



ENGIE NL PURCHASE TERMS AND CONTITIONS (GTC)

ENGIE NL GENERAL TERMS AND CONDITIONS OF PURCHASE FOR GOODS

ARTICLE 1. DEFINITIONS

ENGIE NL:	ENGIE Energie Nederland N.V. (including its business units) and/or all companies forming part of its group or otherwise related to it within the meaning of Sections 24a, 24b and 24c in conjunction with Sections 152 and 262 of Book 2 of the Netherlands Civil Code.
Counterparty:	the seller, supplier or contractor (including its personnel and third parties involved) with which ENGIE NL enters into a contract.
Contract:	any legal relationship to which these purchase terms and conditions may be applicable pursuant to article 2.1.
Purchase Terms and Conditions:	these General Terms and Conditions of purchase for goods (hereinafter referred to as 'GTC') and the Supplementary General Terms and Conditions of purchase for the provision of certain services, execution of assignments and performance of work for ENGIE NL (hereinafter referred to as 'SGTC').
Work:	all work performed and services provided against ENGIE NL's purchase order other than under a contract of employment, whether or not relating to the supply of Goods.

Goods:	all products and/or Work which are or are to be supplied to ENGIE NL pursuant to these Purchase Terms and Conditions, including Software.
Software:	software packages recorded on computer-readable media and related documentation, including new versions where applicable. Software may include standard and/or custom software.
Standard Software:	software which is parameterised and which the Counterparty supplies generally to customers in unmodified form.
Custom Software:	software which is not parameterised and is designed and produced specifically for ENGIE NL.
Process Automation Systems:	Process Automation Systems (PAS) are control systems used to monitor and control industrial production processes. They also include Supervisory Control and Data Acquisition (SCADA) systems, Distributed Control Systems (DCS) and other smaller control systems and subsystems. PAS also include all support infrastructure, such as (computer) networks and network components.

ARTICLE 2. SCOPE

- 2.1 These GTC are applicable to all invitations to tender, tenders and contracts in which ENGIE NL is the party inviting the tender and/or purchasing the Goods.

- 2.2 Derogation from these Purchase Terms and Conditions is only possible by written agreement.
- 2.3 The Counterparty's general terms and conditions, under whatever name, are expressly excluded.

ARTICLE 3. TENDERS, CONTRACTS

- 3.1 Tenders submitted by the Counterparty in response to invitations from ENGIE NL will be irrevocable.
- 3.2 Tenders will be valid for 30 days, unless otherwise agreed in writing.
- 3.3 If a tender by the Counterparty results in a written purchase order, the Contract will commence when the purchase order is sent by ENGIE NL to the Counterparty.
- 3.4 Purchase orders issued orally will not be executed until they are confirmed in writing by ENGIE NL or ENGIE NL issues a purchase order number to the Counterparty.
- 3.5 Under a master contract, the Contract will commence in each case when a purchase order for a (part-)delivery under the master contract is dispatched by ENGIE NL or ENGIE NL issues a purchase order number to the Counterparty.
- 3.6 ENGIE NL is entitled to make changes and additions to the tender, in which case the Contract will commence when ENGIE NL receives written confirmation of the purchase order in accordance with the amended or augmented tender or when the Counterparty actually commences execution of the Contract. ENGIE NL is entitled, within the limits of reasonableness and fairness, to demand changes in the nature and quantity of the Goods to be delivered. The changes may not be of such a kind that it may reasonably be assumed that the Counterparty would not have taken on the Contract if it had been aware of the changes in advance. Changes must be agreed in writing.
- 3.7 If and to the extent that the procedure referred to in paragraphs 1–6 of this article is executed electronically (by means of electronic data transfer), it will be deemed equivalent to execution by means of written documents, except that the purchase order must be issued or confirmed in writing.

ARTICLE 4. PRICES

- 4.1 Unless agreed otherwise, the agreed prices are fixed, are not eligible for set-off and are denominated in euros, excluding value-added tax. Taxes and charges payable in respect of execution of the Contract will be borne by the Counterparty.

- 4.2 Unless otherwise agreed in writing, the prices include the cost of transport, customs clearance, insurance and packaging.

ARTICLE 5. DELIVERY

- 5.1 The delivery conditions will be interpreted in accordance with the 2010 or latest edition of 'Incoterms', published by the International Chamber of Commerce, Paris.
- 5.2 Goods will be supplied on a Delivered Duty Paid (DDP) basis, punctually at the agreed time or within the agreed period, at the agreed delivery location. Use by the Counterparty (at the delivery location) of equipment (crane, forklift truck etc.) and/or personnel provided by ENGIE NL at the Counterparty's request will be entirely at the Counterparty's risk and will not relieve the Counterparty of its responsibility and liability pursuant to the agreed Incoterms delivery condition unless contractual agreements to the contrary relating to the above have been entered into.
- 5.3 The Counterparty is obliged to notify ENGIE NL immediately in writing, stating the reasons, as soon as it can reasonably foresee that it will not be able to fulfil its obligations under the Contract. In the event of non-delivery or late delivery, the Counterparty will be in default ipso jure.
- 5.4 If, for any reason or due to any circumstance affecting its position, ENGIE NL asks the Counterparty to postpone delivery, the Counterparty will store the Goods securely, properly packed and clearly marked for delivery to ENGIE NL, insure them and take all reasonable steps to prevent their deterioration, in exchange for a fee, to be agreed in writing, as reimbursement for expenses which it has demonstrably incurred in that regard. In such situations, ENGIE NL will not be held in default.
- 5.5 'Delivery' includes delivery of all related ancillaries and all related documentation, such as test, quality, inspection and warranty certificates, drawings, maintenance and instruction manuals and user guides.
- 5.6 The Counterparty is not authorised to make part-deliveries, but if part-deliveries have been agreed in writing, 'delivery' will be understood to include 'part-delivery' for the purposes of application of these Purchase Terms and Conditions.
- 5.7 The Counterparty will comply strictly with ENGIE NL's safety rules and other house rules which are applicable to it.

ARTICLE 6. PACKAGING AND DISPATCH

- 6.1 The Counterparty will be liable for damage sustained as a result of or in connection with improper packaging.

