

**GENERAL PURCHASING TERMS AND CONDITIONS (“Terms”)  
VESTAS EASTERN AFRICA LIMITED  
2015**

**I Applicability**

1. The following Terms shall apply to orders of Vestas Eastern Africa Limited (“VESTAS”) for the purchase of products and/or services from the counterparty (“Supplier”). No deviations from these Terms, including any general terms and conditions of Supplier, shall have any effect unless explicitly agreed in writing between the parties. In the event of any inconsistency between any of these Terms and any special term set out in any other document, these Terms will prevail unless agreed otherwise in writing between the parties.

**II Placing of Orders**

1. The parties agree that VESTAS’ purchase of products and/or services shall be made by the exchange of a written order issued by VESTAS and an order confirmation, also in writing, issued by Supplier (collectively a “Contract”).
2. Supplier shall issue the order confirmation within five (5) business days after receipt of the order. The order confirmation must as a minimum include: purchase order (“PO”) number, Vestas item number (if applicable), number of items ordered (if applicable), price (per item), time of delivery and delivery address.
3. Oral Contracts are invalid unless confirmed in writing.
4. A PO number must be used as a reference on all documents related to an individual Contract.

**III Postponement and Cancellation**

1. Supplier accepts that VESTAS can postpone the date of delivery under any Contract for a period of up to six (6) months without any costs or compensation to be paid by VESTAS, provided that such postponement is advised prior to the time of Supplier’s shipment of the products or rendering of the services. Supplier shall diligently store the postponed products at its own cost and risk. If postponement is advised with a shorter notice than aforementioned or for a longer period than six (6) months, VESTAS shall pay to Supplier reasonable documented storage costs.
2. Supplier accepts that VESTAS can cancel a Contract in part or in full. The parties will agree on the cancellation costs based on Supplier’s reasonable cancellation costs incurred as a direct result of the request for cancellation reduced to the extent reasonably possible. Supplier shall take all reasonable steps within its power to mitigate its cancellation costs. In the event of VESTAS cancelling the Contract in terms of this clause III, VESTAS will be entitled to purchase products and/or services of a similar description and quality from an alternative supplier, and, if the reason for the cancellation was the breach by Supplier of the Contract, then VESTAS shall have the right (but not the obligation) to claim, by way of written demand, all expenditure and losses incurred by VESTAS in procuring products and/or services from an alternative supplier, including the difference between the price of the alternative supplier’s products and/or services and the price of Supplier’s products and/or services.
3. Where Supplier has breached any of these Terms and as a consequence thereof VESTAS cancels this Contract, then in those circumstances cancellation costs shall not be due, owing or payable by VESTAS.
4. Supplier is not entitled to cancel any Contract at any time.

**IV Prices**

1. Unless otherwise agreed between the parties in writing, the agreed prices include delivery DDP (Incoterms 2010) at any VESTAS facility within Kenya, at VESTAS’ discretion.
2. Packing is included in the prices.
3. The purchase price set out in any PO will be fixed and will be exclusive of any value added tax levied in accordance with the Valued Added Tax Act, 2013.
4. For the avoidance of doubt, VESTAS shall withhold and remit any withholding tax that it is required by law to withhold and remit to the tax authority in respect of the supply of services or in any other instance provided by law.

## **V Invoicing and Payments**

1. Invoices shall be submitted by Supplier to VESTAS as soon as delivery has been made or services have been rendered. Invoices from Supplier shall be paid within sixty (60) days from the end of the month in which the invoice has been received.
2. Supplier's invoices must clearly reflect the applicable VAT rate, the actual VAT amount due by VESTAS and the Supplier's VAT registration number.
3. Payments made by VESTAS to Supplier shall not to any extent release Supplier from its liability or responsibility, actual or potential, as this is set out in (i) any special terms between VESTAS and Supplier, (ii) these Terms; or (iii) any implied liability applicable to the transaction, nor include a waiver by VESTAS with regard to such liability or responsibility.
4. Without prejudice to any other remedy, which VESTAS may have under a Contract, any agreement between the parties or under applicable law, VESTAS shall be entitled to deduct from any amounts otherwise falling due to Supplier under a Contract any amount for which Supplier is liable to VESTAS under a Contract, irrespective of whether such amount originates from different PO's and/or is based on other legal circumstances/agreements.

