

General Conditions of Contract for the Provision of Design and other Professional Services

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General Conditions of Contract for the Provision of Design and other Professional Services

Conditions governing contract to be executed by contractors for Outokumpu Stainless Ltd and/or any of its subsidiary companies.

1. Definition of Terms

1.1 "the Purchaser" means Outokumpu Stainless Ltd

"the Contractor" means the firm or Company named as such in the Contract.

"the Contract" means the agreement in writing (including schedules, appendices, specification and similar attachments) between the Purchaser and the Contractor for the execution of the Service referring to these General Conditions.

"the Site" means any land or premises occupied by the Purchaser and any other place provided by the Purchaser on or through which the Service is to be provided.

"the Service" means the service to be provided by the Contractor as described in, and in accordance with, the Contract.

1.2 In these Conditions the masculine shall include the feminine and the singular shall include the plural and vice versa unless the context requires otherwise.

Any reference to any Act of Parliament in these Conditions shall be a reference to the Act as it may be re-enacted or modified.

Clause headings and marginal notes are inserted for convenience only and shall not affect the construction and interpretation of these Conditions.

2. Contractor's Proper Performance of the Service

2.1 The Contractor shall perform the Service:-

- a) with all reasonable skill, care and diligence; and
- b) to the reasonable satisfaction of the Purchaser.

2.2 The Contractor shall employ persons with all the requisite skills and experience necessary to carry out the Service.

2.3 In the event that the Contractor is proved to have failed to execute the Contract in accordance with its express terms the Contractor shall at the option of the Purchaser either:-

- a) perform again such of the Service as has not been carried out in accordance with the express terms of the Contract; or
- b) without prejudice to any other right or remedy of the Purchaser, repay the Purchaser the charge for such of the Service as has not been so performed (provided such charge shall have been paid to the Contractor by the Purchaser).

2.4 Time shall be of essence in the provision of the Service.

2.5 If and insofar as the Contractor operates as an employment agency or employment business in its dealings with the Purchaser, the Contractor warrants that he will comply with the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Business Regulations 2003.

3. Statutory and Local Regulations

The Contractor in carrying out the Contract shall conform at his own expense with all applicable British or other standards as specified in the Contract and all legislative provisions and by-laws and with any local and Site Regulations and other regulations of the Purchaser particularly (but without limitation) those relating to safety. Before beginning the Service on Site the Contractor shall sign a certificate provided by the Purchaser certifying that the Contractor has been made aware of the Purchaser's local and Site Regulations, safety rules and general rules applicable to the Purchaser's own employees on the Site and that the Contractor will abide by them and shall procure that the Contractor's employees abide by them.

4. Ownership of IPR

- 4.1 All drawings, calculations, reports, specifications, systems investigations discovery, invention, design, know-how, software programs created for the Purchaser and other intellectually property rights or the like provided to the Purchaser in connection with the Service shall be the property and copyright of the Purchaser. Therefore all copyrights, other intellectual property rights and know how named above and the ownership of those are immediately upon its creation transferred to Purchaser. The transfer does also include all rights to make changes and the right of transfer.
- 4.2 The Contractor will, at the request of the Purchaser at any time, take all steps and execute all documents necessary to enable the Purchaser to obtain patent or corresponding protection in respect of the matters referred to in Clause 14.1 as may be so protected.
- 4.3 All drawings or the like provided to the Contractor by the Purchaser for the provision of the Service shall remain the copyright and property of the Purchaser. The Contractor shall not copy or use the same for any purpose other than for the provision of the Service and shall return them promptly to the Purchaser in good order and condition.
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5. Payment

