

1. Exclusive Validity

- 1.1 These present purchasing- terms and conditions are to be valid for- and apply to all purchases of Cofely AG (Ltd./LLC) (hereinafter referred to as 'Cofely') unless Cofely has otherwise expressly agreed in writing. The supplier expressly declares itself in agreement herewith upon the acceptance of an order from Cofely. Any general sales terms and conditions submitted by the supplier as part of any order confirmation are to be deemed null and void hereunder and will not be recognised by Cofely.
- 1.2 The stipulations of Art. 1.1 are to be valid for- and apply to any additional stipulations which are enclosed by Cofely with an order. Such stipulations are to take preference over these present purchasing terms and conditions in case of any differences. 10.2

2. Offerings and tenders

- Offerings and tenders are to be free of charge for Cofely, even when in response to 11. enquiry or tender invitation from Cofely. The supplier is to comply precisely with an enquiry or tender invitation of Cofely, but to draw attention expressly to any differences.
- 2.2 Unless otherwise agreed in an enquiry or tender invitation of Cofely, an offering or a tender from the supplier are to be valid for 90 days from date of receipt.

3. Orders

- 3.1 Orders are binding when issued in writing by Cofely. Verbal- arrangements, supplementations and alterations will only be valid upon the written confirmation of Cofely. Price requirements, specifications and technical documentation, etc., represent an integral part of an order of Cofely when expressly mentioned therein as such.
- 3.2 A contract of purchase is concluded hereunder, when an order of Cofely is confirmed without any contradictions, or when an execution of an order has already commenced.
- 3.3 The supplier is under a duty of enquiry vis-à-vis Cofely when the supplier recognises that errors or unclarified matters exist in essential contractual parts, in particular as regards volume, price or delivery date. The supplier is liable hereunder for acquainting itself with all material details, circumstances as well as the purpose of the subject matter of the order, for the execution and completion of an order, and that the supply limitations of the supplier concerning the supplies are known, as well as the services of third parties.

4. Prices and value added taxation

- 4.1 The agreed prices are to be deemed as fixed prices (incl. the VAT rate), carriage paid to the place of destination, including packing charges. The prices are to remain fixed during the entire completion of the order, unless otherwise agreed.
- 4.2 Value added taxation is to be shown separately and otherwise the statutory requirements of the Value Added Tax Ordinance are to be complied with.

5. Delivery date and consequences of arrears

- 5.1 The delivery date is to be deemed the maturity date, and is complied with when the agreed supplies or services arrive or are rendered at the place of destination.
- 5.2 Any anticipated delays in supplies are to be immediately communicated to Cofely with indications of the reasons therefor, and the presumed duration of the delay, independent of whether the whole- or only a part of a delivery is affected. The maturity date will not thereby be altered without the agreement of Cofely.
- 5.3 Cofely hereby reserves the right to assert the statutory indemnities in case of the exceeding of the agreed delivery date, independent of whether the supplier has given notice of the delay, or whether a contractual penalty for breach of contract has been agreed.
- 5.4 Once the delivery date (maturity date) is exceeded, the supplier is automatically placed in arrears hereunder without the necessity of a reminder being issued. Cofely hereby reserves the right to agree to a contractual penalty for breach of contract in the written order. The assertion of additional indemnities for loss or damage is hereby reserved. The receipt of the last part of any order is to be determinative for the extent of arrears, or the completion of any erection works. The payment of a contractual penalty for loss or damage does not exempt from the duty of fulfilment of contract. An unconditional acceptance on the part of Cofely of a delivery or a service does not mean a waiver of a contractual penalty for breach of contract hereunder.
- 5.5 The supplier may only claim the absence of any necessary documentation or indications to be provided by Cofely when it has demanded such in good time, or when it has submitted a written reminder in cases of agreed- but not complied with due date deadlines.

