



## SPECIFIC CONDITIONS CAPEX AND MRO

**39 Relation to GPC**

39.1 These Specific Conditions CAPEX and MRO shall complement (and where applicable overrule) the General Conditions for purchases of Work as CAPEX investment, civil works; engineering services and MRO services.

39.2 In the event of a conflict or inconsistency between the General Conditions and any TRS-FRS attached to the purchase order, the order of precedence shall be: (i) the General Conditions, and (ii) the TRS-FRS and (iii) the purchase order.

**40 Delivery of Goods and Equipment**

40.1 Supplier shall deliver the Goods and Equipment to the Work Site.

40.2 Supplier is responsible for the proper care, guarding, and safe storage of the Goods and Equipment. Supplier shall keep accurate up-to-date records of Goods and Equipment shall on request provide copies to FrieslandCampina.

40.3 Any risk of loss or damage to the Goods supplied and/or made available by Supplier shall pass to FrieslandCampina upon FrieslandCampina's issuance of a Provisional Acceptance Certificate.

40.4 Any risk of loss or damage to the Spare Parts supplied and/or made available by Supplier shall pass to FrieslandCampina upon acceptance of the Maintenance Deliverables.

**41 Execution of Work**

41.1 The acceptance of the completed work does not impact the rights of FrieslandCampina with regard to defects, irrespective of whether FrieslandCampina has discovered or could reasonably be expected to have discovered them during the acceptance period and not reported them to Supplier.

41.2 Supplier is obliged to execute the Work outside of the regular working hours on FrieslandCampina's request. Travelling and waiting times can only be charged to FrieslandCampina if that has been expressly agreed in writing between parties.

41.3 Supplier warrants that the Work will be executed:

- a. in accordance with the FrieslandCampina engineering standards, unless otherwise agreed in the purchase order; and
- b. in accordance with industry standards, sound workmanship, and without faults and defects.

41.4 Supplier shall submit detailed progress reports to FrieslandCampina on request.

41.5 FrieslandCampina shall have the right to intervene and stop the execution of the Work with immediate effect if the activities are carried out in violation of any regulations with regard to safety, health, or the environment.

41.6 FrieslandCampina may postpone, suspend or cancel the execution of the Work at its discretion until start or delivery of the Work, with no obligation to compensate any damages incurred by Supplier.

41.7 Supplier shall collect all information necessary to execute the Work. Supplier shall check and scrutinize all requirements, documentation, and materials and designs provided by FrieslandCampina for accuracy. If any inaccuracies are detected Supplier shall immediately and not later than 14 calendar days after Supplier has discovered or should have discovered the inaccuracy, notify FrieslandCampina of such inaccuracies in writing and shall advise FrieslandCampina on the nature and details of the error and requesting instruction regarding its rectification. If Suppliers fails to timely send notice the time for completion shall not be extended and Supplier shall not be entitled to additional payment or any compensation of its damages.

**42 Timing and milestones**

42.1 Requests for extension of time and/or additional payment because of a delay must be requested in writing describing the event or circumstance giving rise to the claim. The notice shall be given as soon as possible and not later than 14 days after the Supplier should have become aware of the event or circumstance.

42.2 If the TRS-FRS does not provide for a time schedule, Supplier shall within 10 days from FrieslandCampina's request submit to FrieslandCampina a detailed program setting out the Project Phases and the sequence in which and the dates by which Supplier proposes to perform its obligations.

42.3 In the event that Supplier does not comply with any agreed milestone Supplier must inform FrieslandCampina as soon as possible. FrieslandCampina is entitled to withhold a credit against any payment due to Supplier at a rate of 0.5% of the Contract Price per calendar day beyond the scheduled milestone date, limited to 10% of the

Contract Price. This credit shall not relieve Supplier from the obligation to execute the Work, or from any other duties, obligations or responsibilities which the Supplier may have under a contract. Such credit is not a remedy for FrieslandCampina and is independent of, and in addition to, the rights and remedies of FrieslandCampina hereunder.