## **VI Warranty**

1. Each warranty referred to in paragraph 2 below will be deemed to be a representation of fact inducing VESTAS to enter into these Terms and any Contract pursuant hereto.
2. Supplier warrants that products and/or services supplied (i) are fit for the purpose for which they are purchased; (ii) are free from defects in design, materials or workmanship and any services will be performed by appropriately qualified and trained personnel, with due care; (iii) meet VESTAS' specifications; and (iv) comply with all applicable regulations, norms and standards.
3. The warranty for an individual product/service shall endure for a period of sixty (60) months calculated from the date of delivery. However, if the product or service forms a part of or relates to a wind turbine, the warranty period of sixty (60) months is calculated from the last day of the month in which the first electrical power-production in commercial operation of the wind turbine into which the product or service forms a part or relates to has occurred ("Operation Date"). In the event that the Operation Date occurs more than twelve (12) months after delivery of the product or service, the warranty period shall commence twelve (12) months after the said date of delivery.
4. VESTAS shall give Supplier written notice of any defective product or inadequate service within a reasonable time after having become aware thereof. Supplier shall thereafter without undue delay, at its own risk and expense, remedy any defective product or inadequate service. Remedy means either (i) repair and re-installment of the defective product or parts thereof or (ii) replacement of the complete product and instalment of a new non-defective product or (iii) re-work the service in an adequate manner. Supplier shall - in addition to the costs for remedy - be liable for and obliged to reimburse VESTAS in respect of all costs, losses and damages incurred as a result of any defective product or inadequate service delivered by Supplier. Should Supplier fail to fulfil this obligation or should the circumstances at VESTAS' sole discretion (taking into account the potential loss to VESTAS or VESTAS' customers) so require, VESTAS may proceed to remedy the defective product or inadequate service itself or employ a third party to do so. Such remedy shall be at Supplier's risk and expense and shall lead to no loss of warranty for the product/service in question, provided that such remedy is carried out in a workmanlike manner. Should Supplier fail to observe the obligation to remedy a specific defect within a reasonable period fixed by VESTAS, VESTAS shall furthermore have the right to terminate the Contract in question and claim compensation for any costs and losses suffered due to Supplier's non-fulfilment of its obligations. If VESTAS has given such notification as mentioned above, and no defect or inadequate service is found for which Supplier is liable, Supplier shall be entitled to compensation in accordance with Supplier's normal reasonable service rates.
5. Repaired or replaced products or repaired or replaced parts thereof, as well as re-worked services, shall be included in the guarantee and warranty hereby given for a period of either (i) two (2) years from the date of repair or replacement or rework or (ii) the remainder of the original warranty period, whichever is the longer.
6. VESTAS shall retain the right to refuse to accept delivery of products or parts where Supplier delivers the wrong quantity or where products or parts do not meet VESTAS' specifications
7. Defective products or parts thereof are returned at the risk and expense of Supplier.

- Nothing in these Terms will prejudice VESTAS' rights in relation to any condition or warranty (expressed or implied), or other rights or remedies to which it would be entitled in relation to the products by virtue of the common law.

## **VII Assignment of Obligations**

- Neither party shall be entitled to cede, assign, delegate or otherwise alienate its rights or obligations under any Contract or the terms hereof without the prior written consent of the other party.
- VESTAS shall however be entitled to cede, assign, delegate or otherwise alienate all rights and obligations which it may have under any Contract or the terms hereof to another member within the Vestas Group. Vestas Group means Vestas Wind Systems A/S and any and all companies which are directly or indirectly (through one or more subsidiaries) controlled by Vestas Wind Systems A/S.