- 5.1 The Purchaser will pay the Contractor:-
- a) the lump sum specified in the Contract; and/or
 - b) the appropriate hourly or weekly rate specified in the Contract for each hour or week during which the Contractor is performing the Service.
- 5.2 The hourly or weekly rate shall apply only in respect of the hours or weeks (as the case may be) actually worked by the Contractor in the provision of the Service and no payment shall be due in respect of time taken for meal breaks, sickness or other leave of absence and holidays.
- 5.3 When payment is to be made by virtue of Clause 5.1(b) the Contractor will procure that there is completed an accurate time sheet recording the number of hours worked by the Contractor in the provision of the Service and that such time sheet is countersigned by an authorised representative of the Purchaser.
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6. Payment Terms

- 6.1 Unless otherwise specified in the Contract the Contractor will submit an invoice when the provision of the Service has been concluded, supported, if applicable, by a time sheet or time sheets signed by the Contractor and countersigned by an authorised representative of the Purchaser.
- 6.2 Unless otherwise stated in the Contract the Purchaser will pay the Contractor the amount due in respect of the invoice on the 30th day of the second calendar month following the month of Service provided that the invoice contains the Purchaser's order number and reaches the Purchaser on or before the 5th day of the first calendar month following the month of Service.
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7. Assignment and Sub-letting The Contractor shall not assign or sub-let the provision of the Service of any part thereof.

8. Patent and other Protected Rights The Contractor shall indemnify the Purchaser against actions, claims, demands, costs, charges and expenses arising from any infringement or alleged infringement of any letters patent, registered design, trademark, copyright or other like right protected by law resulting from the provision of the Service.

9. Variation Orders

9.1 The Contractor shall not vary, add to or omit any part of the Service except as directed in writing by the Purchaser but the Purchaser shall have full power from time to time during the term of the Contract by notice in writing to add to or omit in any manner any part of the service, and the Contractor shall carry out these variations and be bound by the Conditions so far as applicable, as though these variations were stated in the Contract.

9.2 In any case in which the Contractor has received a direction from the Purchaser under this Clause, the Contractor shall advise the Purchaser in writing:-

- a) within 7 days whether in principle there should be an increase or decrease in the agreed price and/or change in the time schedule and
- b) within 21 days of the amount of the increase or decrease of the agreed price and/or change in the time schedule

Within 10 working days from receiving Contractors advise the Purchaser is entitled to withdraw his direction without cost.

The amount of that increase or decrease shall be ascertained and determined in accordance with any rates specified in the Contract so far as the same may be applicable, and, where rates are not contained in the Contract or are not applicable. such amount as shall be fair and reasonable in the circumstances. The same will apply to change in the time schedule. Due account shall be taken to any part taken out from the Service by any variation. No increase of the Contract Price or time under this Clause 9.2 shall be made unless the Contractor shall have given the advices in writing referred to in this Clause within the time specified.

9.3 If the Purchaser shall make any variation under this Clause in respect of any part of the Service, reasonable notice in writing shall be given to the Contractor to enable him to make his necessary arrangements accordingly. If, in the opinion of the Contractor, any variation is likely to prevent or prejudice the Contractor from fulfilling any of his obligations under the Contract he shall so notify the Purchaser in writing, and the Purchaser shall decide with all possible speed whether or not the same shall be carried out. If the Purchaser confirms his instructions in writing, those obligations shall be modified to such an extent as may be justified and agreed with the Purchaser. Until the Purchaser so confirms his instructions they shall be deemed not to have been given.

10. Contractor's Default

10.1 If the Contractor shall fail to provide the Service or any part of the Service with due diligence and expedition or shall refuse or neglect to comply with any reasonable order given to him in writing by the Purchaser in connection with the Service or shall contravene any provision of the Contract, the Purchaser may give notice in writing to the Contractor to make good the failure, refusal, neglect or contravention complained of.

10.2 Should the Contractor fail to comply with the notice referred to in Clause 10.1 within such time as may be reasonable for making it good, then without preju-

dice to any other right or remedy he may have under the Contract or at common law, the Purchaser may:-

- a) employ other personnel and provide the Service or that part of the Service which the Contractor shall have neglected to provide; or
- b) take the provision of the Service in whole or in part out of the Contractor's hands and re-contract with any other person to provide the same.