**43 Engineering & Manufacturing**

43.1 FrieslandCampina may carry out inspections prior to packaging and transportation of the Goods. Supplier shall submit a release note stating that Goods have been manufactured and are ready for packaging. If upon inspection one or more additional manufacturing inspections must be executed, Supplier shall be responsible for the additional costs and delay caused and Supplier shall mitigate or correct the consequences of such delay.

**44 Tests on completion of Project Phases**

44.1 Completion by Supplier of each of the agreed Project Phases shall be documented in writing.

44.2 If Supplier fails to carry out the tests on completion of a Project Phase, FrieslandCampina may progress with the tests at the risk and cost of Supplier. These tests shall then be deemed to have been carried out in the presence of Supplier and the results of the test shall be accepted as accurate.

44.3 If the Work, or a part, fails to pass the tests on completion, FrieslandCampina shall be entitled to:

- a. order repetition of tests on completion;
- b. cause the Work to be executed in full or in part at Supplier's expense;
- c. reject (a part of) the Work or part; or
- d. issue a Provisional Acceptance Certificate or a Final Acceptance Certificate, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to FrieslandCampina as a result of this failure.

44.4 At Provisional Acceptance ending the commissioning, Supplier warrants that the Goods have been commissioned and that all measures have been taken to secure a safe and full production start, including measures to secure that FrieslandCampina's personnel is fully prepared and trained to operate the Goods. Performance qualification may be carried out after Provisional Acceptance, Supplier acknowledges that FrieslandCampina may then operate the Goods.

**45 Performance test**

45.1 If the purchase order or TRS-FRS provides for a Performance Test, this shall be carried out by FrieslandCampina with the assistance of Supplier as soon as practicable after Provisional Acceptance and in accordance with the manuals provided by Supplier and such other instructions as Supplier may give in the course of carrying out the Performance Test.

45.2 If the Performance Test fails, it shall be repeated as soon as practicable and Supplier shall carry out whatever remedial measures and work are necessary to correct the shortfall.

45.3 If the Performance Test fails a second time or after 3 months from the agreed test date then FrieslandCampina is entitled to a 10% reduction of the Contract Price. This reduction shall not relieve Supplier from the contractual obligation to execute the Work, or from any other duties, obligations or responsibilities which the Supplier may have. This reduction of the Contract Price is not the exclusive remedy for FrieslandCampina and is independent of, and in addition to, the rights and remedies of FrieslandCampina hereunder.

**46 Final Acceptance Procedure**

46.1 If (i) the Work has been completed in accordance with the purchase order, and (ii) a Final Acceptance Certificate for the Work has been issued, the Work shall be handed over. Supplier shall notify FrieslandCampina for Final Acceptance Certificate not earlier than 14 days before all agreed Project Phases have been completed.

46.2 FrieslandCampina shall within 28 days after receiving Supplier's application:

- a. issue the Final Acceptance Certificate; or
- b. reject the application, giving reasons and specifying the work required to be done by Supplier to before Supplier may re-apply for a Final Acceptance Certificate.

**47 Remedying Defects**

47.1 FrieslandCampina may at any time prior to the expiry of 24 months from the Final Acceptance Date notify Supplier of any defect and outstanding work (fair wear and tear excepted).