## **VIII Passing of Ownership and Risk**

- Ownership and all risk in and to any product purchased by VESTAS shall pass to VESTAS at the time of delivery of that product to VESTAS.
- Passing of risk and ownership in the products is without prejudice to any right of rejection which may accrue to VESTAS, whether in law or in terms of the Contract in question, and does not constitute, nor shall it be deemed to constitute, any admission by VESTAS as to the fulfilment of the obligations of Supplier.

## **IX Delivery**

- Supplier shall at its own risk deliver the goods to VESTAS at the agreed place of delivery as set out in the PO. The agreed dates of delivery shall be of the essence and must be observed at all times. Partial deliveries are permitted only if explicitly agreed in writing prior thereto. If any delivery is made earlier than agreed without VESTAS' consent, the invoice for such delivery may not be sent by Supplier to VESTAS prior to the originally agreed delivery date.
- Terms of delivery are DDP - place of delivery as set out in the order - (Incoterms 2010) or as otherwise agreed in writing between the parties. Supplier acknowledges and accepts that proper delivery at the agreed time of delivery is of the essence to VESTAS.
- The products must be delivered in accordance with any agreed delivery and packaging specifications. Supplier must use suitable packaging that adequately protects the product with identification marks showing the content, number and kind of product. The packaging shall furthermore be suitable to protect the products during storage at VESTAS' storage facilities for up to six (6) months.
- All shipping documents, quality documents, instructions and other certificates being necessary or required by VESTAS for Supplier to properly fulfil its obligations under a Contract or the terms hereof, shall be dispatched to VESTAS on the date of shipment. Any delay in delivery of the above documents is considered as a delay of the products and/or services to be delivered.
- If the products and/or services including delivery documentation referred to above, are not delivered at the agreed time of delivery and this is not due to (i) an event of force majeure, as set out in clause X below, or (ii) reasons for which VESTAS is in all material aspects responsible, VESTAS will be entitled to claim compensation for delay from the date on which delivery should have taken place. The compensation for delay in delivery shall be payable at a rate of two percent (2%) of the purchase price of the delayed products and/or services for each commenced day of delay. The compensation for delay shall not exceed twenty percent (20%) of the purchase price of the delayed products and/or services. The compensation for delay becomes due on VESTAS' written demand.
- Acceptance of late deliveries shall not be deemed to be a waiver of any claims to which VESTAS is entitled to due to late deliveries.
- In the event of a delay in delivery exceeding ten (10) calendar days, VESTAS shall, in addition to the compensation for delay, be entitled to cancel the Contract in question with immediate effect by giving Supplier notice in writing.
- In addition to VESTAS' right to claim compensation for delay and cancel the Contract, VESTAS is entitled to claim compensation for any other loss suffered due to the delay.
- If VESTAS fails to pay the purchase price by the stipulated date, and this is not due to circumstances for which Supplier is responsible, Supplier shall after having given VESTAS a written notice requiring payment of the outstanding amount be entitled to interest from the day on which the payment was due. The rate of interest is the prime rate quoted by one of the five largest banks in Kenya from time to time.

## **X Force Majeure**

In case of force majeure, defined as an event (i) beyond the control of; and (ii) which could not reasonably have been foreseen, avoided, limited or overcome by the party claiming force majeure, each party shall be entitled to suspend its obligations under the Contract until the force majeure situation has ceased. In case the force majeure situation is not (or is not expected to be) brought to an end within three (3) months, the other party is entitled to terminate the Contract with immediate effect.

## **XI Product Liability Insurance**

1. Supplier shall maintain and keep in force adequate public and product liability insurance covering the products and services. The insurance is to be valid as long as the business co-operation between VESTAS and Supplier exists and for a period of five (5) years hereafter. Supplier's liability is not limited to the sum insured.
2. Supplier shall assume full responsibility and liability for any product liability claims related to products delivered by Supplier whether such a claim is brought against Supplier or VESTAS. Supplier shall thus indemnify VESTAS and hold VESTAS harmless from and against all claims in relation to product liability to third parties.