- 6.2 The Counterparty must attach to the Goods being delivered a clearly visible packing list, dispatch advice and/or copy invoice, which must in all cases state the name and address of the supplier, the purchase order number, the net weight, the country of origin, the invoice value of the consignment, the Counterparty's VAT number, the HS (Harmonised System) number, the number of packages, the mode of transport and the delivery location.

ARTICLE 7. OWNERSHIP AND RISK

- 7.1 The title to and risk in the Goods will pass from the Counterparty to ENGIE NL at the time of actual delivery or delivery in accordance with article 12.2 of the SGTC.
- 7.2 The title to and risk in the rights pertaining to the Goods will pass from the Counterparty to ENGIE NL at the time of signature of a written Contract by the Counterparty and ENGIE NL.
- 7.3 In the case of deliveries of Standard Software which has not been designed and produced specifically for ENGIE NL, the Counterparty will, instead of transferring title to ENGIE NL, grant ENGIE NL at the time of delivery an undisturbed and non-exclusive right to use the Software for an indefinite period. Unless agreed otherwise, the same will apply to modifications made by the Counterparty to Standard Software. Transfer of risk will be subject to the provisions of article 7.1 above.
- 7.4 In the event of deferment of delivery pursuant to the provisions of article 5.4, title to the relevant Goods will pass from the Counterparty to ENGIE NL when the Goods, identifiably marked as the property of ENGIE NL, are placed into storage by or on behalf of the Counterparty.
- 7.5 In cases other than that described in paragraph 4 of this article, ENGIE NL will likewise be entitled to demand that title to the Goods and/or the materials and components intended therefor is transferred at an earlier time than that provided for in paragraph 1 of this article. Where an advance payment is made, title to the Goods in question will pass to ENGIE NL at the time of such payment.
- 7.6 In cases where the provisions of paragraphs 4 and 5 of this article apply, the Counterparty will mark the Goods and/or materials and components intended therefor recognisably as the property of ENGIE NL and will indemnify ENGIE NL against loss, damage or the exercise of third-party rights.
- no specific payment agreement has been made between the parties, payment will be made 60 days after receipt of the invoice, provided all contractual (delivery) conditions have been met.
- 8.2 In such cases as it shall determine, ENGIE NL will be entitled to require the Counterparty to furnish an unconditional and irrevocable bank guarantee, issued by a banking institution which is acceptable to ENGIE NL, as security for the fulfilment of the Counterparty's obligations under the Contract.
- 8.3 Payment by ENGIE NL will not in any way imply the waiver of any right.
- 8.4 ENGIE NL will be entitled at all times to set off the Counterparty's receivables from ENGIE NL against ENGIE NL's receivables, in whatever regard, from the Counterparty or companies which form part of the same group as the Counterparty, irrespective of whether the Counterparty's receivable from ENGIE NL has been transferred to a third party.

ARTICLE 9. QUALITY, WARRANTY

- 9.1 The Counterparty warrants that the Goods which it delivers:
- will function in accordance with and satisfy the requirements of the Contract;
 - will be new, unless agreed otherwise;
 - will possess the promised attributes;
 - will be fit for their intended use;
 - will be free of defects and design, construction, material and manufacturing faults and will not be encumbered by third-party rights;
 - in the case of Software, will not contain undefined functionalities, diseases or viruses and will possess technical and functional properties which comply with the written specifications;
 - will comply with the applicable statutory and/or other regulations, including but not limited to environmental and health and safety regulations;
 - will be complete and ready for use and will include all ancillaries required for proper operation, even if not explicitly named and/or specified in full;
 - will be manufactured from new material of appropriate quality and will be packaged in environment-friendly, biodegradable material;
 - will not be more than three months old at the time of delivery, counting from the date of manufacture.
- 9.2 If, irrespective of the results of any inspection, the Goods are found not to comply with the provisions of paragraph 1 of this article, the Counterparty will, at the sole discretion of ENGIE NL, either repair or replace the goods

ARTICLE 8. PAYMENT, INVOICES

- 8.1 Payment will be made in accordance with the payment conditions as agreed in the Contract between ENGIE NL and Counterparty. In case
- GTC version 1 February 2016

at its expense and risk, immediately upon notification by ENGIE NL, unless ENGIE NL prefers to cancel the Contract pursuant to the provisions of article 18.3 et seq.

- 9.3 The warranty period for Goods will, except for a longer manufacturer's warranty period, be 2 years from the date of acceptance, counting from the time referred to in article 7.1, or, in a situation as referred to in article 9.2 in conjunction with article 9.4, from approval of the repair or replacement. Where the delivery of Goods relates to spare parts, the warranty period will commence upon installation or entry into service of the spare parts, but subject to a maximum of five years from the date of acceptance, counting from the time referred to in article 7.1. Expiry of the warranty period will not affect ENGIE NL's statutory rights and rights under the Contract. Under the agreed warranty, any defect reported to the Counterparty in writing by ENGIE NL during the warranty period will be rectified by the Counterparty as soon as possible, at its risk and expense, including related costs. If the Counterparty has modified, repaired or replaced the Goods or components thereof in discharging this obligation, the full warranty period will apply again to such Goods and components.
- 9.4 In the case of Software produced by the Counterparty in a series of releases, the most recent version will be delivered and versions will be maintained for at least two years after the introduction of a new version. Such assistance will be provided free of charge during the warranty period.
- 9.5 The Counterparty warrants that, during the warranty period, it will make available the expertise and capacity required to execute warranty work to the proper standard.
- 9.6 The Counterparty will allow ENGIE NL to inspect its quality assurance system on request.
- 9.7 The Counterparty warrants that all Goods will comply with the European Directives such as but not limited to the CE inspection requirements, in evidence of which the Goods will bear the CE inspection mark. In the case of machines, equipment and processes using chemicals as raw materials and/or consumables, the Counterparty will provide ENGIE NL with the Material Safety Data Sheets in the Dutch language (and/or such other language as may be agreed upon) at the time of delivery. If and to the extent applicable, the Counterparty shall comply with the EC Regulation No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"). The Counterparty will also provide all information which may reasonably be required for the

proper and safe use and/or operation of the Goods.