- 47.2 FrieslandCampina may notify Supplier of any defect in Goods including Spare Parts (fair wear and tear excepted), Equipment or Services at any time prior to:
- the expiry of 24 months from the date of the Maintenance Deliverables, or
  - the expiry of the regular maintenance interval.
- 47.3 Notwithstanding any other rights of FrieslandCampina to claim damages, Supplier shall, at FrieslandCampina's choice either refund FrieslandCampina (a portion of) the Contract Price, or remedy at no cost to FrieslandCampina such defects and outstanding work.
- 47.4 In the event of a warranty claim relating to Spare Parts or Maintenance Services Supplier will, without prejudice to any of FrieslandCampina's other rights and remedies including the right of FrieslandCampina to claim the actual damages:
- repair or replace such Spare Parts or, at FrieslandCampina's discretion, refund to FrieslandCampina the Contract Price of the Spare Parts; or
  - re-perform the Maintenance Services or repair the Overhauled Goods (or the part in question) free of charge or, at FrieslandCampina's discretion, refund to FrieslandCampina the relevant part of the Contract Price of the Maintenance Services
- 47.5 The warranty period shall be extended by a period equal to any period or periods during which the Work did not meet or did not fully meet the requirements. And a new period equal to the original warranty period shall apply to any part of the Work that has been repaired, re-performed, adjusted or replaced.
- 47.6 Notwithstanding any statutory rights, failure to remedy any defects or complete outstanding work within a reasonable time from FrieslandCampina's notice shall entitle FrieslandCampina to carry out all necessary work at Supplier's cost.
- 47.7 FrieslandCampina may remove any Defective or non-approved Goods or Equipment from the Work Site at Supplier's expense.
- 48 Cooperation with third parties**
- 48.1 Supplier shall, at no additional charge to FrieslandCampina, provide to any third party at the Work Site all reasonable cooperation and assistance.
- 48.2 Supplier shall promptly notify FrieslandCampina if such third-party work will cause, or have caused, a problem or delay in executing the Work, and shall work with FrieslandCampina to prevent or resolve such problem or delay.
- 49 Overhaul**
- 49.1 Risk of damage or loss to the Overhauled Goods shall pass Supplier on the commencement of the Maintenance Services and shall transfer back to FrieslandCampina on delivery of the Overhauled Goods or on the date of the Maintenance Deliverables as the case may be.
- 50 Work site conditions**
- 50.1 On request of Supplier FrieslandCampina shall make available to Supplier relevant data in its possession on sub-surface and hydrological conditions of the Work Site. Supplier shall be responsible for verifying and interpreting all such data. FrieslandCampina shall have no responsibility for the accuracy, sufficiency or completeness. Supplier shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Work.
- 50.2 Supplier shall be deemed to have been satisfied as to the suitability and availability of access routes to the Work Site. Supplier shall be responsible for any maintenance including signage and any permission required from relevant authorities at Suppliers costs.
- 50.3 Supplier warrants that any surplus Work and waste will always be removed promptly and on Suppliers costs in order to keep the Work Site in a tidy and environmentally acceptable condition at all times, also with a view to safe working conditions.
- 51 Safety, on-site instructions and regulations**
- 51.1 Supplier shall at all times adhere to the applicable rules on the sites and at the facilities of FrieslandCampina, such as hygiene and safety regulations.
- 51.2 Supplier shall ensure that all necessary safety measures are taken, that the means required therefore are available and that all persons involved in the execution of the Work are properly protected and instructed. Supplier shall give FrieslandCampina access to all locations, installations, Goods, Equipment, Personnel and documentation:
- to ascertain whether Supplier complies to relevant regulations; and
  - to conduct an independent enquiry in the event of incidents or accidents.
- 51.3 Supplier shall at all times remain responsible for full compliance with the regulations and shall be liable for any loss or damage, and/or for any delays resulting from non-compliance, even if FrieslandCampina exercises supervision.
- 51.4 Other than in cases of intentional act or omission or gross negligence, FrieslandCampina shall not be held liable for any damages or any injuries originating or caused in any manner whatsoever.
- 52 Audit and inspection**
- 52.1 If upon inspection any (part of a shipment or a production batch of the) Goods, Spare Parts or Work do not conform to the representations and warranties and/or the TRS-FRS, FrieslandCampina may reject, at its discretion, the entire shipment or production batch without any payment becoming due by FrieslandCampina and without any liability towards Supplier. FrieslandCampina shall store the rejected Goods and Spare Parts or cause them to be stored, at Supplier's expense and risk.
- 53 Contract change**
- 53.1 Changes to the Work may be initiated by FrieslandCampina at any time prior to issuing the Final Acceptance Certificate by a request for Supplier to submit a proposal in accordance with a change order format prescribed by FrieslandCampina.
- 53.2 Supplier shall accept the requested change and will carry it out as if the change was part of the original contract unless (i) the change would require Supplier to do work that he or its Subcontractors do not undertake in the ordinary course of their business, or (ii) would involve the use of resources beyond the current capacity of Supplier or its Subcontractors. Any such objection shall be made to FrieslandCampina within 5 working days from the date of FrieslandCampina's change request.
- 53.3 Unless Supplier objects in accordance with article 53.2, Supplier shall provide a written proposal to FrieslandCampina within the same 5 days of:
- a description of the work to be performed,
  - a reasonable adjustment to the time schedule, and
  - a reasonable adjustment to the Contract Price.
- 53.4 FrieslandCampina shall as soon as practicable after receipt of such proposal respond with approval, rejection or comments. If FrieslandCampina approves the change, it shall sign the change order after which Supplier is authorized to carry out the change.
- 53.5 Changes in applicable law which require a change to the work will be treated as changes as referred to in article 53.1.
- 54 Contract Price and payment**
- 54.1 As full and final consideration for executing and completing the execution of Work in conformity with the purchase order, FrieslandCampina shall pay Supplier the Contract Price.
- 54.2 To the extent the agreed pricing is cost-reimbursable, Supplier shall provide and maintain records and shall maintain a system of cost control to the satisfaction of FrieslandCampina to enable effective control with respect to all payments made and due in accordance with the purchase order.
- 54.3 At FrieslandCampina's request Supplier shall provide on first demand a bank guarantee or other adequate security to be judged by FrieslandCampina, made out in a format and issued by a bank approved by FrieslandCampina as security that Supplier will meet all its obligations towards FrieslandCampina or towards Subcontractors and third parties, or repay any advance payments made by FrieslandCampina. The costs of such bank guarantee shall be borne by Supplier.
- 54.4 If Supplier is declared bankrupt or is granted suspension of payments or if an application to such effect is filed, FrieslandCampina may also discharge its liability towards Supplier by paying the amount at that time owed by Supplier to one or more Subcontractors directly to these Subcontractor(s). This shall only be applicable to the extent that the debts Supplier is owing to the Subcontractor(s) are directly connected with execution of Work. FrieslandCampina is entitled to offset any amounts thus paid to any Subcontractor against any amounts that will be due at any time by Supplier to FrieslandCampina and/or any group company or by any of the latter to Supplier on any account whatsoever.

