



## 1. General - applicability

- 1.1** These general terms and conditions of sale, installation and commissioning (the '**General Terms and Conditions**') apply to:
- 1.1.1** all offers, order confirmations and agreements made by or entered into with Alfen B.V. (Netherlands), Alfen België BV and Alfen Elkamo (Finland) and their group companies (each hereinafter referred to as '**Alfen**'), and
  - 1.1.2** the deliveries of high and medium voltage grid solutions, including transformer substations and other smart grid products (the '**Products**'); and
  - 1.1.3** the performance of work in relation to the Products, such as assembly, installation and commissioning, as well as warranty services or other services (hereinafter collectively referred to as the '**Services**')
- 1.2** By placing an order with Alfen but at the latest upon Alfen's commencement of the work in relation to the Products or Services, the customer (the '**Customer**') acknowledges the applicability of these General Terms and Conditions.
- 1.3** These General Terms and Conditions apply during the entire duration of the business relationship, i.e. also during the pre-contractual phase, to subsequent agreements, negotiations and requests from the Customer.
- 1.4** Unless otherwise agreed in writing by the parties, Products are delivered or Services are performed by Alfen exclusively on the basis of these General Terms and Conditions. All other terms and conditions - including the Customer's terms and conditions - are not binding on Alfen.
- 1.5** Deviations from these General Terms and Conditions will only be valid if and insofar as Alfen's authorised director(s) has/have expressly accepted such deviations in writing, and only with regard to the single agreement in respect of which such deviations have been agreed.
- 1.6** Alfen has the right to amend these General Terms and Conditions at any time.
- 1.7** For the purposes of these General Terms and Conditions, the term "in writing" will include any communication between the parties via e-mail.
- 1.8** A Business Day means any day other than a Saturday, Sunday or recognised public holiday in the Netherlands.

## 2. Quotations, offers, orders and agreements

- 2.1** All quotations and (budget) offers made by Alfen are only binding during the period mentioned in this quotation or (budget) offer. If no deadline is stated in the quotation or (budget) offer, this quotation or (budget) offer is explicitly non-binding.
- 2.2** An agreement comes into being (i) upon written confirmation from Alfen of a quotation/order (signed) by the Customer, or in the absence of written confirmation from Alfen, (ii) upon Alfen's commencement of the work in respect of the Products or Services, whereby Alfen's latest quotation is deemed to accurately reflect the content of the agreement, (the '**Agreement**').
- 2.3** In case of a conflict or inconsistency between the contents of a (signed) quotation or order and the contents of the Alfen order confirmation, the Alfen order confirmation will prevail.
- 2.4** The data in illustrations, drawings and specifications of dimensions and weight, which form the basis for the quotation or order confirmation, are to be regarded as estimated values only, insofar as they are not exclusively designated as binding. The Customer is obliged to verify the aforementioned data.

## 3. Engineering phase: Design and amendments

- 3.1** If the Agreement states that Alfen will perform design work, the quotation will contain the draft functional design. After conclusion of the Agreement, Alfen will elaborate the draft functional design with a construction drawing into the basic design and Alfen will share this design with Customer. The Customer will approve or reject the design within five (5) Business Days of receipt. If the Customer does not respond within five (5) Business Days, the design will be deemed to be approved by the Customer and the design made by Alfen will be deemed to be the final design. Any adjustments in relation to the draft functional design or the (basic) design will be deemed to be amendments to the Agreement, which will be dealt with in accordance with the provisions of Article 3.3.
- 3.2** The Customer will inform Alfen without delay if the Customer becomes aware of any imperfection, defect,

inconsistency or discrepancy in or between the Agreement and the draft design or the basic design.

- 3.3** The parties may propose changes to the Products or the Services by sending a written request to the other party. Alfen will examine the feasibility of such a change request and prepare a change proposal including information on the contractual, technical and commercial impact, as well as its impact on delivery, performance, warranty, timing, cost and scheduling. If the Customer agrees to the change proposal, Alfen will implement the change. If the Customer does not agree to Alfen's change proposal, then (i) a change initiated by Customer will not be implemented by Alfen and the Products and Services will be delivered and/or performed in accordance with the original Agreement, and (ii) a change initiated by Alfen will be implemented if the change is necessary due to changed circumstances regarding (the availability of) materials, technical or legal requirements, and the Products and Services will be delivered and/or performed in accordance with the change proposal.

