

## Landis+Gyr General Conditions of Purchase

These General Conditions of Purchase apply to all Purchase Orders for Goods (including Software as the case may be) issued by an entity of the Landis+Gyr Group (Purchaser) either on a stand-alone basis, based on Supplier's offer or under a separate (e.g. framework) agreement. Supplier's acknowledgement or confirmation of the Purchase Order and/or commencement of deliveries shall be deemed an acceptance of the Contract.

### 1 DEFINITIONS

**Confidential Information** means all information relating to or used by any Landis+Gyr Group entity, including know-how, trade secrets, ideas, and information about products, services, customers, suppliers, marketing and operations and any other information disclosed by or on behalf of the Purchaser or a Landis+Gyr Group entity. Excluded is information which is generally publicly known without any breach of confidentiality or disclosed to the Supplier without breach of confidentiality.

**Contract** means the agreement between the parties according to which Supplier will provide Goods the Purchaser as agreed in the Purchase Order and/or, if applicable, a separate (e.g. framework) agreement under which the Purchase Order is issued, these General Conditions of Purchase as well as any other documents referred to aforementioned documents. In no event shall Supplier's general terms and conditions or similar terms apply, unless the Purchaser has expressly agreed thereto in writing.

**Force Majeure** means any unforeseeable and unavoidable event beyond a party's reasonable control and which cannot be prevented despite reasonable efforts of the affected party, including acts of god, war, fire, flood, storm, epidemic or government action. Events such as strikes, labor disturbances or trade disputes, lockouts, supply shortages, accidents or supplier insolvencies shall not be considered as Force Majeure.

**Goods** means the goods described in the Contract, Purchase Order, Specifications and/or work statements including, if applicable, relevant Software.

**Group (entity)** means any corporation, company or other business entity which is controlled by a company, controls a company or is under common control with a company.

**Intellectual Property Rights** means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark, brand name, service mark, trade name, eligible layout right, topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or registered or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

**Purchase Order** means the purchase order issued by Purchaser in accordance with the Contract including related documents to describe the deliveries such as work statement or Specifications.

**Purchaser** means the Landis+Gyr Group entity ordering Goods under the Contract.

**Software** means any software and/or firmware described in the Contract, Purchase Order, Specifications, work statements and/or as included in the Goods.

**Specifications** means the technical, manufacturing, quality, testing, security, packaging and transport information supplied and/or approved by Purchaser as amended from time to time in writing.

**Supplier** means the supplier supplying Goods under the Contract.

### 2 DELIVERY

2.1 The Goods must be sufficiently packed and prepared for safe transport, labeled according to Purchaser's instructions and be accompanied by all relevant documents and information reasonably requested by the Purchaser and shall be delivered on the delivery date and destination according to the Purchase Order. If the Goods are incorrectly delivered, the Supplier will be held responsible for any related costs, damages or expenses. Unless otherwise agreed, the Goods shall be delivered DDP (Incoterms 2010).

2.2 If Goods include Software, the delivery shall, unless explicitly agreed otherwise, include object code and source code. Upon request, Supplier shall deposit the source code and all relevant documentation, instructions, knowhow and tooling for support and maintenance with an escrow holder designated by Purchaser with release conditions providing the Purchaser with adequate access to the source code and documentation as required by the Purchaser. If not made subject to a separate agreement, the Supplier will supply bug fixes and updates for the Software at no additional cost.

2.3 Except where the Contract expressly provides otherwise, the Purchaser is allowed to re-sell, license, alter, modify and combine the Goods and/or Software and/or transfer and assign all related rights without limitation, either alone or as part of one of the Good.

### 3 DOCUMENTATION

3.1 The Supplier shall furnish with the Good all operation and maintenance manuals, drawings, calculations, technical data, diagrams, progress and final reports, quality confirmation certificates, bill of lading, bill of material, certificates of origin, export authorizations and licenses, security data sheets, compliance documents, export permissions and restrictions, track and trace information and any such other documents, information and data as required according to the Contract or the applicable laws or as reasonably requested by the Purchaser. Upon request, the Supplier shall submit such documents, information or data to the Purchaser for review and approval.