## **XII Indemnity**

Without prejudice to VESTAS' other rights in terms of these Terms, Supplier hereby indemnifies and holds VESTAS harmless from or against any loss, liability, damage, expense, cost, fine, penalty and/or any claims against VESTAS, which may be suffered or incurred by, imposed on or brought against VESTAS as a result of or in connection with:

- (1) defective workmanship, quality or materials relating to any products and/or services;
- (2) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the products or the provision of the services; and
- (3) any claim made against VESTAS in respect of any liability, loss, damage, injury, cost or expense sustained by VESTAS' employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the products as a consequence of a direct or indirect breach of the terms of a Contract by Supplier.

## **XIII Intellectual Property Rights**

1. Any and all intellectual property rights ("IPR") and/or know-how furnished by either party ("Owner") to the other party ("Recipient") may not be used for purposes other than performance of any Contract or the terms hereof without express written approval of Owner. Owner shall retain all of the above-mentioned IPR and no ownership of any kind passes to Recipient, unless explicitly agreed in writing by the authorized representatives of the parties.
2. Supplier warrants that it owns all right, title and interest in, to and under all IPR concerning the products and/or services and/or possesses valid, transferable, irrevocable, perpetual and world-wide licenses to relevant IPR owned by third parties entitling Supplier and VESTAS to exploit such third party IPR in the products and/or services, the production process or otherwise without limitation.
3. Supplier may not use trademarks or trade names owned or used by the Vestas Group or pictures of installed Vestas wind turbines as reference in sales brochures, press releases, or any other material used for general promotion purposes, unless such material has been reviewed and explicitly approved in writing by VESTAS prior to such use.
4. Any tools and/or documents transferred by VESTAS to Supplier enabling Supplier to manufacture the products, shall at all times while being in Supplier's possession be clearly marked "Property of VESTAS" in a non-erasable manner. Such tools and/or documents shall be kept and used at Supplier's own risk and liability, and Supplier will at its own cost secure that they are properly insured. The tools and/or documents shall be returned immediately to VESTAS upon VESTAS' demand.

## **XIV Quality and Environment**

1. Supplier shall ensure that chemicals and materials used in products and/or services delivered to VESTAS fulfil the requirements stated in the Chemical and Material Blacklist, which can be found on: <http://www.vestas.com/en/about-vestas/sustainability/suppliers.aspx>, as well as any subsisting standards and specifications provided under any Kenyan law or regulations as amended from time to time.

2. Supplier shall act in an ethically responsible manner and comply with the policies, international conventions and principles, which can be found on: <http://www.vestas.com/en/about-vestas/sustainability/commitments-and-policies.aspx>.

## **XV Disputes and Applicable Law**

1. Any and all Contracts, including these Terms, shall be governed by and construed exclusively in accordance with Kenyan law (excluding in full the United Nations' Convention on the International Sales of Goods "CISG"). Any dispute arising out of or in connection with a Contract and/or these Terms, including any disputes regarding the existence, validity or termination thereof, shall be finally settled by arbitration under the provisions of the Arbitration Act, 1995 arranged by the Chartered Institute of Arbitrators, Kenya branch, ("CIA") in accordance with the arbitration rules adopted by CIA and in force at the time when such proceedings are commenced. The place of arbitration shall be Nairobi, Kenya, and the proceedings shall be conducted in the English language. All aspects of the arbitration shall be considered confidential. Irrespective of this arbitration clause, VESTAS shall be entitled to give third party notice to Supplier if VESTAS is taken to court or arbitration by any third party claiming damages against VESTAS on the basis of Supplier's performance and deliveries. In case VESTAS is taken to court by any third party claiming damages against VESTAS on the basis of Supplier's performance and deliveries, Supplier is under an obligation – if so requested by VESTAS – to participate in (at its own cost) and bindingly accept any court/arbitration case lodged by such third party against VESTAS and any ruling/award given under such court/arbitration case. However, contractual disputes between VESTAS and Supplier shall be settled by arbitration in accordance with this clause.
2. Should any third party claim damages against either party due to product liability or infringement of IPR, that party is obliged to inform the other party thereof immediately. Both parties are under an obligation to participate in any court/arbitration case examining claims for damages lodged against one of them on the basis of alleged infringement of IPR or damage allegedly caused by the products and/or services.

