

Annex Capital Goods

1. Scope of application

- 1.1 This ANNEX CAPITAL GOODS governs the manufacture and supply of CAPITAL GOODS in conjunction with the CONTRACTUAL TERMS.
- 1.2 The SERVICE the SUPPLIER owes in reference to the manufacture and supply of CAPITAL GOODS, its scope, specifications and schedule will be established separately in the PROJECT ANNEXES.

2. General obligations

- 2.1 Unless otherwise agreed in writing, the SUPPLIER shall manufacture the CAPITAL GOODS at its own responsibility, using its own personnel, its own health and safety equipment and, to the extent necessary, its own devices, equipment and tools.
- 2.2 The SUPPLIER declares that it has taken note of (and, if necessary, procured) all records, documents and information of significance to the manufacture and supply of CAPITAL GOODS and is aware of the scope of the SERVICE, its intended use and the usage environment of the CAPITAL GOODS, along with the resulting requirements.
- 2.3 In the event that GRAMMER imposed requirements of any kind on the SUPPLIER in reference to the SERVICE in the CONTRACTUAL TERMS, and specifically in the PROJECT ANNEXES, the SUPPLIER must thoroughly review such requirements, especially with regard to completeness and implementability and including a comparison of the contents pursuant to section 2.2. If, based on such review, the SUPPLIER has doubts or concerns or needs additional information, it will promptly so advise GRAMMER in writing.
- 2.4 The SUPPLIER must inform GRAMMER on a regular basis and on its own initiative about the progress of the SERVICES related to the manufacture of the CAPITAL GOODS, including but not limited to the completion of MILESTONES.
- 2.5 The SUPPLIER is obliged to clearly and permanently label the CAPITAL GOODS and, while they are being manufactured, any distinct (partial) SERVICE as the property of GRAMMER or its customers, as well as to transmit to GRAMMER suitable proof (e.g., photos) of such labeling.

3. Rights of access, review and audit

- 3.1 GRAMMER is entitled at any time to review the SUPPLIER's SERVICE and compliance with the obligations under CONTRACTUAL TERMS itself or have a third party do so.
- 3.2 The SUPPLIER grants GRAMMER or a third party acting on GRAMMER's behalf a right of inspection, access to its places of business as well as full access to all documents, data and systems related to the implementation of executed contracts during regular business hours (but at least between 8 a.m. and 5 p.m., local time). The SUPPLIER is entitled to adopt suitable

measures to safeguard its business and trade secrets and protect confidentiality; however, such measures must not interfere with the completion of the review and/or affect its outcome.

4. Delivery, fixed dates

- 4.1 Unless otherwise agreed, the SUPPLIER must deliver the CAPITAL GOODS to the location GRAMMER specified in the ORDER, install them there and have GRAMMER accept them after they were successfully put into service.
- 4.2 The fixed dates agreed between the PARTIES are binding and must be met by the SUPPLIER. They include but are not limited to fixed dates for the INTERIM ACCEPTANCE, delivery, installation, commissioning and acceptance of the CAPITAL GOODS.

5. Project plan

The PARTIES may jointly determine (“PROJECT PLAN”) that the SUPPLIER is to provide the SERVICES for the manufacture and supply of CAPITAL GOODS in the form of individual milestones (“MILESTONES”).

6. Changes

- 6.1 The SUPPLIER is not entitled to change and/or amend the SERVICES, MILESTONES or the PROJECT PLAN (“CHANGES”) without GRAMMER’s consent.
- 6.2 The SUPPLIER is obliged to propose CHANGES it deems necessary or expedient to GRAMMER.
- 6.3 At any time, the PARTIES may demand CHANGES to SERVICES pursuant to the provisions of this section (“CHANGE PROCEDURE”). A CHANGE PROCEDURE may be initiated by the SUPPLIER or GRAMMER by way of an APPLICATION FOR CHANGE or a CHANGE REQUEST, respectively.
- 6.4 **Supplier’s application for change**

6.4.1 In the event that the SUPPLIER intends to make CHANGES to SERVICES, or if it is obliged to do so pursuant to section 6.2, the SUPPLIER must file a written application seeking GRAMMER’s consent to the intended CHANGE (“APPLICATION FOR CHANGE”).