3.2 The Supplier shall keep all documentation, information and all other data relevant under the Contract (including but not limited to all records to trace and evidence compliance with the applicable laws, rules and regulations) at least for fifteen (15) years upon delivery or any longer period agreed in the Contract or required by applicable laws. The Supplier warrants that such documentation, information and data is at all times available within a reasonable time upon Purchaser's request.

### 4 PERFORMANCE AND QUALITY

4.1 The Supplier shall follow all reasonable instructions, policies and procedures of the Purchaser. Supplier shall promptly notify the Purchaser in case Purchaser's instructions, policies or procedures or any other circumstances adversely affect the performance of the Contract.

4.2 The Supplier warrants that the Goods (a) are new, of good quality, free from defects

or lack of conformity in design, workmanship and material and fit and suitable for the purpose for which goods of that kind are commonly bought and for any purpose expressed in the Contract or reasonably inferred from it; and (b) if applicable, correspond with the relevant samples provided by the Supplier; and (c) are provided in strict accordance with the Contract, conform with any Specifications, sample, drawing, description and other specification provided by the Purchaser; and (d) are designed, manufactured, tested and provided with all due care and skill, in a professional and timely manner, and to the best of Supplier's knowledge and competence.

4.3 Unless a longer period is agreed in the Contract, the liability period for warranties under section 4.2 shall be sixty (60) months from when the Good was put into commercial use. For repaired or replaced Goods or parts thereof a new defects liability period shall commence, with a final cut-off date after ninety-six (96) months.

4.4 If during the liability period for warranties the Goods show a defect or other nonconformance, the Supplier shall, without prejudice to any of Purchaser's other rights, at Purchaser's option, immediately repair or replace defective Goods at no cost to Purchaser or refund payments. In case the Supplier does not timely comply with such request, Purchaser shall be entitled to appoint a third party to repair or replace the Goods or perform the Service at Supplier's cost.

4.5 The Supplier warrants that (a) it has the necessary expertise, skill, knowledge and resources to comply with its obligations under the Contract and it has and maintains at all times sufficient and appropriate management, personnel, equipment and other resources necessary to ensure its obligations under the Contract; and (b) it will ensure that the personnel engaged in the performance of any services and design, manufacturing and provision of Goods is suitably qualified and experienced and carries out the duties to the best of their skill and ability and in accordance with best practice of industry standards; and (c) it has all necessary permits, rights and licenses to sell Goods to the Purchaser as agreed in the Contract.

4.6 Supplier warrants that support, maintenance and after-sales services (including repair services) are available up until at least five (5) years after end of the lifecycle of the Good or Software. End of lifecycle shall be announced by giving at least 12 months notice in writing. If support, maintenance and after-sales services are not continued beyond the period mentioned above, Supplier shall provide Purchaser or an appointed third party with all information (including track and trace information), code, tools, resources and knowhow reasonably requested by Purchaser to ensure compliance with any obligations applicable according to customer contracts or the law.

4.7 All warranties under the Contract are in addition to and without prejudice to any other warranties, rights, remedies or guarantees from the Supplier or third parties in respect of the Goods set out in the Contract or implied or imposed by law.

### 5 TITLE AND RISK

5.1 Supplier warrants that there is no restriction on or impediment to the passing of full title in the Goods to the Purchaser. The title to the Goods shall pass to the Purchaser free of encumbrances and other interests from the earlier of delivery or payment of the Goods.

5.2 The risk of loss of or damage to the Good shall pass to the Purchaser upon delivery of the Good to the named destination.

### 6 INSPECTION

6.1 The Supplier warrants that it has tested and inspected the Goods for compliance with the Contract prior to delivery and shall, if requested, supply the Purchaser with certificate of testing and/or certificates of origin.

6.2 The Purchaser and/or Purchaser's customers may inspect the Goods at any time upon request. The Supplier shall facilitate inspection and give the Purchaser any access reasonably required for the purpose of conducting the inspection to the satisfaction of the Purchaser at no additional cost. Such inspection does not relieve the Supplier of any of its obligations under the Contract.

