



## Standard Conditions of Purchase for Goods and Services

Brazil / October 2020

### 1. Specification and Warranties

- (a) The goods delivered and services performed shall be of the description and quality set out in the Purchase Order and conform with OILTANKING specifications, as attached hereto, with the enquiry specifications, set out in the tender documents, and with nationally recognized and accepted practices, codes and standards of the respective industry. In the absence of such practices, codes or standards the goods or services shall conform with the pertinent standards and codes of practice published by the European Committee for Standardization (CEN) or the International Organization for Standardization (ISO).
- (b) The goods and services shall be:
  - (i) Free from any defect in design, workmanship or materials and in compliance with any sample, model, drawing or technical specification furnished by OILTANKING to the Supplier; and
  - (ii) To the reasonable satisfaction of OILTANKING; and
  - (iii) Fit for the particular purpose for which they are intended.
- (c) Where the Purchase Order sets out any performance characteristics of the goods or services, these shall also be satisfied.
- (d) The Supplier shall warrant the goods and services for the term set out in the Purchase Order. If no warranty term is so specified, the Supplier shall warrant the goods and services for a period of 24 months from the date that the goods or services are delivered, installed put into use or operation or otherwise furnished (whichever is the later). If the warranties set forth in this Clause 1 are breached within the warranty term and OILTANKING has provided written notice to Supplier thereof, Supplier shall correct the defect at the Supplier's expense. The expense of refinishing and uncovering, or of removal and replacement, as the case may be, and of making good other work affected by such removal and replacement shall be borne by the Supplier. Any corrective work shall be similarly warranted for a period of 24 months from the date such corrective work is completed. If, after notification of a defect, Supplier unreasonably delays corrective action, then OILTANKING may upon written notice to Supplier correct the defect and Supplier shall be liable for all necessary cost incurred by OILTANKING in connection therewith and shall reimburse OILTANKING for the cost within 30 days after receipt of a verifiable invoice from OILTANKING.
- (e) The Supplier shall furnish instruction and maintenance manuals and installation information, together with any relevant advice on OILTANKING's use of the goods or services. Such information shall be provided upon or before the delivery of the goods or completion of the services.
- (f) The Supplier shall furnish such samples, specifications, drawings or other documentation in connection with the goods or services as OILTANKING may reasonably require.

### 2. Compliance

The Supplier shall comply with all laws, rules, ordinances and regulations applicable to the manufacture, sale, shipment and delivery/performance of the goods or services, and shall indemnify OILTANKING against all costs, losses and expenses incurred in consequence of any breach of same.

### 3. Inspection and Testing

- (a) The Supplier shall at its cost carry out such tests and quality control procedures as required by OILTANKING or as necessary to ensure that the goods or services comply with Clause 1, and shall provide OILTANKING with copies of the test results.
- (b) OILTANKING or its authorised representative shall at all

reasonable times have access to the premises of the Supplier and his sub-contractors and suppliers to monitor progress, carry out inspections and witness tests.

- (c) The exercise by OILTANKING of any right under this Clause 3 shall not relieve the Supplier from any of its obligations under the Contract.

### 4. Price and Terms of Payment

- (a) Unless otherwise provided in the Purchase Order, OILTANKING shall pay for the goods or services within 60 days as of the date the payment becomes due.
- (b) Unless otherwise provided in the Purchase Order, Supplier's price shall be inclusive of all delivery/performance costs and all taxes and duties of any kind assessed or otherwise imposed on Supplier and Supplier's employees.
- (c) Any invoice submitted by the Supplier at a price other than set out in the Purchase Order shall not be payable unless such changed price has been previously accepted by OILTANKING by issue of an appropriate amendment to the Contract.
- (d) Invoices shall be submitted by the Supplier as directed in the Purchase Order together with adequate proof of delivery of the goods or performance of the services.
- (e) OILTANKING may set off any sums due to Supplier under the Contract against any sum due from the Supplier to OILTANKING under the Contract or any other contract.
- (f) Notwithstanding any other provision of the Contract, OILTANKING shall have the right to withhold payment of any invoice of Supplier if Supplier is in breach of any of its obligations under the Contract.

### 5. Changes

OILTANKING shall have the right to order changes at any time in the quantity, specifications, drawings, requirements and time for delivery/performance of the goods or services or any part thereof. The Supplier shall comply with all written orders issued by OILTANKING in such regard. Should any such order cause an increase or decrease in the purchase price of the goods or services or the time for performance, the price and/or time shall be equitably adjusted; provided that any claim of the Supplier for extra time or cost shall be submitted to OILTANKING in writing within 10 days of receipt of OILTANKING's written order, failing which any such claim shall be deemed waived by the Supplier. No such requested increase shall be binding on OILTANKING unless agreed to by appropriate amendment to the Contract.

### 6. Delivery and Title

- (a) Time and place of the delivery of goods or performance of the services is of the essence.
- (b) The Supplier shall (without additional compensation) maintain all governmental permits, certificates and licenses (including professional licenses) necessary for Supplier to deliver the goods or perform the services. The Supplier warrants that the goods will be free of all liens, claims, charges, security interests, encumbrances or defects in title. Title to the goods or results of the services and risk of loss will pass to OILTANKING upon their actual delivery to OILTANKING. However, if completion is carried out in instalments, title to each such instalment and risk of loss shall pass to Oiltanking upon each such partial completion.

### 7. Assignment

The Supplier shall not assign any obligation under this Contract without the prior written consent of OILTANKING.

### 8. Property Rights

- (a) The Supplier shall defend, indemnify and hold harmless OILTANKING from and against any claim, cost, loss,

expense or liability for infringement or breach of any patent, copyright, trademark or other intellectual property right arising out of the delivery of the goods or performance of the services.