- 9.8 The Counterparty warrants that the Goods comply with the requirements of or pursuant to the law and contain no prohibited substances. The Counterparty further warrants that the Goods contain no substances which cannot be processed by normal waste processing methods. On request, the Counterparty will provide information on the extent to which environment protection is taken into account in design and manufacturing. The Counterparty will provide ENGIE NL with full and accurate information if the Goods contain substances which are hazardous or harmful to people, property or the environment.
- 9.9 The Counterparty will be responsible, during and after the manufacturing process, for testing the (semi-)finished Goods. ENGIE NL will be provided on request with a copy of the test report. If relevant, the Counterparty will operate a quality assurance system which complies with or is equivalent to NEN-EN-ISO 9001.
- 9.10 The Counterparty will indemnify ENGIE NL against all third-party claims relating to defective Goods within the meaning of the product liability provisions of the Netherlands Civil Code.
- 9.11 In circumstances which admit of no delay or if the Counterparty fails to fulfil its warranty obligations, ENGIE NL will be entitled to carry out (provisional) repairs itself or have such repairs carried out, at the Counterparty's risk and expense, without affecting the Counterparty's warranty obligations.

ARTICLE 10. INSPECTION, ACCEPTANCE

- 10.1 Goods will be inspected by ENGIE NL on delivery, in accordance with ENGIE NL's procedures, unless otherwise agreed in writing.
- 10.2 In the case of Software, the acceptance procedure will be carried out by the Counterparty in the presence of ENGIE NL or persons or agencies designated by ENGIE NL. Notwithstanding acceptance of the Software, ENGIE NL retains the right for a period of 30 days after acceptance to reject the Software if it proves to contain faults. ENGIE NL will not reject Software if the faults are trivial and do not affect the proper functioning of the Software. The Counterparty will, however, rectify the faults immediately, in consultation with ENGIE NL and to ENGIE NL's satisfaction.
- 10.3 If any or all of the Goods are rejected on delivery, ENGIE NL will notify the Counterparty thereof in writing or arrange for the Counterparty to be so notified. This

notification will serve as notice of default. ENGIE NL will give the Counterparty an opportunity to complete the order within a reasonable period. If the Counterparty chooses not to avail itself of that opportunity or is unable to complete the order, ENGIE NL will be entitled to cancel the order without further notice of default.

- 10.4 If the Goods are rejected upon or after delivery, the Counterparty will be deemed to have retained title to and risk in the Goods, which will be deemed not to have passed to ENGIE NL at any time.
- 10.5 ENGIE NL will be entitled to repair or replace the Goods or to have the Goods repaired or replaced at the Counterparty's risk and expense if, after consultation with the Counterparty, it may reasonably be assumed that the Counterparty cannot or will not repair or replace the Goods promptly and satisfactorily. The Counterparty will not be released thereby from its obligations under the Contract. ENGIE NL may dispense with consultation if compelled by circumstances which admit of no delay.

ARTICLE 11. CONFIDENTIALITY

- 11.1 The Counterparty will treat as confidential all information from or concerning ENGIE NL which comes into its possession directly or indirectly and which has been designated as being of a confidential nature or which the Counterparty may reasonably be expected to recognise as such. This obligation will not apply to information:
- which is already known to the Counterparty, unless such information was supplied on a confidential basis;
 - which has been lawfully acquired by the recipient independently of the provider of the information;
 - which is already in the public domain.
- 11.2 The Counterparty is obliged to require third parties which it employs in the execution of the Contract to sign a similar written confidentiality agreement or to have such third parties sign a confidentiality agreement provided by ENGIE NL.
- 11.3 The Counterparty may not publicise its execution of the Contract in any way nor contact ENGIE NL's principal(s) directly or indirectly without ENGIE NL's prior written permission.

ARTICLE 12. INDUSTRIAL AND INTELLECTUAL PROPERTY

- 12.1 The Counterparty warrants that the use, including resale, of the Goods it supplies and ancillaries it purchases or manufactures for

ENGIE NL will not infringe patent rights, trademark rights, model rights, copyrights or other rights of third parties. To the extent that the Goods or ancillaries supplied are subject to third-party (intellectual property) rights, the Counterparty will ensure that ENGIE NL is granted rights of use without incurring any additional cost over and above the agreed purchase price. ENGIE NL will be entitled to negotiate rights of use directly with the third party or parties concerned at the Counterparty's expense.

- 12.2 If it is found that ENGIE NL's use as referred to in the first paragraph infringes or is at risk of infringing third-party (intellectual property) rights, the Counterparty will be obliged, at the sole discretion of and in consultation with ENGIE NL:
- either to replace the Goods or ancillaries concerned with equivalent items which do not infringe third-party rights;
 - or to acquire rights of use of the Goods or ancillaries concerned;
 - or to modify the Goods or ancillaries concerned to avoid such infringement; without incurring additional expense for ENGIE NL over and above the agreed purchase price and without the rights of use being more restricted than those in respect of the Goods and/or ancillaries originally supplied.
- 12.3 The Counterparty will indemnify ENGIE NL and hold it harmless against claims arising out of any infringement of the rights referred to in the preceding paragraph and will reimburse ENGIE NL for all losses and expenses resulting therefrom.
- 12.4 ENGIE NL will have title to all industrial and intellectual property rights arising from or connected with the execution of the Contract by the Counterparty, including all rights to Custom Software and methods and techniques specifically employed on ENGIE NL's behalf in the course of installation, implementation or other work. In the case of supply of Standard Software, the provisions of article 7.3 will apply.
- 12.5 Unless stated otherwise, all industrial and intellectual property rights to goods made available to the Counterparty by ENGIE NL for the purposes of executing the Contract, including software and systems owned by ENGIE NL and supplied by third parties, will reside exclusively with ENGIE NL (or the aforementioned third parties).

ARTICLE 13. SPARE PARTS AND MAINTENANCE

- 13.1 The Counterparty is obliged, for what is generally held to be a reasonable period, to

keep a stock of spare parts for the Goods and to supply them at competitive prices and on competitive terms and conditions, even after production of the Goods has ceased. ENGIE NL may require the Counterparty to notify it when production ceases.

- 13.2 The Counterparty warrants that it is willing and able to maintain the equipment supplied for a period of at least seven years after delivery or, if so agreed, acceptance.

