



**ADDITIONAL PURCHASE ORDER CONDITIONS (C)
CONSTRUCTION WORKS
Current as of 23rd May, 2018**

1. OBJECT

- (a) The Company awards to the Supplier the constructions works (such as construction/repair/enlargement/maintenance/refurbishment) foreseen in the Purchase Order ("PO") as well as the supply of materials and services necessary for the execution of said works, being the Supplier under the obligation to deliver the construction works completely concluded, in adequate and entirely satisfactory conditions of safety, conservation, finishing, operation, maintenance and exploitation.
- (b) The Supplier accepts the award of the construction works and represents that it owns all permits and licences required under the applicable legislation to the access and carrying of the activity of construction.
- (c) The Supplier further undertakes that it shall only present a proposal to the Company if and when it possesses all the permits, licenses and/or authorisations legally required for the complete execution of all the works included in the Specification provided by the Company (comprising the general and architecture works and all the works of the project specialities).

2. TIME OF EXECUTION

- (a) The maximum delay for the complete execution and conclusion of the construction works shall be the one set forth in the Negotiation Protocol and/or in the PO. The partial deadline dates included in said documents are also considered by the Parties as binding to the Supplier.
- (b) Any extension of the deadlines dates referred to in the previous paragraph shall only be valid if agreed, in writing, by the Parties.
- (c) Each work shall also be considered to be concluded once it has been perfectly executed and in general conditions of good operation, in particular:
 - (i) After all waste and equipment have been removed, leaving the Supplier the place absolutely clean and having all pavement and other infrastructures eventually damaged been reinstated and/or repaired, as the case may be, in adequate terms;
 - (ii) After the delivery by the Supplier (in paper and digital support or in micro station (HLS), as the case may be), of (i) a full set of final legal and contractual required documents related to each specific work, including all drawings used in the construction works, especially designated for such purpose, as well as eventual modifications introduced in the construction works during its execution so that the drawings completely reproduce the works executed and (ii) operation and maintenance handbooks of all technical installations and equipment.

3. BANK GUARANTEES AND DEDUCTION IN PAYMENTS

3.1 Bank Guarantee for Payments in Advance

- (a) Should the Parties agree on a payment in advance to be made by the Company to the Supplier, which may not exceed the maximum amount of 30% (thirty per cent) of the projects' global value, and prior to the execution of the referred payment in advance, the Supplier must deliver to the Company an autonomous bank guarantee on first demand issued by a first class bank in favour of the Company in the same amount of the payment in advance to be made by the latter; This guarantee shall be valid and may only be released by the Company if and when the constructions works corresponding to the amount(s) of the payment(s) in advance are fully executed by the Supplier and confirmed and accepted, in writing, by the Company.

- (b) If 2 (two) months before the end of the period of validity of the bank guarantees referred to in 3.1 (a) above, the Company and/or the Supplier recognize that the constructions works corresponding to the amount(s) of the payment(s) in advance made will not be fully executed by the Supplier and confirmed and accepted, in writing, by the Company before such date, the Supplier undertakes to obtain the renewal of the period of validity of the concerned bank guarantees for a minimum additional period of 6 (six) months;

3.2. If the global value of the construction works established in the PO is less than € 500.000,00:

- (a) The global price of the construction works shall be paid by the Company, in instalments, in accordance with the monthly measurements to be made to the executed construction works;
- (b) In case the Company and the Supplier agree on the monthly measurement report of the executed construction works, the supplier shall issue 2 (two) invoices i) one invoice corresponding to 90% (ninety percent) of the monthly measurement; ii) one invoice corresponding to 10% (ten percent) of the monthly measurement. The Company shall pay to the Supplier the invoice corresponding to 90% (ninety percent) of the value of the work already executed by the same and shall withhold the payment of the invoice corresponding to 10% (ten percent) of the monthly measurement—in order to guarantee the good execution of the remaining constructions works and the entire fulfilment of the obligations of the Supplier; the Supplier expressly accepts that the payment by the Company of the invoice corresponding to 10% (ten percent) of the monthly measurement shall only occur after the definitive reception of the works has been made by the Company as per paragraph (c) below.
- (c) At the end of the execution of all the construction works, the Company shall withhold 10% (ten percent) of the global project price, until all points of the construction works are adequately closed as per the Company' judgment and the definitive reception of the works has been made by the Company.