10.3 The Purchaser shall be entitled to retain any sum which may otherwise be due to the Contractor and to apply that sum towards the payment of the cost of providing the Service or such part of the Service referred to in Clause 10.2. If the cost of doing this work shall exceed the sum retained, the Contractor shall pay the excess forthwith to the Purchaser.

11. Termination

11.1 If by reason of an event which cannot reasonably be anticipated or prevented by the Purchaser or if by reason of any strike, lock out or other industrial dispute or if by reason of any closure of the Site or temporary or permanent cessation of a relevant part of the Purchaser's business the provision of the Service or any part of the Service is rendered unnecessary or uneconomic to the Purchaser then the Purchaser may by notice in writing terminate or suspend the operation of the Contract in whole or in relation to the part of the Service so affected.

11.2 In the event that a notice is issued pursuant to Clause 11.1 the Purchaser shall pay to the Contractor the Contractor's direct costs reasonably incurred in withdrawing the Service or part of the Service so affected and in discharging any commitments reasonably entered into in order to provide the Service or such part of the Service.

11.3 Save as aforesaid, the Purchaser shall have no liability in respect of any loss suffered by the Contractor as a result of such termination or suspension.

12. Access to the Site

The Contractor shall have access (but not exclusive access) only to such parts of the Site as are reasonably necessary for the purpose of providing the Service and to such other parts as the Purchaser may from time to time authorise. The Contractor shall be responsible for ensuring that his employees do not enter any other part of the Site and that they make use only of such roads, routes and facilities as the Purchaser may from time to time authorise.

13. Interference with other Operations and Rights

The Contractor in providing the Service shall ensure that there shall be no interference with the operations of the Purchaser or of other contractors or with the use and enjoyment of any public rights or with any easement of property whether of the Purchaser or not unless the Contract unavoidably so requires and then the Contractor shall ensure that any such unavoidable interference is as limited as possible.

14. Liability

14.1 The Contractor shall indemnify and keep the Purchaser fully indemnified against all actions claims proceedings liabilities costs expenses and losses (including but not limited to direct, indirect and consequential loss of profit or loss of production whether foreseeable or not) in relation to death or injury to persons (including but not limited to any employee of the Employer) or loss of or damage to property (including but not limited to property of the Employer) or a breach of contract by the Contractor to the extent that such death injury loss damage or breach is attributable to the acts or omissions of the Contractor its officers employees agents or sub-contractors.

14.2 Except in respect of claims for personal injury or death or loss of or damage to

third party property or wilful misconduct or intent by the Contractor the liability of the Contractor arising under Clause 15.1 for any one act or omission shall not exceed 200 % of price agreed for the Service or £10 Million whichever is the greater.

- 14.3 The Contractor shall during the period of the Contract hold adequate insurance policies to cover the full amount of the Contractors potential liability under clause 14.1 and 14.2. Satisfactory evidence of such insurance and payment of the premium shall be shown to the Purchaser upon request. If insurance is not effected or premiums not paid, the Purchaser may effect or pay the same and may deduct the cost of so doing from the price agreed for the Service.
- 14.4 The Contractor shall hold employers' liability insurance in respect of his employees of at least a minimum of £10 million (ten million pounds sterling) in respect of any one event or series of connected events.
- 14.5 In addition to the above the Contractor shall indemnify and keep the Purchaser fully indemnified against all actions, claims, proceedings, liabilities, costs, expenses and losses suffered or incurred by the Purchaser in relation to any claim by a person who have carried out the Service against the Purchaser in which the person relies upon the allegations that he or she is either a worker or employee of the Purchaser.