6. Packing, transportation

- 6.1 The supplier is liable for proper and correct packing. The packing, as required, is to be provided in such a manner that the products are effectively protected against damage and corrosion during transportation and during any subsequent short-term warehousing (i.e. up to a maximum of 60 days). The supplier is to be liable hereunder for loss or damage from improper and incorrect packing and also for loss or damage during-transportation and interim warehousing.
- 6.2 Cofely hereby reserves the right to return packing materials and to demand a credit note in this regard. Cofely will bear the transportation charges for the returns.
- 6.3 Cofely will bear the charges for non-included packing provided such are necessary and separately shown in an offering or tender.
- 6.4 When particular care is to be taken when unpacking goods, such is to be indicated by the supplier in good time and to show such in particular on the packing exterior by means of a suitable, clearly visible warning.
- 6.5 Unless otherwise agreed, deliveries are to be forwarded on 'franco domicile' terms to the place of destination.
- 6.6 Goods-in-transit insurance will not be contracted by Cofely.
- 6.7 Supplier is liable for transportation to the place of destination and for the subsequent unloading.

7. Deliveries / documentation

- 7.1 All products (components, materials and parts for plant and equipment) are to be checked for qualitative and volume conformity with the Cofely order. Such a verification is to be noted on the consignment note (e.g. by rubber stamp). Only such verified consigned products are to be delivered hereunder.
- 7.2 Advance- or partial -deliveries may not be consigned without the express permission of Cofely.
- 7.3 Each consignment delivered is to be mandatorily accompanied by a consignment note including the reference of Cofely.
- 7.4 All documentation from the supplier (consignment notes, invoices, correspondence, etc.) is to include the following: order number, charge- or magazine number, the identification of the establisher, the issuing date, the name of the branch and a description of the goods with indication of the volume.
8. **The passing of the perils and usufruct**
The right of usufruct and the perils pass, unless otherwise agreed, to Cofely upon the acceptance or a consignment of goods or rendering of services (see Art. 9.2).

9. Verification- and acceptance of consignments and services

- 9.1 Cofely hereby reserves the right to check products at the premises of the supplier before consignment.
- 9.2 Unless otherwise specifically agreed, checking and acceptance will be undertaken within a reasonable time after receipt of a consignment at the place of delivery and/or after the completion of the rendering of a service.

10. Returns of products

- 10.1 Cofely is to be entitled hereunder to return any unused and intact products and to demand an appropriate credit note.
- 10.2 Should it not be possible to deduct the credit note from an existing invoice, the supplier binds itself hereunder to repay the amount within the shortest period of time.

11. Warranty

- 11.1 The supplier hereby warrants as a specialist that the subject matter of the supply has no defects encroaching upon its value, or suitability for the intended use, possesses the assured characteristics, and meets the required capabilities and specifications as well as the relative governing legislation and other government regulations. The supplier also warrants proper and correct erection works on a building construction site, when carried out by the supplier.
- 11.2 Unless otherwise agreed, the warranty time period is to be 2 years from the date of acceptance by the building construction developers (the customers of Cofely).
- 11.3 Should during the warranty time period, the consignments of goods or the provision of services, or parts thereof fail to meet the specifications, then the supplier is to be under a contractual duty hereunder, at the choice of Cofely to rectify the defects at its own expense on site, or to have such rectified, or to supply Cofely with faultless replacement. In the case of replacement supply, the subject matter of the replacement is to be made available to Cofely free of charge for use, until faultless replacement in a commissioned- and operative condition is provided. The foregoing is also to apply in case of a withdrawal in whole or in part from a contract because of defective supply.
- 11.4 Should the supplier be belated in rectifying defects, or should urgency arise (e.g. water damage), then Cofely is to be entitled hereunder to rectify the defects itself, or to have such rectified by another, for the account and risk of the supplier.
- 11.5 Complaints concerning defects are to be made immediately upon discovery. The supplier hereby waives the objection of late defect complaint during the statute-barred time period.
- 11.6 Warranty time periods are to start anew in cases of replaced- or repaired products as well as of improvements (e.g. insulation) as from the date of new acceptance.
- 11.7 Reserved remain hereunder the terms and conditions of the statutory warranty time periods.