3.3. If the global value of the construction works established in the PO is equal or higher than € 500.000,00:

- (a) **Bank Guarantee for the Good Execution of construction works:** In this case, and to guarantee the good execution of the construction works, the Supplier shall deliver to the Company, within the maximum delay of 15 days as from the date of the issue of the PO, but always before the date of the beginning of the construction works, an autonomous bank guarantee on first demand issued by a first class bank in favour of the Company with the value of 10% (ten percent) of the global price of the construction works; such guarantee may be immediately executed in case of delay in the fulfilment of an obligation by the Supplier; This guarantee shall remain valid at least until 6 months after the estimated date for the definitive reception of the works. It may only be released by the Company if and when the definitive reception of the works has been made by the Company and all of the obligations of the Supplier are entirely fulfilled.
- (b) If authorised, in writing, by the Company, the construction works may be initiated by the Supplier before the delivery of any of the bank guarantees referred to in 3.1 and 3.3, as the case may be, but no payment at all will be made by the Company to the Supplier until the required bank guarantees are delivered to the Company;
- (c) If 2 (two) months before the end of the period of validity of the bank guarantee referred to in 3.3 (a) the Company and/or the Supplier recognize that the definitive reception of the works will not occur before such date, the Supplier undertakes to obtain the renewal of the period of validity of the concerned bank guarantees for a minimum additional period of 6 (six) months;
- (d) The global price of the construction works shall be paid, by the Company, in instalments, in accordance with the monthly measurements of the executed construction works;

- (e) In case the Company and the Supplier agree on the monthly measurement report of the executed construction works, the supplier shall issue 2 (two) invoices i) one invoice corresponding to 95% (ninety five percent) of the monthly measurement; ii) one invoice corresponding to 5% (five percent) of the monthly measurement. The Company shall pay to the Supplier the invoice corresponding to 95% (ninety five percent) of the value of the work already executed by the same and shall withhold the payment of the invoice corresponding to 5% (five percent) of the monthly measurement in order to guarantee the good execution of the remaining constructions works and the entire fulfilment of the obligations of the Supplier; the Supplier expressly accepts that the payment by the Company of the invoice corresponding to 5% (five percent) of the monthly measurement shall only occur 5 years as from the definitive reception of the construction works, as per paragraph (g) below.
- (f) At the end of the execution of all the construction works, the Company shall withhold 5% (five percent) of the global project price of the works, until all points of the construction works are adequately closed as per the Company' judgment and shall keep the same during the warrantee period of 5 years as from the definitive reception of the construction works, as provided for in Clause 4 below;
- (g) **Final acceptance guarantee:** the withheld percentage referred to in 3.3 (g) above may be released and paid to the Supplier against the delivery by the latter of an autonomous bank guarantee on first demand, of the same value, issued by a first class bank in favour of the Company, such bank guarantee to be issued under terms acceptable by the Company and be valid during all the warrantee period of 5 years counted as from the definitive reception of the construction works, as provided for in Clause 4 below;
- (h) If before the end of the period of validity of the bank guarantee referred to in 3.3 (h), the Company and/or the Supplier recognize that the execution of all the works related with issues raised during the guarantee period will not occur before such date, the Supplier undertakes to obtain the renewal of the period of validity of the concerned bank guarantees for a minimum additional period of 6 (six) months;

4. PERIOD OF WARRANTEE

- (a) After the definitive reception of the construction works, and during the period of 5 (five) years as from such date, or, as from the date of the conclusion of any works of repair or of elimination of deficiencies, whichever the latest, the Supplier shall be responsible towards the Company and any third parties for the perfection and durability of the construction works under the terms of the Portuguese Civil Code.
- (b) If, during the guarantee period, any deficiencies, by which the Supplier is responsible, be detected in the construction works, the Supplier shall immediately execute, at its own expenses, all necessary works of correction and/or replacement indicated by the Company, except those resulting from the use of which the works are made for and that constitute the normal depreciation arising from such use.