## **XVI Personal Data Protection**

1. The Parties will as part of their contractual relationship and to perform their respective obligations under the Agreement only share personal data about certain employees or third parties engaged by either Party whom are working to fulfil the Agreement.
2. VESTAS and the Supplier, as applicable, will collect and process the personal data as data controllers.
3. The Parties acknowledge and agrees that they will provide all of its employees and/or third parties engaged by the Parties, as applicable, whom are working to fulfil the Agreement, with information about the other Party's collection and processing of their personal data.
4. Such information must comply with applicable data protection laws, including Article 13 and 14 of the General Data Protection Regulation. Either Party will defend and indemnify the other Party from and against all claims raised by an employee or third party engaged by the Party due to the Party's non-compliance with this Clause XVI.
5. To the extent Supplier acts for VESTAS as a data processor the Parties shall enter into a Data Processing Agreement in compliance with applicable data protection laws.
6. If applicable, VESTAS and/or Supplier must comply with any requirements established by any data protection authority or any other governmental authorities necessary for the granting of approval by such authorities for the transfer of personal data outside of the EEA, including by facilitating the conclusion of the Commission's standard contractual clauses as set out by Commission Decision of 5 February 2010 with later amendments (the "Model Clauses").

## **XVII General Provisions**

1. If any provision of these Terms is held to be illegal, invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of any other provision of these Terms or the validity or enforceability of that provision or any other provision. The parties shall in good faith negotiate replacement provisions that in a legal, valid and enforceable way to the nearest extent, reflect the original intent of the parties.

2. Supplier warrants that (i) upon the effectiveness of a Contract, all products have the necessary export and/or re-export authorizations by the competent authorities in the countries of manufacture of the ordered product if and to the extent legally required, and (ii) it shall keep VESTAS informed in detail regarding any actual or expected embargo or export control regulation concerning the products. Should Supplier fail to fulfil its obligations set out herein, VESTAS has the right to claim damages from Supplier and to terminate the affected Contract(s).
3. All products may be used, sold, and resold in, as well as imported to or exported from any country in the world by VESTAS and/or its customers both singularly (as spare parts) and/or incorporated into other products.
4. During the duration of a Contract and after termination hereof, both parties shall treat all technical documents and commercial information, which have been disclosed by either party to the other party in confidentiality, and the receiving party shall not copy, disclose or otherwise use such documents and information for any other purposes than for fulfilling any Contracts. Supplier shall at request of VESTAS return any documentation to VESTAS or destroy it.
5. No change, modification, alteration or addition to any provision of these Terms shall be binding unless in writing and signed by an authorized representative of each party.
6. Any notice given under the Contract must be in writing addressed to an authorized representative of the other party and shall be deemed given upon receipt of the other party.
7. No indulgence or extension of time, which either party ("Grantor") may grant to the other, nor any election or failure by the Grantor to enforce, whether completely or partially, or delay the enforcement of any of its existing or future rights, will constitute a waiver of, or, whether by estoppel or otherwise, limit any of the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.
8. Without prejudice to any other provision of these Terms or any Contract, any successor in title, including any business rescue practitioner, curator, executor, heir, liquidator or trustee, of either party will be bound by these Terms.
9. The signature by either party of a counterpart of any Contract will be as effective as if that party had signed the same document as the other party.

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