6.4.2 At a minimum, the APPLICATION FOR CHANGE must contain

- a) a detailed and comprehensible comparison of the intended CHANGES to the SERVICE as agreed;
- b) a breakdown and explanation of the advantages and disadvantages of the CHANGE as well as of the need for it;
- c) a breakdown of the technical and commercial implications of the CHANGE, especially for the scope of SERVICES, fixed dates and deliverability, prices, weight, SERVICES already provided, liability for spare parts, LCC/RAMs, technical norms as well as statutory and official requirements, including possible approval procedures, along with other features of the SERVICE and the contractual bases of the PARTIES’ business relationship;

- d) a breakdown and explanation of any resulting duties of assistance on GRAMMER's part.
- 6.4.3 GRAMMER will evaluate the APPLICATION FOR CHANGE, request additional information from the SUPPLIER if needed and make a decision on whether to approve or deny it within a reasonable period of time. Upon its written approval or denial, the CHANGE PROCEDURE concludes in reference to the APPLICATION FOR CHANGE.
- 6.4.4 Should GRAMMER consent to the APPLICATION FOR CHANGE, the SUPPLIER must conduct initial sample testing.
- 6.5 If and to the extent that GRAMMER incurs costs due to, in connection with or as a result of the APPLICATION FOR CHANGE, including internal processing and administrative costs, the SUPPLIER must reimburse it for such costs against documentary proof.
- 6.6 The SUPPLIER bears any and all costs and expenditures incurred due to, in connection with or as a result of the APPLICATION FOR CHANGE, including its implementation.
- 6.7 **GRAMMER's change request**
- 6.7.1 GRAMMER will communicate intended CHANGES in writing ("CHANGE REQUEST") along with the scope of the CHANGE as well as the preferred date of its implementation.
- 6.7.2 The SUPPLIER will immediately, but in any case within 5 (five) calendar days,
- a) evaluate the CHANGE REQUEST and review it for completeness and implementability;
 - b) provide GRAMMER with a written statement containing, at a minimum, the information pursuant to section 6.4.2;
 - c) submit to GRAMMER a detailed written OFFER to implement the CHANGE on the basis of the CHANGE REQUEST ("CHANGE OFFER"); the SUPPLIER is bound by the CHANGE OFFER for a period of 6 (six) months from GRAMMER's receipt thereof.
- 6.7.3 The PARTIES will enter into an agreement about any and all costs and expenditures incurred due to, in connection with or as a result of the CHANGE REQUEST, including its implementation.
- 6.8 The CHANGE PROCEDURE in reference to the CHANGE REQUEST is completed either with the written acceptance of the CHANGE OFFER or the lapse of the six-month acceptance period pursuant to section 6.7.2 c).
- 6.9 GRAMMER is entitled but not obliged to accept CHANGE OFFERS. If GRAMMER accepts a CHANGE OFFER in writing, the SUPPLIER is obliged to implement the changes agreed therein.
- 6.10 During the CHANGE PROCEDURE, the SUPPLIER is obliged to render SERVICES in accordance with previous agreements unless GRAMMER informs the SUPPLIER in writing that the SERVICES are to be suspended or restricted for the duration of the CHANGE PROCEDURE.

7. SUPPLIER's interim acceptance

- 7.1 The SUPPLIER is obliged to conduct its own acceptance procedures ("INTERIM ACCEPTANCE") during the manufacture of CAPITAL GOODS. Specifically, INTERIM ACCEPTANCE encompasses testing and controls for distinct SERVICES as well as possible MILESTONES to verify compliance with GRAMMER's requirements, including the provisions of the CONTRACTUAL TERMS as well as statutory requirements.
- 7.2 The SUPPLIER must document the completion and the result of INTERIM ACCEPTANCE in a report to be provided to GRAMMER without undue delay.
- 7.3 Unless otherwise agreed in writing, INTERIM ACCEPTANCE occurs at the SUPPLIER's place of business and at its risk and expense.

8. Assembly, installation

- 8.1 Before the assembly or installation of CAPITAL GOODS commences, the SUPPLIER must familiarize itself with the localities and environs with regard to all needed conditions and promptly give written notice to GRAMMER of any concerns, risks, problems or requirements.
- 8.2 The SUPPLIER must provide the materials needed for assembly or installation at its own risk and expense.

9. Commissioning

- 9.1 Before commissioning CAPITAL GOODS, the SUPPLIER must ensure that the necessary safety precautions were taken and that the CAPITAL GOODS may be operated without placing the legal interests of GRAMMER or third parties at risk.
- 9.2 Commissioning CAPITAL GOODS requires a written release by GRAMMER as well as an acceptance report signed by both PARTIES.