5. PENALTIES

- (a) If the Supplier does not conclude the works in the agreed intermediate deadline dates (milestones) established in the PO, it shall pay to the Company a daily penalty, as a minimum delay compensation, in the amount of:
 - (i) 0,1% of the global value of the construction works set forth in the PO, with a minimum of € 100, in each of the subsequent first 7 (seven) days;
 - (ii) As from the 8th (eighth) day of delay onwards, 0,2% of the global value of the construction works set forth in the PO, with a minimum of € 500, in each of the referred days, and until the date the construction works are performed.

- (b) If, notwithstanding the delays in the compliance with the intermediate deadline dates, the Supplier concludes the construction works in the final deadline date established in the PO, without any damage and/or loss for any of the Company's activities, the amounts charged as a penalty under the terms of the previous paragraph shall be returned.
- (c) If the Supplier does not conclude the works in the final deadline date for the construction works established in the PO, it shall pay to the Company a daily penalty, as a minimum delay compensation, in the amount of:
 - (i) 0,2% of the global value of the construction works set forth in the PO, per day, in each of the first 7 (seven) days after the end of the final deadline date;
 - (ii) As from the 8th (eighth) day of delay onwards, 0,5% of the global value of the construction works set forth in the PO, per day, in each of the referred days and until the date the construction works are finished;
 - (iii) The total penalty applied in the terms referred to in 5. (c) (i) and (ii) above, may not exceed 20% of the global value of the construction works set forth in the PO.
- (d) If the Supplier does not conclude the construction works set forth in the PO, and at the Company's sole judgment and decision, in addition to the application of the penalties set forth in this Clause 5, the Company may forthwith terminate this agreement in accordance with Clause 10 (a) below being also entitled to be compensated/indemnified for all damages arising from such breach and for the termination of the agreement in accordance with the applicable Law.
- (e) The amounts referred to in the previous numbers charged as penalties may, if the Company so wishes, be deducted in the invoices to be issued by the Supplier or already issued and in the process of payment, or paid by execution of the bank guarantee provided for in Clause 3 above.
- (f) The penalties referred to in this Clause may be applicable by the Company at its discretionary decision and on a case-by-case basis. The total or partial non-applicability by the Company of any of the above referred daily or global penalties to a given Supplier and in a given situation does not prevent the Company to apply to the same Supplier, on another situation, the penalties set forth in this Clause.

6. OBLIGATIONS OF SUPPLIER

The Supplier undertakes to:

- (a) Comply with all applicable laws and with the rules and regulations of official and administrative entities;
- (b) Notify the Company with urgency, in writing and by a certifiable mean, if from the documents result an error in the description of the works or of the materials, so that between the error or the omission and the reception of the notice no more than ten (10) days have elapsed. Such error or omission shall not in any case impair the validity of the agreement;
- (c) Supply to the Company all documents relative to the construction works required for the compliance with all rules and regulations imposed by public authorities;
- (d) Supply everything which is necessary for the adequate execution of the construction works in accordance with the objectives and the correct interpretation of the documents, considered as a whole, either such objectives are implicitly represented or described or that may be inferred from said documents;
- (e) Assume all responsibilities resulting from the fact of being of its responsibility the eventual corrections arising from the non-fulfilment of the exact implementation of the construction works;
- (f) Perform, at its own expenses, all preparatory or accessory works eventually necessary for the execution of the construction works, in particular:

- (i) To set up and dismantle the construction buildings, including installations and provisional water and sewage networks, electricity and telephone, access roads and whatever is deemed necessary to the execution of the object of this Agreement;
- (ii) To build the necessary equipment to guarantee the safety of the people employed in each work and the public in general, in order to avoid any losses, in particular in the adjacent properties and satisfy the safety and police regulations relative to public ways;
- (iii) To transport and remove outside the construction area the products resulting from the diggings, cleaning waste as well as to clean the streets, ways and surrounding properties in order to keep them free from waste of the works.