ARTICLE 14. ASSIGNMENT TO THIRD PARTIES

- 14.1 The Counterparty will not assign any or all of its rights and obligations under the Contract to third parties or subcontract to third parties without ENGIE NL's prior written permission.
- 14.2 ENGIE NL shall be permitted to transfer, partially or otherwise, the rights and obligations contained in the Contract with the Counterparty to third parties. In the event that obligations of ENGIE NL are transferred, ENGIE NL must inform the Counterparty of this fact in advance.

ARTICLE 15. LIABILITY, PENALTY

- 15.1 The Counterparty will be liable and obliged to pay compensation for all losses sustained and expenses incurred by ENGIE NL resulting from or in connection with the execution of the Contract. This provision will not apply to losses resulting from manufacturing stoppages and/or loss of profit, unless due to gross negligence, attributable fault or intent on the part of the Counterparty.
- 15.2 The Counterparty will indemnify ENGIE NL and hold it harmless against all third-party claims for compensation for loss as referred to in the first paragraph. The third parties referred to in the present paragraph will include ENGIE NL's employees and persons working on ENGIE NL's instructions. The Counterparty's liability and the indemnification acknowledged by the Counterparty referred to in paragraphs 1 and 2 of this article will be applicable mutatis mutandis in the case of ENGIE NL's onward supply and/or making available of the Goods supplied or made available to ENGIE NL by the Counterparty.
- 15.3 The Counterparty will indemnify ENGIE NL against all third-party claims in respect of breaches by the Counterparty of contracts entered into between Counterparty and a third party and/or infringements of statutory regulations with regard to the Goods.
- 15.4 ENGIE NL will not be liable for losses sustained and/or damages incurred by the Counterparty or its personnel unless such loss is the result of gross negligence or intent on the part of ENGIE NL. In such a case, any liability to compensate for direct loss

attributable to gross negligence or intent on the part of ENGIE NL or its management staff will, in so far as permitted by law, be limited to the value of the relevant purchase order.

- 15.5 The Counterparty will arrange adequate insurance of its liability and risks as described in the preceding paragraphs.
- 15.6 The Counterparty will be in default of its obligations as from the agreed delivery or completion date, without further notice of default, if it fails to deliver the Goods or complete the Work on or before the agreed delivery or completion date or fails to do so in accordance with its agreed obligations. If the Counterparty fails to complete the Work or deliver the Goods in compliance with the Contract within the agreed period at the agreed location, the Counterparty will be liable for payment to ENGIE NL immediately on demand of a penalty of 1% of the price of the Work or Goods concerned, plus value-added tax, for every day that such failure of performance continues, up to a maximum of 15%. If such failure of performance becomes permanent, the penalty will be payable in full as from that moment.
- 15.7 ENGIE NL's right to charge a penalty as referred to in article 15.6 is without prejudice to its right to require execution of the Contract and demand compensation for any loss which exceeds the amount of the penalty.

ARTICLE 16. INSURANCE

- 16.1 At ENGIE NL's request, the Counterparty will present for inspection the policies for the insurance which the Counterparty is required to arrange pursuant to article 15.
- 16.2 If the Counterparty is able to claim benefits under an insurance contract in connection with its liabilities to ENGIE NL, the Counterparty will ensure that such benefits are paid direct to ENGIE NL. To that end, ENGIE NL may, at its discretion, demand that the Counterparty:
- name ENGIE NL as beneficiary when arranging the insurance, or
 - assign any insurance claim to ENGIE NL.
- In that case, the Counterparty will grant ENGIE NL an irrevocable power of attorney to receive the benefit under a claim direct from its insurers.
- 16.3 Any excess on an insurance policy arranged by the Counterparty will be borne by the Counterparty.
- 16.4 Arrangement of insurance by the Counterparty will neither limit the Counterparty's liability nor render ENGIE NL jointly liable.

ARTICLE 17. INFORMATION, DATA PROTECTION AND SECURITY

- 17.1 The Counterparty warrants that all Software and/or systems supplied and/or used and/or made available by it to ENGIE NL in supplying the Goods and/or performing the Work will at all times be kept adequately safe and secure, protected against digital threats (such as viruses, trojans, worms, spyware, spam, phishing and rootkits) and/or against other kinds of threats that compromise or potentially compromise the confidentiality, integrity and/or availability of the Goods or the network or other parts of ENGIE NL's information system. In that context, the Counterparty will fully indemnify ENGIE NL against the consequences thereof and will be obliged to give compensation for losses sustained and costs incurred in relation thereto and/or arising therefrom.
- 17.2 It is not permitted without GDFSUEZ NL's explicit consent to make an electronic connection with digital systems and networks, including ENGIE NL's office and PAS-related automation systems. "Connection" is understood to mean a connection between the ENGIE NL electronic (digital) network and/or systems on the one hand and the Counterparty's (own) external devices such as PCs or laptops, data carriers such as USB sticks and memory cards or (part of) the Counterparty's network and/or systems on the other hand.
- 17.3 The Counterparty must be able on request to demonstrate that the hardware, Software, systems, networks or digital media to be used are not vulnerable to digital threats as defined in article 17.1. ENGIE NL will retain the right at all times to verify this itself (in consultation) or, where appropriate, to impose and monitor additional security requirements. ENGIE NL may also require the Counterparty to scan its (own) external devices as defined in 17.2 using means and methods designated by ENGIE NL.
- 17.4 Suspect software and/or (potential) digital threats must be reported immediately by the Counterparty to ENGIE NL and any connection which has been made must be terminated immediately. Notwithstanding instructions and consents given by ENGIE NL as referred to above, the Counterparty will continue to be responsible for that connection.
- 17.5 Where appropriate, the Counterparty will, if required by ENGIE NL and agreed with Counterparty, comply more specifically with requirements of which it is informed, such as certification procedures, standards, norms, guidelines and national or international regulations relating to the use, behaviour or

supply of Software, including but not limited to the ISO/IEC 27001:2005 standard for information security. For PAS, the Counterparty will as a minimum comply with the Bronze level of the Process Control Domain – Security Requirements for Vendors report, latest version, as published by the International Instrument Users Association (WIB).