12. Safety

The supplier is liable hereunder for safety in the supply of goods and the provision of services. The legal- and statutory underlying basis therefor is in particular represented by the Swiss Federal 'Bauarbeitenverordnung' (Building Construction Works Ordinance) dated 29 June 2005, as well as the prescriptions of the governmental 'SUVA – Schweizerische Unfallversicherungsanstalt' (Swiss Accident Insurance Establishment), the building construction regulations issued by the 'SIA – Schweizerischer Ingenieur- und Architektenverein' (the Swiss Architects- and Engineers Association), as well as the security specifications of the building construction developers.

13. Disposals

- 13.1 Unless specially agreed, the supplier is under a contractual duty hereby to dispose of packing materials at its own expense.
- 13.2 The supplier hereby declares itself prepared to take back used and/or exchanged products and to dispose of these in an ecologically compliant manner. The matter of responsibility for the charges is to be clarified in advance.

14. Product liability

- 14.1 Should a claim be asserted against Cofely in regard to product liability of the supplies of the supplier, the supplier is to adopt all loss or damage indemnity liabilities and is otherwise, without reservation whatsoever to indemnify Cofely entirely in this respect.
- 14.2 The supplier hereby declares that it is insured against product liability risks, and is to provide a certificate insurance of the competent insurer, upon the first demand of Cofely.

15. Terms and conditions of settlement payment

- 15.1 Unless otherwise agreed, Cofely will make settlement payment within 30 days with 2% discount, provided the subject matter of the supply or services is entirely fulfilled as per the order, after receipt of any requested documentation and invoice, but 30 days at the earliest after the agreed delivery date and/or completion of any erection works.
- 15.2 Cofely hereby reserves entitlement hereunder to offset any of its counter claims against the supplier, as well as those of other associated companies of the GDF SUEZ Group. The supplier may only cede financial claims against Cofely to third parties with the permission of Cofely. Cofely will not refuse such permission without material grounds.
- 15.3 Cofely can collect no 'COD – cash on delivery' instruments or bills of exchange.
- 15.4 In cases of advance payments made by Cofely, the supplier is to provide an appropriate, unlimited joint surety (bank guarantee) of a well known banking institution or insurance company.
- 15.5 Cofely cannot render partial advance payments without corresponding consideration.
- 15.6 On orders over CHF 100,000.00, Cofely will only make a final settlement payment instalment against the provision of a joint surety (bank guarantee), or a warranty retention of over 10% of the entire volume of the order for the duration of the warranty time period as per Art. 11.2

16. Evidential documentation / Declaration of Conformity

The supplier is to ensure that the subject matter of the supply meets the relevant governing safety requirements (e.g. the standards or regulations of the following organisations: the Swiss Federal 'STEG – Schweizerisches Bundesgesetz über die Sicherheit von technischen Einrichtungen und Geräeten' (Legislation governing safety in plant, equipment and appliances), the Swiss Federal 'STEV – Verordnung ueber die Sicherheit von technischen Einrichtungen und Geräeten' (Government Ordinance executing the Swiss Federal Safety Legislation for plant, equipment and appliances), the Swiss Federal 'NEV – Verordnung ueber elektrischen Niederspannungserzeugnissen' (Government Ordinance governing electrical low voltage products), as well as the Directives of the European Communities). The supplier is to provide Cofely upon demand with the necessary evidential documentation, in particular the declarations of correct conformity and test reports.

17. Place of jurisdiction and applicable law

- 17.1 The place of jurisdiction for the supplier is the City of Zurich, Switzerland. Cofely however hereby reserves the right to litigate against the supplier at the court of law competent for the place of its corporate domicile (registered office).
- 17.2 The legal relationship between the parties is subject to Swiss law.