7. INSTRUCTIONS AND SUPERVISION BY THE COMPANY

- (a) The Supplier shall follow all the instructions communicated by the Company or by the person indicated by the Company for this purpose.
- (b) The Company may supervise, as it may deem adequate, all construction works and verify the compliance of the projects and of the specifications, their eventual modifications, as well as the remaining contractual documents.
- (c) The Company may appoint, as it wishes, an individual or legal person to represent it in respect of all and any of its rights and powers regarding this Agreement, hereinafter the Supervision.
- (d) The Supervision, like the Company, shall have free and permanent access to the place of execution of the construction works, in order to inspect and test the quality of the same and to verify the feasibility of fulfilment of all the contractual deadlines.
- (e) Whenever in this Agreement the possibility of exercising a right or faculty by the Company is established, it may be replaced, for all purposes, by the Supervision.
- (f) The Supervision does not exclude nor diminishes the responsibility of the Supplier, which is the sole responsible for the perfect execution of the construction works as well as for the supply of materials and equipment.
- (g) The Supplier shall give to the Company or to its representatives and collaborators, all necessary means and facilities for the effective supervision of the works accepting all their requests promptly and without limitations.
- (h) The supervision to be made by the Company or by an entity indicated by the same, shall have, in particular, the competence to:
 - (i) Suspend the works, totally or partially, at any moment, whenever such measure is deemed necessary;
 - (ii) Refuse any service or material, which does not comply with the specifications of this Agreement, or in broader terms, which quality does not have the adequate requirements of the construction works or of the required objectives and quality standards of the Company.
- (i) If the Supervision verifies that certain construction works were executed with failures, defects, errors, irregularities or imperfections for which the Supplier is responsible, the Supplier shall be notified by the Supervision that, under the orientation of the Supervision, it shall proceed to the necessary corrections, particularly undoing, demolishing, remaking or reinstating the construction works incorrectly made, so that the same can be made in accordance with the hired project, being all the derived costs and charges entirely bore by the Supplier, without such fact being relevant for the modification of the contractual terms, and taking the following into consideration:
 - (i) The Supplier shall begin the corrective measures within two (2) days from receiving the notice made by the Supervision;
 - (ii) If the Supplier does not initiate the execution of the remedies within the term referred to in the previous sub-paragraph, the Company may entrust to another entity the execution of the construction works, which shall be debited to the Supplier; the corresponding values may be discounted from the invoices to be issued by the Supplier or already issued and in process for payment, or paid by the execution of the bank guarantee established in Clause 3 above.

- (j) If the period for the execution of the construction works exceeds the deadlines established in the PO due to the action/omission of the Supplier it shall bear, during the necessary additional period, all the costs and charges relative to the Supervision.
- (k) The Company or its representative shall verify and sign the measurement reports, whose purpose is only relevant for payment terms, and cannot be, in any way or circumstance, considered as an express or implicit acceptance by the Company of the construction works executed.

8. PROVISIONAL RECEPTION OF THE CONSTRUCT WORKS

- (a) Once the construction works are concluded, an inspection shall be carried out for the purpose of provisional reception, from which a report shall be made and signed by the representatives of the Company and of the Supplier, including any defects, imperfections and failures then detected.
- (b) The construction works are considered to be concluded after all the works included in the PO be completed.
- (c) The defects, imperfections and failures shall be specified by the Company or by its representative, in a list to be delivered to the Supplier within fifteen (15) days after the signature of the report referred to in paragraph (a) of this Clause.
- (d) The repairs arising from the list presented by the Company shall be the exclusive responsibility of the Supplier, provided the delay indicated in the previous paragraph (c) has been complied with.
- (e) Being the complaint of any defects, imperfections and failures made within the delay indicated in the previous paragraph (c), the Supplier shall proceed to its repair within ten (10) days as from the date of presentation of the list referred to in said paragraph (c), which shall be made and concluded within a reasonable period, accepted by both Parties.
- (f) After such repair has been made, the report of provisional acceptance shall be redrafted.