- 17.6 When using ENGIE NL's ICT resources, the Counterparty is obliged at all times to comply with the ENGIE NL ICT Gedragscode (Code of Conduct).

ARTICLE 18. ESCROW AGREEMENT

- 18.1 In the case of the supply of Software, the Counterparty declares that it has entered into an escrow agreement with an escrow agency, under which the Software, with (a copy of) the source code and related technical information and documentation, has been placed on deposit with the escrow agency. An individual version will be filed and maintained for each client. The Counterparty will provide ENGIE NL with a copy of the agreement immediately upon request. The cost of entering into the escrow agreement will be borne by the Counterparty.
- 18.2 If it wishes, ENGIE NL may itself become a party to the escrow agreement between the Counterparty and the escrow agency. ENGIE NL will be entitled to nominate an escrow agency with which an escrow agreement is to be signed.
- 18.3 The Counterparty declares that the escrow agreement safeguards ENGIE NL's right of access to the original software and source code, if (i) the Counterparty ceases operations without legally assigning to one or more third parties the contract entered into with ENGIE NL or (ii) the Counterparty is put into liquidation or (iii) the Counterparty is otherwise no longer able to fulfil its maintenance or other obligations.
- 18.4 Unless agreed otherwise, the escrow contract will be entered into at the Counterparty's expense for an indefinite period.

ARTICLE 19. CANCELLATION, DISSOLUTION, IMPUTABLE FAILURE OF PERFORMANCE, FORCE MAJEURE

- 19.1 ENGIE NL will be entitled to cancel the Contract at any time by giving the Counterparty written notice, provided it is supported by sufficiently compelling reasons.
- 19.2 The Counterparty will cease execution of the Contract immediately upon receipt of the written notice. ENGIE NL and the Counterparty will then consult together on the

consequences of such termination. The Counterparty is entitled to reasonable compensation other than compensation for loss of production, loss of profit or other financial loss. The provisions of this paragraph will not apply to the cases referred to in the third and fifth paragraphs.

- 19.3 If the Counterparty fails in its performance of the Contract or may reasonably be assumed to be unable or no longer able to fulfil its obligations, if the Counterparty offers any inducement to any employee of ENGIE NL, in the event of the Counterparty's involuntary liquidation or moratorium or the closure, liquidation or acquisition of or any other similar circumstance affecting its enterprise, the Counterparty will be in default ipso jure and ENGIE NL will be entitled:
- unilaterally to terminate the contract, in whole or in part, by serving written notice on the Counterparty, if the defaulting Counterparty fails to fulfil its obligations within thirty days of receipt of the notice or such other period as may be determined;
 - suspend its payment obligations or offset payments;
 - assign execution of the Contract, in whole or in part, to third parties at the Counterparty's expense;
- all without liability on ENGIE NL's part for any compensation and without prejudice to any rights accruing to ENGIE NL, including ENGIE NL's entitlement to full compensation, payment of penalty and execution of the Contract.
- 19.4 In such cases, all ENGIE NL's receivables from the Counterparty now and in the future will become payable immediately, together with costs of collection.
- 19.5 To the extent that non-fulfilment of an obligation under the Contract cannot be imputed to the Counterparty (force majeure), the Counterparty will not be held in default and will not be liable for compensation or penalty, provided it notifies ENGIE NL in writing of the fact of, the cause of and the reasons for the non-fulfilment immediately, and in any event within the period agreed for fulfilment of the obligations. Force majeure will in no circumstances include staff shortages, strikes, staff illness or non-performance on the part of third parties employed by the Counterparty, whether or not due to force majeure.
- 19.6 If the Counterparty claims that non-fulfilment is due to force majeure, ENGIE NL will be entitled to suspend its payment obligations. If the force majeure persists for more than two months, ENGIE NL may dissolve the Contract by registered letter with immediate effect, without giving rise to any right to compensation.

ARTICLE 20. ETHICS AND SUSTAINABLE DEVELOPMENT

- 20.1 The Counterparty undertakes to comply with the commitments to sustainable development and social responsibility (as further available on the ENGIE NL website at <https://www.engie-zakelijk.nl/inkoopvoorwaarden>).
- 20.2 In particular, but without limitation, the Counterparty shall and shall cause its suppliers and subcontractors to (i) refrain from utilizing child, slave, prisoner or any other form of forced or involuntary labour, (ii) refrain from engaging in abusive employment or corruption, (iii) avoid any form of discrimination within its company or towards subcontractors and (iv) act with respect for the environment in product design, manufacture, use and disposal or recycling of Goods.
- 20.3 If ENGIE NL suspects shortcomings with respect to the compliance with these obligations by the Counterparty, ENGIE NL may at any time request clarifications, information and explanations from the Counterparty with regard to the suspected shortcomings. The Counterparty commits, on first demand, to provide the requested clarifications, information, and explanations to ENGIE NL, with all appropriate supporting evidence and with the required level of accuracy and completeness and within the shortest possible delay.
- 20.4 Failure to comply with the obligations set forth in this article will be regarded as an event of default entitling ENGIE NL (at its sole opinion) at the expense of the Counterparty and considering the situation at hand to (i) have such audit performed by an independent organism and/or (ii) require the Counterparty to implement any reasonable and proportionate remedies and/or (iii) the application of article 19.3.

ARTICLE 21. APPLICABLE LAW, DISPUTES

- 21.1 The Contract and all contracts resulting from it will be governed exclusively by the laws of the Netherlands.
- 21.2 All disputes, including those considered such by only one of the parties, arising out of the Contract or other contracts between the parties which result therefrom will be adjudicated by the competent court in Zwolle.
- 21.3 In derogation from the preceding paragraph, ENGIE NL may decide to exclude the ordinary courts and have disputes decided by one or more (an uneven number of) arbitrators in accordance with the regulations of the Netherlands Arbitration Institute (NAI), Rotterdam.

21.4 Application of the Vienna Convention on International Trade Law is expressly excluded.

ARTICLE 22. REFERENCE TITLE, REFERENCE SOURCE

22.1 These purchase terms and conditions may be referred to as 'ENGIE NL Purchase Terms and Conditions 2016'.

22.2 These purchase terms and conditions are also available in digital form on the ENGIE NL website (<https://www.engie-zakelijk.nl/inkoopvoorwaarden>).