15. Contractor's Employees

- 15.1 The Purchaser shall be at liberty to object to any representative or person employed by the Contractor in the provision of the Service who shall, in the opinion of the Purchaser, misconduct himself or be incompetent or negligent. The Contractor shall remove that person and he shall not be employed again by the Contractor in connection with the Service without the permission of the Purchaser. Any removal of labour under this clause shall not constitute a valid reason for the Contractor's failure to provide the Service in accordance with the Contract.
- 15.2 All persons directly or indirectly working for the Contractor under the Contract shall have the necessary skills and experience to the best professional standards and have sufficient and well maintained equipment, (including but not limited to safety clothing and safety equipment) to carry out the Works. The Purchaser shall be entitled if he so requires to have suitable certificates of competence from the Contractor for any person employed providing the Service.
- 15.3 The Contractor shall not without the consent of the Purchaser or of the Contractor concerned knowingly take into the employment workmen or other employees of the Purchaser or from any other Contractor employed by the Purchaser in providing a similar or comparable Service.

16. Key Person(s)

- 16.1 In the event that any one or more of those persons named as such in the Contract cease to be employed by the Contractor in connection with the performance of the Service, the Purchaser shall be entitled to terminate the Contract upon giving 7 (seven) days written notice to the Contractor.
- 16.2 In the event of such termination, the Contractor shall be entitled to payment for that part of the Service actually performed as at the actual date of termination but shall be entitled to no further payment and the provisions of Clause 4 (Ownership of IPR) shall also apply.

17. Secrecy

The Contractor shall not at any time disclose to any person any information acquired which concerns the Purchaser its business or interests or which concerns any company, firm or person with which the Purchaser may be in commercial or technical co-operation or association unless such disclosure is made with the written consent of the Purchaser and the Contractor shall not make use of any such information to the detriment or prejudice of the Pur-

chaser.

18. Publications

The Contractor shall not publish any photographs literature deliver any lecture or make any communication with the press concerning the Purchaser, its business or interests or use the Purchaser as a reference nor take any photographs of the Purchaser's property without the written consent of the Purchaser.

19. Bankruptcy

If the Contractor shall have a winding up or bankruptcy petition presented or enter into any form of voluntary arrangement with its creditors or become bankrupt or insolvent or have a receiving or administration order made against him or compound with his creditors or enter into administration or being a corporation commence to be wound up, not being a member's voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under an administrator or a receiver for the benefit of its creditors or any of them the Purchaser shall be at liberty and at no cost to him, either:-

- a) to terminate the Contract forthwith by notice in writing to the Contractor or to the administrator, receiver or liquidator or to any person in whom the Contract may become vested and to act in the manner provided in Clause 10 (Contractor's Default) as if the provision of the Service has been taken out of the Contractor's hands; or
 - b) to give such administrator, receiver, liquidator or other person the option of carrying out the Contract subject to his providing a guarantee in a form and from a guarantor acceptable to the Purchaser for the due and faithful performance of the Contract up to an amount to be agreed.
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20. Complete agreement

20.1 The Contract hereto shall constitute the complete agreement between the parties and no correspondence prior to the date of signature hereof nor any standard terms and/or conditions of the Contractor shall have effect so as to modify its terms.

20.2 No variation or amendment of this Agreement shall have effect unless it is made in writing and signed by both parties.

21. Offers of Employment

During the period of this Contract and thereafter for a period of one year the parties agree not to employ as a director, manager, consultant, employee or otherwise the services of any director, manager, consultant, employee, or otherwise of the other party engaged in the performance or supervision of this Contract without the prior written consent of the other party.

22. Law and dispute

The Contract shall be governed and construed in accordance with English Law.

If the Contractor is a company registered in United Kingdom any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to the resolution of the High Court, in Sheffield, England.

If the Contractor is a company registered in a country outside United Kingdom any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules (London Court of International Arbitration), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or

legal place, of arbitration shall be Sheffield, England. The language to be used in the arbitral proceedings shall be English.

APPENDIX

CLAUSE 15.3 - PROFESSIONAL INDEMNITY INSURANCE

Professional Indemnity insurance is/is not* required

If cover is required, the minimum sum insured must be £ in the aggregate.

*delete as appropriate