### 7 ACCEPTANCE

7.1 The Goods shall be considered accepted when the Purchaser confirms that the Goods are in full conformance of the Contract. The Purchaser is entitled at any time prior to Acceptance and without prejudice to any other rights, to reject any Goods not complying with the Contract. Rejected Goods shall be replaced by conforming Goods, as directed by the Purchaser. In the event that Goods are rejected and cannot be re-delivered within the timeframe specified by Purchaser, the Purchaser may, without prejudice to its other rights, purchase such Goods from a different supplier and the Supplier shall reimburse any costs incurred for such supply.

### 8 DELAYS

8.1 The Goods shall be delivered in accordance with the time schedule set forth in the Contract or as directed by the Purchaser. The Supplier shall immediately notify the Purchaser if any delivery or performance is delayed or likely to be delayed and propose at the same time measures for acceleration.

8.2 If the delivery of the Goods is delayed, the Supplier shall pay liquidated damages to the Purchaser as set out in this clause. Liquidated damages for delay will accrue as a debt due at the rate of five percent (5%) of the Purchase Order value per week of delay or commenced week of delay unless other terms are agreed in the Contract. Supplier agrees that the liquidated damages amount is a genuine pre-estimate of Purchaser's loss and damage for delay in delivery of Goods, and is without prejudice to any other rights or remedies that Purchaser may have, in particular Purchaser's right to compensation of any additional damage or losses.

### 9 INTELLECTUAL PROPERTY RIGHTS

9.1 Supplier warrants that the Goods do not infringe any Intellectual Property Rights of any third party.

9.2 The Supplier shall defend and hold Purchaser harmless from any claims by third parties against Purchaser or Purchaser's customers concerning breach of Intellectual Property Rights and shall, upon request, participate in and bear all costs in relation to such lawsuit or settlement (including legal fees, compensation for all damages and settlement

payments).

9.3 If, due to third party Intellectual Property Rights asserted at any given time, the Purchaser or Purchaser's customers are unable to use the Goods in whole or in part, the Supplier shall, at Purchaser's option and at no cost to Purchaser or Purchaser's customers, (a) modify or adapt the Goods in such a way that they do not breach the rights of third parties and compensate Purchaser for all costs for implementation of such modifications or adaptations, or (b) obtain licenses from the third party. This shall apply in addition to and without prejudice to any other warranties, rights, remedies or guarantees from the Supplier or third parties set out in the Contract or implied or imposed by law.

## 10 INDEMNITIES AND INSURANCE

10.1 The Supplier shall indemnify and hold the Purchaser, its Group entities, officers, directors, employees and agents harmless against all liability, claims, damages, costs, expenses (including legal expenses) and losses, whether direct or indirect, incurred by the Purchaser in any way, arising from (a) any breach of the Contract (including any breach of any warranty or representation given by the Supplier in relation to the Goods), (b) any act or omission of the Supplier, its Group entities, officers, directors, employees, agents or subcontractors in connection with the Goods or Supplier's performance of the Contract, (c) personal injury to or death of any person or damage to property arising from the Supplier's performance of the Contract or any use of the Goods, (d) any failure by the Supplier to deliver the Goods on time.

10.2 The Supplier must take out and maintain appropriate insurance to cover its liabilities under the Contract. General all-risk insurance and product liability insurance shall not be less than EUR five (5) mio. per occurrence or any higher value agreed in the Contract. Upon request, the Supplier shall present such policies to the Purchaser.

## 11 FORCE MAJEURE

11.1 Neither party shall be considered in breach of Contract where its performance is, in whole or in part, prevented or delayed due to a Force Majeure event. In such case, the time for performance shall be adjusted accordingly, subject to the delayed party promptly notifying the other party of the Force Majeure event and taking all reasonable steps to mitigate the resulting delay.

## 12 PRICE AND PAYMENT

12.1 Unless differently stated in the Contract or Purchase Order, all prices are in EUR and include all tax (including VAT), insurance costs, license fees and freight costs to the named destination as well as other charges set out in the Contract. The price is firm and fixed and not subject to escalation for any reason unless otherwise stated in the Contract.