9. DEFINITIVE RECEPTION OF THE CONSTRUCTION WORKS

- (a) After the period of twelve (12) months as from the date of the provisional reception, a new inspection for the purposes of definitive reception shall take place.
- (b) If no deficiencies, imperfections, failures, signs of destruction, ruin or lack of solidity, omissions or imperfections occur, a report of definitive reception shall be made and in the same it shall be registered such facts, being thereafter the report signed by the Supplier and the Company or by its representative.
- (c) Otherwise, a delay shall be established for the Supplier to make at its own cost the necessary repairs and corrections indicated by the Company without which a definitive reception report shall not be drafted, keeping the Company, in such case, the bank guarantee relative to the good execution of this Agreement, notwithstanding the responsibility incurred by the Supplier, under the general terms of Law.
- (d) In case of disagreement as to the verification of the conditions which determine the definitive reception, each Party shall indicate an expert, both experts deciding on the indication of a third party to decide the disagreement. If an agreement fails, within eight (8) days as to the decision on the third expert, the same shall be appointed by the President of the Engineers Association ("Ordem dos Engenheiros"), per the request of the most diligent party.

10. TERMINATION OF THE AGREEMENT BY THE COMPANY

- (a) Without prejudice of the application of the penalties established in Clause 5 above, the Company may terminate this Agreement in case of breach/default by the Supplier of any of its legal and/or contractual obligations, including the ones set forth in the Specifications, in the Negotiation Protocol, in the PO and/or in the General Purchase Order Conditions and in these Additional Purchase Order Conditions, and such termination entitles the Company with the right to be indemnified in accordance with the terms of the Law, comprising a compensation for damages and/or losses arising from the interruption of the construction works to the appointment of a new entity to conclude the execution of the same.
- (b) In case of termination of this Agreement, the Supplier is only entitled to receive the value of the construction works fully completed until the date of termination and which have been approved by the Supervision, notwithstanding the paragraph (c) under.

- (c) The Company shall withhold the amounts due to the Supplier for the construction works executed in the terms referred to in paragraph (b) above and may offset such amounts with the amounts due by the Supplier to the Company under this Agreement, in particular under this Clause 10.

11. SPECIFIC PRICE / REMUNERATION AND PAYMENT TERMS

- (a) The construction works shall be subject to fixed and non-revisable prices accrued by the respective valuable added tax (VAT), if applicable, under the applicable legal rate.
- (b) The regime of the construction works, as to their remuneration, corresponds to the global price regime, i.e., all the works which are part of the construction works shall be paid by the global value of the approved proposal, regardless of the nature and volume of the works necessary for such purpose.
- (c) The price of execution of each the construction works cannot be subject to any revision, notwithstanding the adjustments to be made due to the performance of extra or less works demanded, in writing, by the Company.
- (d) The global price of the construction works shall be paid by the Company, in instalments, in accordance with the monthly measurements of the construction works duly executed. For this purpose, the Supplier shall draft, on a monthly basis, together with the Supervision, between days 25 and 30 of each month, measurement reports, which shall be presented for approval by the Company or by whom it designates for such purpose.
- (e) The approval or refusal of the measurement reports shall be communicated to the Supplier on the eighth (8) day following its reception, after which the Supplier shall issue the corresponding invoice.
- (f) If the Company and the Supplier disagree in respect of any instalment, the payment shall be made in a provisional basis in accordance with the values accepted by the Company.
- (g) The Company shall withhold ten per cent (10%) or five percent (5%) of the total amount of each invoice, as the case may be, pursuant to Clause 3.2. and 3.3. above respectively, in order to guarantee the good execution of the constructions works and the entire fulfilment of the obligations of the Supplier.