**55 Indemnification**

- 55.1 Neither party shall limit its liability and shall fully indemnify the other party (the "Indemnitee") from all claims, damages and expenses suffered by the Indemnitee that:
- result from the intentional or grossly negligent conduct of the liable party (or for any party for whom that liable party is liable by law);
  - result from the liable party causing loss of life, physical injury or harm to health;
  - result from the liable party causing damage to any property, real or personal (other than the Work) of the Indemnitee;
  - result from defects in the Work for which the Indemnitee is held liable by a third party pursuant to the product liability act for personal injury or damage to property; or
  - are caused by a disruption or a standstill as a result of delayed or non-performance of Maintenance Services.

**56 Personnel, Subcontracting and Social Security**

- 56.1 Supplier shall employ qualified Personnel in appropriate numbers as is required for the proper and timely execution of Work.
- 56.2 Supplier shall remove from the Work Site any Personnel who, in the reasonable opinion of FrieslandCampina, is unsuitable or incompetent.
- 56.3 All appointments, reassigning, removal or replacements of key Personnel, such as Supplier's project manager, shall be subject to the acceptance of FrieslandCampina.
- 56.4 Supplier shall not assign any of its rights and obligations nor enter into any agreement with Subcontractors with respect thereto without the prior written consent of FrieslandCampina. Supplier shall ensure that it and all Subcontractors shall comply with (i) FrieslandCampina's regulations concerning health, safety and environment, and (ii) all applicable statutory provisions and any other regulations, instructions and conditions included in permits, licenses (or orders of a similar nature) which have been issued in connection with the Work.
- 56.5 Supplier warrants that the Work will be carried out in accordance with applicable laws and regulations on the payment of contributions for social insurance and taxes, safety, the environment, hygiene, product designations or other matters as applicable under the relevant law and at the location of the Work. All costs of measures needed, and all penalties and/or damages resulting from non-compliance with these provisions, shall in all cases be carried by Supplier, even if they are initially borne by FrieslandCampina.
- 56.6 Supplier assumes full liability for payment of all social security charges, contributions and taxes levied at any time in respect of any Personnel deployed by Supplier in connection with the performance of the purchase order and Supplier agrees to indemnify and hold FrieslandCampina harmless against and release FrieslandCampina from all liabilities, costs, and expenses associated with the defense of such claim from tax and other authorities.