ENGIE NL PURCHASE TERMS AND CONDITIONS (SGTC)

ENGIE NL SUPPLEMENTARY GENERAL TERMS AND CONDITIONS OF PURCHASE FOR THE PROVISION OF CERTAIN SERVICES, EXECUTION OF ASSIGNMENTS AND PERFORMANCE OF WORK

ARTICLE 1. SCOPE

- 1.1 These Supplementary General Terms and Conditions of purchase (hereinafter referred to as 'SGTC') are applicable to all invitations to tender, tenders and contracts in which ENGIE NL acts as principal with respect to the provision of services, execution of assignments and performance of Work by the Counterparty, whether or not in combination with the supply of Goods.
- 1.2 In addition to these terms and conditions, ENGIE NL's General Terms and Conditions of purchase (hereinafter referred to as 'GTC') are also applicable to the invitations to tender, tenders and contracts referred to in paragraph 1, except as departed from by these SGTC or otherwise departed from expressly or by virtue of the nature of those provisions.

ARTICLE 2. SCOPE

- 2.1 Prior to commencement of the Work, each party will inform the other of the names of the persons assigned to assist in the execution of the Contract on their behalf and who are authorised to represent the parties in all matters relating to the execution of the Contract.

ARTICLE 3. REGULATIONS

- 3.1 Prior to commencement of the execution of the Contract, ENGIE NL will inform the Counterparty of the general regulations in force at the ENGIE NL locations where the

Work is to be performed and, where relevant, the substance of regulations additionally applicable on a specific site (e.g. Harbour Regulations. In connection with the Work, the Safety, Health and Environment ("SHE") regulations as contained in the current Health & Safety rules ENGIE NL ("VGM Reglement ENGIE NL") will form part of the Contract and associated specifications.

- 3.2 The provisions of paragraph 1 of this article do not diminish the obligation incumbent on the Counterparty to take active and independent steps in good time and prior to the Work to advise its personnel and the subcontractors it uses of the current SHE and other regulations and the fact that they must act in accordance with them. The SHE and other regulations concerned are available on the ENGIE NL website (<https://www.engie-zakelijk.nl/inkoopvoorwaarden>).
- 3.3 ENGIE NL reserves the right in connection with a stringently applied SHE policy pursued by the company (e.g. 'ZERO TOLERANCE OF UNSAFE BEHAVIOUR') to monitor strict compliance with the regulations both prior to the start of the Work (at the time of issue of the work permit) and during the Work (whether involving the ENGIE NL project coordinator or otherwise).
- 3.4 If the Counterparty fails to comply with the regulations referred to in paragraph 1 of this article, ENGIE NL will be authorised:
 - to bar the person(s) concerned from the location with immediate effect;
 - to suspend performance of the Work with immediate effect;unless ENGIE NL chooses to dissolve the Contract pursuant to article 19 of the GTC.

ARTICLE 4. DOCUMENTATION TO BE PROVIDED BY ENGIE NL

- 4.1 The Counterparty must check that the specifications, drawings and other

documentation which it receives from ENGIE NL for the purposes of performing the Work are complete and correct.

- 4.2 The Counterparty will notify ENGIE NL in writing as soon as possible of any inaccuracies in or omissions from the aforementioned documentation. Proposals submitted by the Counterparty to ENGIE NL for improvements or modifications will form part of the Contract after approval by ENGIE NL.
- 4.3 If the Counterparty has not notified ENGIE NL in writing of its objections to the aforementioned documentation within two weeks of signature of the Contract, it will be deemed to have approved the documentation and will not be able subsequently to rely upon the inaccuracy or incompleteness of the documentation as a defence.

ARTICLE 5. PREPARATIONS FOR AND PERFORMANCE OF THE WORK

- 5.1 The Counterparty warrants that the Work will be prepared and performed in accordance with the latest generally accepted industry standards, in compliance with the Contract and all related to regulations and documentation and in accordance with ENGIE NL's directions and instructions, such that the Work achieves the agreed result.
- 5.2 Within one week of signature of the Contract, the Counterparty will provide ENGIE NL with a detailed timetable ('work schedule') for the performance of the Work.
- 5.3 After approval by ENGIE NL, the work schedule will form part of the Contract. Approval by ENGIE NL will not release the Counterparty from its responsibility for the accuracy and feasibility of the work schedule. The Counterparty must accept the ENGIE NL SHE plan in connection with overhaul activities or similar work before commencing the Work. The Counterparty must on request compile a Task Risk Analysis (TRA) in accordance with the model employed by ENGIE NL, submit it to ENGIE NL for approval in good time and implement it accordingly.
- 5.4 Without prejudice to the provisions of article 6, the Counterparty will provide ENGIE NL with written progress reports at agreed intervals and will keep ENGIE NL constantly informed in writing of its success or failure in achieving the milestones defined in the schedule in the course of performing the Work.
- 5.5 ENGIE NL will only consider payment for additional work if a written purchase order for such work has been issued by ENGIE NL. The ENGIE NL representative with decision-

making authority and the latter's purchasing department must be notified in good time (before commencement of the additional work). The request for additional work must be accompanied by a clear and complete costing of the materials, labour and other items required. If the Counterparty considers that the additional work will affect the agreed completion date, this must be notified by the Counterparty to ENGIE NL in the request for additional work. The parties will then enter into consultation without delay to discuss the possibility of deferring the delivery date and the consequences which such deferment would have for any late-completion penalty which has been agreed and/or any other impact on the Contract, as the case may be.

ARTICLE 6. DELAYS

- 6.1 If the Counterparty ascertains that execution of the Contract is not proceeding or is unlikely to be completed according to the work schedule, it must inform ENGIE NL as soon as possible and, on its own initiative, submit proposals to ENGIE NL for avoiding or limiting the delay.
- 6.2 In urgent cases and in cases where, in consultation with the Counterparty, it may reasonably be assumed that the Counterparty will not be able within the time allowed to fulfil the obligation referred to in paragraph 1 of this article, ENGIE NL will be authorised to engage third parties, at the Counterparty's expense, to avoid or limit the delay. This will not release the Counterparty from its obligations under the Contract.
- 6.3 At ENGIE NL's request, the Counterparty will interrupt or suspend the Work or instruct the Work to be interrupted or suspended if necessary for e.g. operational reasons. In such case the parties shall meet and discuss the financial and/or other consequences resulting therefrom.