12. PATENTS AND COPYRIGHTS

- (a) The Supplier expressly undertakes that the Company is the exclusive owner of all intellectual property or copyrights regarding all industrial models and drawings, processes, operation methods, systems, programs, patents, utility models, inventions or any other industrial or intellectual property rights set forth in the Law that may result from the execution of the services set forth in this agreement.
- (b) In addition to (a) above, and should that be the case, the Supplier hereby grants to the Company a royalty-free licence to use, itself or to allow third parties indicated by the Company to do so, any patents, inventions, drawings, specifications and/or any copyrights in respect of any goods/equipment supplied by Supplier to the Company under this agreement, even after termination of the same. This licence to use comprises the right to use and to modify, totally or partially, the referred patents, inventions, drawings, specifications and/or any copyrights.
- (c) The Supplier will not claim, entitle itself or invoke the ownership of any of the rights referred in the previous paragraphs and expressly undertakes not to perform or allow other parties to perform any actions in competition or forgery in violation of the Company's rights and further undertakes to actively co-operate with the Company whenever requested by the latter for the protection of such rights.

13. SUBCONTRACTING AND ASSIGNMENT OF CONTRACTUAL OBLIGATIONS

- (a) The Supplier may not subcontract, totally or partially, the execution of this agreement, without the prior written consent of the Company. The Supplier shall inform the Company, in writing, of the subcontractors it uses duly authorised by the Company. The sub-contractors must possess all the permits, licenses and/or authorisations legally required for the complete execution of all the works sub-contracted to them by the Supplier (comprising the general and architecture subcontracted works and all the subcontracted works of the project specialities, as the case may be).

- (b) In the event that the Company accepts sub-contractors, all the obligations established for the Supplier and its employees and/or collaborators, shall be fully applicable to the sub-contractors, their employees and/or collaborators being the Supplier fully responsible for its obligations hereunder and solely responsible for payments due to such subcontractors. Neither the sub-contractors nor their collaborators and/or employees shall enter into a contractual relationship with the Company.
- (c) The Supplier may not assign to third parties, in any form, the fulfilment of its obligations with respect to the PO, unless the Company has granted its written consent to such assignment. Supplier may assign monies due to the Supplier and to become due under the PO; provided however, that the Company shall be entitled to assert against the assignee thereof all rights, claims, and defences of every type (including, without limitation, rights of setoff, recoupment and counter claim) which the Company could assert against the Supplier, whether acquired prior to or subsequent to such assignment.

14. CONTRACTUAL DOCUMENTS

- (a) In everything not expressly provided for in this agreement, the provisions of the legislation in force shall be applicable, namely in respect of civil construction, Social Security, labour regulations, personnel installations, security and health care.
- (b) Further to the documents above mentioned, the Supplier shall also comply with all rules, statutes, regulations and any other legislation related with the construction works to be performed, with the specifications and documents of official entities as well as with the instructions of the manufacturers and suppliers, having the Company or the entity representing the same, the possibility of demanding evidence of such compliance at any time.
- (c) Any doubt in the interpretation or any omission which cannot be solved under the previous numbers shall be solved taking into account the object of the construction works as covering the execution of all the works and supply of all materials and equipment necessary so that the construction works contracted be delivered to the Company fully and in perfect conditions of operation, exploitation and maintenance.
- (d) If the Supplier has any doubts in the interpretation of the drawings or specifications governing the construction works and does not submit them to the Company or to whom represents the same under the terms of this Agreement previously to the execution of the works relative to said documents, the Supplier shall be responsible for the consequences of the wrongful interpretation made, including the demolition and reconstruction of the parts of the works in which the error has been reflected.