**57 Insurances**

- 57.1 During the execution of the Work, and for two years following the Final Acceptance Date, Supplier shall maintain in effect a general liability insurance and professional liability insurance which insurance shall provide policy limits which are not less than €5,000,000 per event and €10,000,000 in the aggregate. Within 10 days from FrieslandCampina's request Supplier will provide FrieslandCampina with certificates of such insurance coverage.
- 57.2 Certain liabilities of Supplier under a purchase order relating to the execution of Work in the Netherlands, Belgium and Germany may be covered by the Construction All Risks ("CAR ") insurance which FrieslandCampina has concluded for its own account, also to the benefit of parties involved in the Work.
- 57.3 Supplier shall inform FrieslandCampina in writing as soon as possible of any damage event of such proportions as to make it likely that claims will be made under the CAR insurance. Any claim will be settled with the insurers by either Supplier or FrieslandCampina or both, at FrieslandCampina's option.
- 57.4 In connection with each claim's payment, Supplier shall be charged an amount equal to the deductible excess.

**58 Specific Obligations on termination**

- 58.1 Upon termination of a contract for whatever reason Supplier shall immediately:
- cease executing the execution of the Work in a safe manner;

- enable FrieslandCampina or third parties designated by FrieslandCampina to take over the execution of the Work;
- if FrieslandCampina so desires: assign to FrieslandCampina (or to third parties designated by FrieslandCampina) all rights and obligations pertaining to the execution of the Work to which Supplier has committed itself to Subcontractors and remove the Equipment and any other property of Supplier and its Subcontractors from the Work Site.

**59 Definitions**

For the purposes of these Specific Conditions CAPEX and MRO and all related documents, the following terms shall have the following meanings.

- 59.1 "Contract Price" means the total amount payable by FrieslandCampina to Supplier for the execution of the Work as stated on the purchase order;
- 59.2 "Equipment" means all tools, instruments, means of transport, auxiliary machines, materials, and other means and instruments required for the execution of the Work;
- 59.3 "Final Acceptance" means the Work is completed and performance is as expected and agreed and the Supplier has fulfilled all its obligations under a purchase order;
- 59.4 "Final Acceptance Certificate" means the certificate issued by FrieslandCampina upon the satisfaction of the Final Acceptance;
- 59.5 "Final Acceptance Date" means the date of the Final Acceptance Certificate;
- 59.6 "Maintenance Deliverables" means the completion of maintenance services evidenced by written release note for completion of Maintenance Services: relevant log card for "lified" items and, where requested by FrieslandCampina, Supplier's report on the stripping down of Spare Parts;
- 59.7 "Maintenance Services" or "MRO" means the maintenance, repair and overhaul services to be provided by Supplier which may include deliveries of Spare Parts, including the Maintenance Deliverables;
- 59.8 "Overhauled Goods" means systems or goods having been subjected to the Maintenance Services;
- 59.9 "Performance Test" means the agreed test(s), used to verify that the Work or system performs as contracted and expected;
- 59.10 "Personnel" means any person working on the execution of the Work under the supervision and responsibility of Supplier or its Subcontractor(s);
- 59.11 "Project Phase" means each of the clustered steps to be completed by Supplier for the execution of the Work according to the FrieslandCampina 'Way We Work' standards.
- 59.12 "Provisional Acceptance" means the Work is installed and commissioned satisfactorily.
- 59.13 "Provisional Acceptance Certificate" means the certificate issued by FrieslandCampina upon the satisfaction of the Provisional Acceptance;
- 59.14 "Spare Part" means a duplicate part to replace a lost or damaged or worn part of a Good, including consumables;
- 59.15 "TRS-FRS" means the technical and functional requirements specifications for Work as included in a purchase order;
- 59.16 "Subcontractor" means any party other than FrieslandCampina with which Supplier has either directly or indirectly concluded an agreement in connection with the execution of the Work or part thereof;
- 59.17 "Work Site" means the place or places where the Work is to be executed, and any other places designated as such by FrieslandCampina in connection with the Work;
- 59.18 "Work" means the Services and/or Goods and/or Equipment, whatever the case may be, for CAPEX and/or MRO.