ARTICLE 7. PRICES, RATES, INVOICES, PAYMENT

- 7.1 The agreed prices and rates cover all the Work to be performed by the Counterparty and third parties in connection with the Contract, including all ancillary expenses such as inspection fees, tools and equipment.
- 7.2 Travel and accommodation expenses and travel time will only be reimbursed by ENGIE NL if and to the extent that this has been agreed in writing.
- 7.3 Invoices will be submitted monthly in arrears, together with documents itemising expenses on the basis of the categories defined in the Contract.

- 7.4 Payments will be made in accordance with the agreed payment conditions as set forth in the Contract between ENGIE NL and Counterparty. In case no specific payment conditions have been agreed upon, invoices will be paid monthly, 60 days after receipt and approval of the invoice and approval of the progress of the (relevant part of the) Work, as referred to in article 11.

ARTICLE 8. VERIFICATION

- 8.1 The Counterparty is required to keep such records of the execution of the Contract as to enable the expenses incurred and obligations undertaken to be ascertained at any time.
- 8.2 The Counterparty will provide ENGIE NL on request with copies of documents relating to the Contract.

ARTICLE 9. COOPERATION WITH THIRD PARTIES

- 9.1 The Counterparty will allow third parties engaged by ENGIE NL to perform work at the site of the Work or in the vicinity. If the Counterparty has to cooperate with third parties, the Work will be coordinated by ENGIE NL in order to minimise inconvenience to the parties concerned. The performance of Work which may cause inconvenience to third parties must be discussed in advance with ENGIE NL. Coordination by ENGIE NL will in no way release the Counterparty from its responsibilities and/or obligations under the Contract

ARTICLE 10. COUNTERPARTY'S PERSONNEL

- 10.1 The Counterparty's personnel must meet generally accepted industry standards. Unless agreed otherwise with ENGIE NL, (the organization as well as the employees of) Counterparty shall have and shall act in accordance with the contractors' safety, health and environment checklist (Veiligheid, gezondheid en milieu Checklist Aannemers ("VCA")). The aforementioned also in view of the certified Safety, Health and Environment (SHE) system ("Veiligheid, Gezondheid en Milieu" ("VGM-beheersysteem") of Counterparty.
- 10.2 If ENGIE NL considers any of the personnel to be insufficiently qualified, it will be entitled to demand that the person in question be removed, whereupon the Counterparty will immediately provide a replacement, with due observance of the provisions of paragraph 1 of this article. Costs associated with the

replacement's familiarisation period will be borne by the Counterparty.

- 10.3 ENGIE NL will be entitled to demand that the Counterparty's personnel and those of its subcontractors provide identification.
- 10.4 The Counterparty warrants that, in respect of its personnel and those of its subcontractors, identities have been verified in accordance with the statutory regulations, the requisite work permits have been issued, educational particulars have been checked and the required confidentiality statements have been signed.
- 10.5 In the case of a contract within the meaning of Section 400, Book 7, of the Netherlands Civil Code (overeenkomst van opdracht), the Counterparty will ensure that personnel whom it assigns to ENGIE NL are not assigned to competitors of ENGIE NL to work on projects of similar content for a period of one year after the termination or dissolution of the Contract, unless otherwise agreed by the parties. The parties will in all cases define as closely as possible the field of activity and the competitors to which this provision applies.
- 10.6 In the case of a contract within the meaning of Section 400, Book 7, of the Netherlands Civil Code (overeenkomst van opdracht), the Counterparty's personnel will perform the Work entirely independently and will themselves determine how the Contract is executed. Instructions or guidelines issued to the Counterparty by ENGIE NL in the context of the Contract will serve solely to ensure its effective execution and will not concern the method of execution, which will be at the Counterparty's sole discretion.
- 10.7 If ENGIE NL considers it necessary for the execution of the Contract, the Counterparty will provide replacements as soon as possible, taking the utmost care in their selection, when employees assigned by the Counterparty or third parties are absent.
- 10.8 The Counterparty will provide ENGIE NL with the residence permits and work permits of persons satisfying the criteria set by the Foreign Employment Act (Wet arbeid vreemdelingen) and if and when required by law, with the E101/A1-Statement.
- 10.9 The Counterparty will provide GDF SUEZ NL with the officially accredited certificates and/or officially accredited quality marks available or developed in the sector of the Counterparty (or in their absence, their generally prevailing equivalents in the sector concerned of the Counterparty) concerning and in evidence of payment of the agreed and payable wage (according to the collective agreement (CAO) if applicable) to its personnel or other persons, such as a

certificate issued by the Labour Standards Association (Stichting Normering Arbeid) to the Counterparty, based on NEN 4400-1 or NEN 4400-2.

ARTICLE 11. ACCEPTANCE

- 11.1 When the Work or an agreed part of the Work is ready for use, an acceptance procedure will be conducted.
- 11.2 The acceptance procedure will be conducted by the Counterparty in the presence of ENGIE NL or persons or agencies appointed by ENGIE NL.
- 11.3 Unless otherwise agreed in writing, acceptance will take place in accordance with ENGIE NL's applicable procedures.
- 11.4 If necessary, the Counterparty will provide the requisite instruction in operation and maintenance for ENGIE NL's personnel.

ARTICLE 12. HANDOVER

- 12.1 Upon fulfilment of all the terms and conditions of the Contract, the Counterparty will send ENGIE NL a written invitation to attend the handover of the Work in operational condition.
- 12.2 Handover will take place when ENGIE NL considers that all relevant conditions of the Contract have been met.
- 12.3 As soon as possible, ENGIE NL will send the Counterparty a report on the handover which will in any event state whether the Work has been approved by ENGIE NL pursuant to paragraph 2 and, if not, what Work is still to be performed by the Counterparty within a reasonable time in order to complete the handover of the Work as soon as possible. The date of handover will be deemed to be the date on which ENGIE NL approves the Work. A handover protocol will be drawn up.