12.2 Supplier shall send, upon the completion of delivery submit a detailed invoice stating the details as requested by Purchaser together with all supporting documents.

12.3 Purchaser shall pay the Supplier the amounts due (less any amounts which the Purchaser is entitled to deduct pursuant to the Contract or otherwise) after delivery of the Goods or Acceptance, as the case may be, within ninety (90) from the receipt of the sufficiently detailed and documented invoice. If the Supplier is in breach of the Contract, the Purchaser may suspend its payments.

## 13 CHANGES OF GOODS

13.1 The Purchaser may at any time request the Supplier to make changes to the Goods or the scope of the Contract (Change Request). The Supplier shall within five (5) days provide a written statement of the impact of the requested change(s) in respect of time for delivery and costs. The Supplier shall not undertake any changes or variations to the Goods unless specifically instructed or approved by the Purchaser. If the parties fail to reach agreement on the impact of the requested change(s), the Purchaser is entitled to request the Supplier to commence the implementation of the Change Request prior to having finalized the adjustments to the Contract.

## 14 CONFIDENTIALITY

14.1 The Supplier shall establish and maintain effective security measures to prevent any unauthorized use or disclosure of or access, loss or damage to the Confidential Information. Confidential Information shall not be used for any other purpose than executing the Contract. Disclosure to any third party, including Supplier's suppliers, advisers, consultants or Group companies, is subject to Purchaser's previous written consent.

14.2 When required to disclose Confidential Information by mandatory law or regulatory authority Supplier shall immediately notify Purchaser and shall provide all assistance to Purchaser to challenge or limit such disclosure.

14.3 Upon request by the Purchaser and upon termination of the Contract, the Supplier must (a) immediately cease all use of the Confidential Information and (b) at Purchaser's option, return to the Purchaser or permanently delete and destroy all materials containing or derived from Confidential Information and certify in writing compliance with the provisions of this clause.

## 15 SUSPENSION

15.1 The Purchaser may instruct the Supplier to suspend performance of the Contract. In case the suspension exceeds three (3) months, the Supplier shall be entitled to payment of direct costs (excluding any profit element) attributable to the suspension, provided the Supplier has taken all reasonable steps to minimize the costs associated with the suspension. The Supplier shall not suspend performance unless agreed in writing with Purchaser.

## 16 COMPLIANCE

16.1 The Supplier represents and warrants that (a) the Goods do not include any hazardous and/or contaminated substances, elements or waste of any kind, which is restricted by law or by international engineering practice, at the place of origin and/or any temporary or final destination according to the Contract, and (b) the Goods will be delivered with all instructions, warnings, data sheets and other data necessary for safe and proper installation, operation and scrapping, (c) are in strict compliance with the laws, regulations, standards and industry codes applicable at the place of origin and at the temporary and final destination, in particular but not limited to the relevant EU and member state legislation on data protection, data security, WEEE, RoHS, REACH, ELV, Battery Directive, Packaging Regulation and ERP.

16.2 Supplier hereby agrees to adhere to the Purchaser's Code of Conduct in its latest version and undertakes to comply with its provisions, and to ensure, when applicable, that each entity of the Group it belongs to complies with such provisions.

16.3 Supplier warrants that it has not directly or indirectly paid any commission, fees, 'kick-backs' or granted any rebates to Purchaser's officers or employees or any other third party, including any customers of the Purchaser, or made any gifts, entertainment or any other non-monetary favours or other arrangements.

16.4 Any breach of this clause 16 by the Supplier or a Supplier Group Entity shall be considered to be a material breach. Supplier shall indemnify and hold harmless Purchaser from and against all claims, loss or damage arising in connection with Supplier's breach of its obligations under this clause 16.

## 17 TERMINATION

17.1 **Termination for Cause.** Without prejudice to any other rights and remedies under the Contract, the Purchaser may terminate this Contract or parts thereof by written notice to Supplier (a) if the Supplier is in breach of the Contract, (b) if the Supplier does not begin performance in a timely manner, fails to make progress as agreed in the Contract or is otherwise in delay and fails to provide adequate assurances that the delivery of the Goods will be made in a timely manner, (c) if the Supplier effects or attempts to effect any assignment or transfer of any of its obligations or rights other than as permitted by the Contract, (d) if the Supplier becomes bankrupt or insolvent or makes an arrangement with its creditors, has a receiver or administrator appointed, becomes unable to pay its debts as they fall due, commences winding up or similar proceedings or ceases or threatens to cease to carry on its business.