- (b) With regard to any pre-existing intellectual property supplied to OILTANKING such as catalogues, manuals or other literature ("Data"), Supplier hereby grants OILTANKING a license to use the Data in connection with the operation, maintenance, and/or sale of the facilities for which the goods were delivered or the services were performed.
- (c) All materials that Supplier develops under the Contract, including any inventions or copyrightable work product becomes the sole and exclusive property of OILTANKING upon development. Supplier shall deliver the materials to OILTANKING, together with any materials furnished to Supplier by OILTANKING, at the delivery of the goods or termination, completion or suspension of the services. The Supplier shall at OILTANKING's request and cost complete all documentation which may be necessary to obtain patent and any similar protections in OILTANKING's name.

## 9. Indemnities and Insurance

- (a) The Supplier shall defend, indemnify and hold harmless OILTANKING against all loss or damage including any claim made by any third party in connection with any injury or damage to persons or property arising out of the delivery of the goods or performance of the services or any breach by the Supplier of any of its obligations under the Contract.
- (b) Without in any way limiting Supplier's liability under the Contract, the Supplier shall secure and maintain (i) third party liability insurance with a minimum coverage of EUR 5 million, and (ii) such occupational disease and accident insurance as is mandated or customary in the location where the goods are delivered or the services are performed to cover the liability of the Supplier and of any sub-contractor for personal injury or the death of any person employed by the Supplier or a sub-contractor that occurs in connection with the delivery of the goods or the performance of the services whether on or off the site. A copy of the policies shall be furnished by the Supplier to OILTANKING promptly upon signing of the Purchase Order and in no event any later than when delivery of the goods or performance of the services is commenced.

## 10. Default

If the Supplier breaches any of its obligations under the Contract and does not correct the breach within seven working days following written notice thereof from OILTANKING, OILTANKING may, without prejudice to any other rights or remedies it may have, terminate all or any part of the Contract by written notice to Supplier specifying the date of termination.

## 11. Termination for Convenience

OILTANKING shall have the right to terminate the Contract in whole or in part at any time and without cause by written notice to the Supplier and the Supplier shall immediately cease work. Provided that the Supplier is not in breach of any obligation under the Contract, OILTANKING shall pay to the Supplier the value of the goods delivered or services performed up to the date of notice (based on the prices agreed to in the Contract). Provided further, that goods delivered are stock goods rather than specially manufactured goods, OILTANKING shall only pay to the Supplier its reasonable re-stocking cost. The payment of such cost to the Supplier shall be OILTANKING's sole liability in respect of any such cancellation. In no event shall the Supplier be entitled to loss of any anticipated profits.

## 12. Terms

- (a) These Standard Conditions are unconditionally accepted when the Supplier signs the Purchase Order or when the Supplier starts delivery of the goods or performance of the services. Any conditions or modifications to the Standard Conditions or any reference to Supplier's own

terms and conditions contained in a written acceptance, delivery note or other document issued by the Supplier shall be of no force and effect.

- (b) No quotation, estimate or other document issued by the Supplier ("Quotation") and referenced in the Purchase Order shall be deemed to be incorporated into the Purchase Order, save
  - (i) to the extent that the Quotation is reproduced in full in the Purchase Order, or
  - (ii) to the extent that the reference is express and specific.
- (c) These Standard Conditions and any exhibits attached to the Purchase Order, as well as the enquiry specifications set out in the tender documents are an integral part of the Purchase Order, and together form the contract between the parties (the "Contract").

## 13. Applicable Law

The Contract shall be governed by and construed in accordance with the laws of the Federal Republic of Brazil and the parties agree to submit any and all disputes arising out of or in connection with this Contract to the exclusive jurisdiction of the Central Courts of the State of Rio de Janeiro, Brazil. Application to the Contract of the United Nations Convention on International Sale of Goods is expressly excluded.

## 14. Rights Cumulative

OILTANKING's rights and remedies under the Contract shall be cumulative and nothing contained herein shall limit or restrict OILTANKING's exercise of rights and remedies available to it under the applicable law. Any failure of OILTANKING to enforce any of the provisions of the Contract or to require compliance with any of its provisions shall not be deemed a waiver of the right of OILTANKING thereafter to enforce any and each such provision.

## 15. Consequential Damages

Supplier and OILTANKING shall not be liable to each other for loss of profits, loss of use, loss of contracts, indirect, consequential or moral damages ("Consequential Damage") arising out of the delivery of the goods or performance of the services, provided, however, that the foregoing waiver shall not apply to (a) Consequential Damages asserted by third parties against OILTANKING for which Supplier has agreed to indemnify OILTANKING and (b) Consequential Damages of OILTANKING to the extent covered by Supplier's insurance.

## 16. Safety

If services are performed on OILTANKING premises the following shall apply: Supplier shall fully comply with the safety procedures required by OILTANKING for site access or on-site work. Notwithstanding the existence of such safety procedures, the Supplier shall establish and maintain its own programs and procedures for the safety of its employees and the Supplier shall be solely responsible for the safety of its personnel while performing services on OILTANKING premises.

## 17. Miscellaneous

If not otherwise agreed in the Contract, the required written form shall also be fulfilled by sending an e-mail or fax of the respective document or with an electronically transmitted signature (meaning facsimile transmission, e-mail transmission with scanned signatures, or other agreed form of electronic contract conclusion provided by or on behalf of the undersigning party, such as the DocuSign™ procedure). This also applies to termination of or withdrawal from the Contract, amendment or supplement to the Contract.