ARTICLE 13. WAGE TAX AND SOCIAL INSURANCE CONTRIBUTIONS (LIABILITY FOR SUBCONTRACTORS) ACT

- 13.1 If and to the extent that the Wage Tax and Social Insurance Contributions (Liability for Subcontractors) Act (*Wet op de ketenaansprakelijkheid*) is applicable to the Contract, the Counterparty must fulfil all obligations under the Act. The aforesaid applies by analogy for the Counterparty with respect to the Labour Market Fraud (Bogus Schemes) Act (*Wet aanpak schijnconstructies*).
- 13.2 The Counterparty will cooperate in implementing safeguards to ensure the collection of taxes and social insurance contributions relating to the Work and will pay its personnel or third parties engaged by the

Counterparty for the Work, the wage agreed and payable by law (according to the collective agreement, if applicable) and will indemnify ENGIE NL in that regard. The above applies for the Counterparty as an obligation to be imposed on third parties should Article 14 of the General Terms and Conditions of Purchase concerning 'TRANSFER TO THIRD PARTIES' be applicable.

- 13.3 In such cases as it may determine, ENGIE NL will be authorised to pay part of the price either via a blocked account or direct to the agencies concerned or to pay direct to the personnel or third parties deployed by the Counterparty for the Work the wage agreed and payable by law (according to the collective agreement, if applicable).
- 13.4 Without prejudice to the provisions of the preceding paragraphs, the Counterparty will fulfil all its statutory tax and social insurance liabilities in respect of all personnel engaged in the Work. ENGIE NL retains the right to carry out checks on this point.
- 13.5 The Counterparty will submit to ENGIE NL on request, within 30 days, a statement confirming that the Counterparty has paid turnover tax, wage tax, social insurance contributions and employee insurance contributions for all persons employed in connection with the Contract. This statement must be drawn up by the relevant tax office and the Institute for Employee Benefit Schemes (Uitvoeringsorgaan Werknemers Verzekeringen – UWV) and certified as original. The Counterparty will likewise submit to ENGIE NL on request, within 60 days of the end of each quarter, a statement signed by a Dutch-certified accountant (registeraccountant) confirming that the liabilities arising from or pursuant to the tax and social insurance legislation in respect of the past period have been fulfilled. All costs in respect of the aforementioned statements will be borne by the Counterparty.
- 13.6 If the Counterparty does not have a UWV registration number (aansluitnummer), it will submit on request, within 30 days, an Employment Relationship Statement ("verklaring arbeidsrelatie – VAR") in respect of the agreed Work, designating the person assigned as self-employed. If and to the extent that the Counterparty fails to submit the VAR, ENGIE NL will be entitled to suspend all payments to the Counterparty under the Contract and retain that sum without being liable for interest.
- 13.7 At first request of ENGIE NL the Counterparty is obliged to request ENGIE NL for authorization in advance and in writing if and to the extent the Counterparty has the

intention to involve other (sub)contractors for the execution of the Work. The Counterparty is in such case obliged to also impose this obligation on its (sub)contractors, who is/are obliged in such case to impose the same on their (sub)contractors et cetera. In case the Counterparty and/or the (sub)contractor(s) fail to impose the same on its (sub)contractors, ENGIE NL is authorized to immediately pay a part of the fee to the Dutch Tax Authorities. ENGIE NL is authorised to recover damages from the Counterparty that result from the ultimate liability for non-payment of taxes and social security contributions by the Counterparty and its (sub)contractor(s).

- 13.8 The Counterparty will take all measures or will cooperate in implementing measures which ENGIE NL considers necessary to minimise ENGIE NL's liabilities under the Wage Tax and Social Insurance Contributions (Liability for Subcontractors) Act (Wet Ketenaansprakelijkheid), the Labour Market Fraud (Bogus Schemes) Act (Wet aanpak schijnconstructies) and/or the Value-Added Tax Liability Transfer Scheme (Verleggingsregeling BTW).

ARTICLE 14. ACCIDENTS

- 14.1 The Counterparty must notify ENGIE NL immediately of and report in writing to ENGIE NL on all incidents, in particular those which caused or could cause injury, loss and/or damage to persons, the environment and/or property.
- 14.2 The Counterparty will lend its full cooperation to investigations of accidents and the reporting of accidents to the competent authorities.

ARTICLE 15. EXCAVATIONS

- 15.1 If, as a consequence of a purchase order, the Counterparty is required to perform excavations and/or other activities in the ground in connection with the agreed Work, the Counterparty, as soil disturber, shall prior to such activities, investigate the precise location of underground cables and pipelines, including empty pipes buried supporting and protecting structures, intended for transporting solid, liquid or gaseous products, electricity or data. The soil disturber is deemed to be the person or legal body under whose responsibility, management and/or supervision such excavation work is performed. As part of his or her responsibilities, the soil disturber must, as a minimum, notify the Cable and Pipeline Information Centre (Kabel- en Leidingen Informatie Centrum) at the Land Registry Office (Kadaster) as required by the

Underground Networks Exchange of Information Act (Wet Informatie Uitwisseling Ondergrondse Netten).

- 15.2 In the event of damage to cables and pipelines as hereinabove mentioned and/or in the event of other or different kinds of damage, such as subsidence, the Counterparty will be liable for making good such damage entirely. In such cases the Counterparty shall indemnify and hold harmless in respect thereof ENGIE NL from and against third party claims for compensation.

ARTICLE 16. INSURANCE

- 16.1 Prior to commencement of the Work, the Counterparty will arrange Construction All Risks (CAR) insurance which covers the Work and in which ENGIE NL is named as co-insured. The said CAR policy must provide adequate primary cover for the Counterparty's statutory and contractual obligations. The excess will be borne by the Counterparty in all cases, as will losses not covered by the policy. In the event of a claim, the Counterparty will notify ENGIE NL immediately and fulfil all obligations under the policy.
- 16.2 Without diminishing either party's statutory or contractual liability, ENGIE NL may at its discretion arrange CAR insurance jointly on behalf of the Counterparty, provided it expressly notifies the Counterparty thereof. In that case, the provisions of the last two sentences of article 16.1 will apply mutatis mutandis.