17.2 **Termination for Convenience.** The Purchaser may at any time terminate the Contract or parts thereof for convenience by written notice in writing.

17.3 Upon any termination or expiry of this Contract, the Supplier must, upon Purchaser's request, (a) deliver all work in progress and all things necessary to enable the Purchaser to complete the Goods, (b) assign to the Purchaser any rights, titles, agreements and commitments relating to the supplies which the Supplier has acquired, (c) immediately make available for collection or at its own cost deliver to the appointed recipient all goods, materials, equipment, documentation or other information owned or provided by Purchaser to the Supplier under the Contract which is in the possession, custody or control of the Supplier. Termination or expiration of the Contract does not affect any right (including license rights), claim or remedy of the Purchaser that accrued prior to termination or expiration.

17.4 In case of termination for Cause by Purchaser, the Purchaser may, at its option, reject all or part of the Goods and complete all or parts of the Goods itself or through a third party at the cost and risk of Supplier or require a refund for all rejected Goods. Without prejudice to any other rights and remedies of the Purchaser, the Supplier shall compensate the Purchaser for any cost, expense, loss and damage incurred by the Purchaser in connection with such termination. The Purchaser is entitled to withhold payment of all due amounts until the amounts due by Supplier have been established and can be set-off.

17.5 In case of termination for Convenience, the Purchaser shall pay for all Goods which have been delivered and accepted by the Purchaser.

## 18 MISCELLANEOUS

18.1 **Subcontracting.** The Supplier may only subcontract the provision of the Goods to a third party with the prior written approval of the Purchaser. Subcontracting shall not release Supplier from any of its obligations under the Contract and Supplier shall be fully liable for the acts and omissions of its subcontractors.

18.2 **Notices.** All notices must be addressed to the recipient at the details set out in the Purchase Order or to any other address that a party may notify to the other for this purpose. Notices shall be sent by registered mail, by facsimile or courier service or delivered by hand.

18.3 **Assignment.** The Purchaser may assign or transfer the Contract or any rights or obligations without the prior written consent of the Supplier. The Supplier may not assign or transfer the Contract or any rights or obligations without the prior written consent of the Purchaser.

18.4 **Relationship.** Nothing in the Contract shall be deemed to constitute a joint venture, partnership or relationship of principal and agent or employer and employee or similar relationship. Neither party has the right or authority to bind the other by any representation, declaration or admission, or to make any contract or commitment on the other's behalf.

18.5 **No Waiver.** The failure of the Purchaser to enforce or exercise any term of or any right pursuant to the Contract does not constitute, and will not be construed as a waiver of such term or right and shall in no way affect the Purchaser's right to later enforce or to exercise it.

18.6 **Severance.** If any provision contained in the Contract is found to be illegal, invalid or unenforceable under any applicable law, the term will, insofar as it is severable from the remaining terms, be deemed omitted (as the case may be) and will in no way affect the legality, validity or enforceability of the remaining terms.

18.7 **Order of Precedence.** All Contract documents shall be taken as mutually explanatory. In case of conflict or inconsistency the following, the order of precedence shall be (1) Purchaser's Purchase Order; (2) the additional (framework) agreement (if any), (3) these General Conditions of Purchase; and (3) any other documents referred to herein.

18.8 **Amendments.** Any amendments to the Contract shall be binding only if in writing and signed by duly authorized representatives of the parties. This requirement may only be waived in writing.

## 19 GOVERNING LAW AND JURISDICTION

19.1 These Terms and Conditions and the Contract shall be exclusively governed by the laws of South Africa without reference to the conflict of law provisions and the possibility to refer to any different body of law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

19.2 In the event of any disputes arising out of or in connection with the Contract or any deliveries hereunder, the commercial courts of South Africa shall have exclusive jurisdiction.