10. Acceptance

- 10.1 The conditions of GRAMMER's acceptance of CAPITAL GOODS are
 - 10.1.1 the timely and defect-free manufacture of the CAPITAL GOODS by the SUPPLIER;
 - 10.1.2 the SUPPLIER's exhaustive completion of all SERVICES, including any MILESTONES;
 - 10.1.3 the successful preliminary acceptance of the CAPITAL GOODS at the SUPPLIER's place of business in GRAMMER's presence;
 - 10.1.4 the delivery of the documents and records created during the manufacture of the CAPITAL GOODS, including the documentation for all necessary SERVICES;
 - 10.1.5 the delivery of records provided, including but not limited to (design) drawings, CAD data, electrodes, model and functional flow charts, tool tags and images;

- 10.1.6 the delivery of the entire technical documentation, any and all instructions and other documents needed for operating the CAPITAL GOODS;
- 10.1.7 the delivery of any and all necessary declarations (including, where applicable: CE markings, declarations of conformity) and approvals.
- 10.2 Any and all duties pursuant to this section form part of the SERVICE owed and are included with the agreed rate of compensation according to the ORDER.

11. Warranty

- 11.1 If and to the extent that applicable law does not mandate longer periods of limitation, GRAMMER's warranty claims shall become time-barred after 30 (thirty) months from successful acceptance.
- 11.2 In all other respects, the statutory provisions of the law governing contracts for work and labor apply.

12. Property, transfer of title, expectant right

- 12.1 The PARTIES irrevocably agree that GRAMMER acquires the title to the CAPITAL GOODS once payment at the rate of compensation agreed in the ORDER has been made in full. Insofar as partial compensation has been agreed (e.g., for MILESTONES), GRAMMER acquires the title to the MILESTONE or the SERVICES rendered therein, along with such share of the title to the CAPITAL GOODS in question as may reflect the proportion (in percent) of the amount of compensation offered for partial performance to the total amount of compensation for the CAPITAL GOODS.
- 12.2 Until payment at the rate of compensation agreed in the ORDER has been made in full, GRAMMER holds an expectant right for the transfer of the title to the CAPITAL GOODS.
- 12.3 Where compensation is amortized, GRAMMER is granted ownership of the CAPITAL GOODS by way of security.
- 12.4 The SUPPLIER's extended or expanded retention of the title to SERVICES or CAPITAL GOODS is excluded.
- 12.5 The SUPPLIER procures that, at the time the title is transferred to GRAMMER, it holds sole power of disposition and the CAPITAL GOODS are free from any third-party rights, including but not limited to liens, retention of title or liability with respect to accessories.
- 12.6 Subject to a written agreement between the PARTIES, the transfer of the CAPITAL GOODS to GRAMMER may be substituted for an arrangement under which the SUPPLIER safekeeps the CAPITAL GOODS with the diligence of a prudent businessman ("loan"). As part of such loan, GRAMMER is entitled at any time to demand that the CAPITAL GOODS be surrendered to GRAMMER or third parties unless the PARTIES expressly agreed otherwise.

12.7 Insofar as third parties have possession of the CAPITAL GOODS, the SUPPLIER hereby assigns its claim against such third parties for the surrender thereof to GRAMMER. GRAMMER is also entitled to redeem any third-party rights to the CAPITAL GOODS. Insofar as GRAMMER redeems third-party rights to CAPITAL GOODS, the SUPPLIER fully indemnifies GRAMMER against the resulting costs.

12.8 GRAMMER is entitled at any time to demand that the CAPITAL GOODS be surrendered, including in the event of the SUPPLIER's insolvency (exclusion from insolvent assets), irrespective of the SERVICES' state of processing or progress. GRAMMER holds a right of pre-emption with respect to SERVICES already rendered and, to such extent, is entitled – in deviation from the terms of payment – to settle such share of compensation as may be commensurate with a given manufacturing state ahead of the due date. This also applies to any costs of CAPITAL GOODS that are not yet fully amortized.

13. Supply of spare parts

Unless otherwise agreed in writing, the SUPPLIER is obliged to supply spare parts for CAPITAL GOODS at reasonable terms for the period of regular technical use, but at least 25 (twenty-five) years from the CAPITAL GOODS' proper acceptance.