#### **4. Transport and shipping**

- 4.1** Unless otherwise agreed, deliveries are DPU in accordance with Incoterms 2020, at the address indicated in the Agreement by Customer (the 'Location'). The transport costs are for the Customer's account. The costs will be specified by Alfen on the invoice.

#### **5. FAT, SAT and Commissioning**

- 5.1** As part of the delivery of the Product, the parties may agree that (i) a 'factory acceptance test' ("**FAT**") and/or (ii) a 'site acceptance test' ("**SAT**") and/or (iii) commissioning will be carried out.
- 5.2** Factory acceptance is achieved at the first moment of (i) signature of the FAT test report by both parties, or (ii) shipment of the Product from the Alfen factory to the Location.
- 5.3** Site acceptance is achieved at the first moment of (i) signature of the corresponding SAT test report by both parties, or (ii) commissioning of the Product. If site acceptance takes place, the warranty period begins to run.
- 5.4** Commissioning shall be achieved at the moment when Alfen, the Customer and/or the network company energize the Product.
- 5.5** The Customer will proceed to sign the test reports unless the Product does not conform to the specifications

as stated in the Agreement or there is a defect, other than minor defects that do not interfere with the use or operation of the Product.

- 5.6** If the performance of a 'factory acceptance test' and/or a 'site acceptance test' and/or commissioning is not part of the Agreement, the Products and Services will be deemed to be accepted within five (5) Business Days after delivery of the Product and/or performance of the Services, unless the Customer has notified Alfen of any defects within the aforementioned period. The warranty period starts when the Product is delivered.

#### **6. Delivery, delivery period, performance, acceptance and force majeure**

- 6.1** The delivery or execution dates or periods mentioned in offers or order confirmations and/or other written correspondence are only guidelines and never firm deadlines. If, notwithstanding the above, the parties in the Agreement agreed on a firm deadline that has been exceeded, the Customer will request Alfen in writing to still comply within a reasonable period of at least fifteen (15) Business Days.
- 6.2** Any (issued) dates or periods are extended if (i) there is a change in accordance with Article 3.3, (ii) the Customer fails to meet all technical, administrative, commercial and financial requirements, (iii) Alfen has not received (partial) payments in respect of the Products or Services before the Due Date (included in Article 7.2), (iv) there is a force majeure situation.
- 6.3** Partial deliveries are allowed. After a partial delivery, Alfen is entitled to payment for that partial delivery and therefore Alfen may send a partial invoice.
- 6.4** From the moment of delivery of the Products by Alfen, the full risk of the Products will pass to the Customer.
- 6.5** Alfen may transfer its obligations under an agreement to third parties, or have third parties perform these obligations.
- 6.6** In case Alfen or one of its suppliers is hindered by a force majeure situation, Alfen has the right to suspend the delivery date by an appropriate period of time. The same applies in case of government intervention, shortage of energy or raw materials, delay in the delivery of parts by suppliers and/or on behalf of the Customer, strikes, employee lockouts, lack of means of transport and other unforeseen delivery problems, insofar as Alfen cannot influence these. Alfen will inform the Customer of this and ensure that the inconvenience to the Customer is

minimised. If the situation of force majeure continues for more than three months or as soon as it becomes clear that it will continue for more than three months, Alfen is entitled to dissolve the Agreement in whole or in part, insofar as it has not been performed, and to demand payment for the parts that have been performed, such without any obligation to pay damages to the Customer.

**6.7** If the Customer requests a delayed delivery, Alfen reserves the right to charge the Customer for the costs associated with the delayed delivery (including, but not limited to, storage and transport costs). In this case, Alfen is entitled to send the Customer the invoice as if delivery had taken place on the delivery date initially indicated.

## **7. Prices and payment terms**

**7.1** Prices of the Products and/or Services are in euros, excluding costs relating to FAT, SAT, commissioning, import costs, duties, and taxes, travel and accommodation expenses and VAT and/or other levies.

**7.2** Payments must be made without any form of set-off or deduction - therefore not even in the case of complaints - to the specified bank account within the period specified on the invoice (the '**Due Date**'). Payments will be deemed to have been made when credited to Alfen's bank account.

**7.3** If the Customer fails to pay an amount by or on the Due Date, the Customer will be in default by operation of law. In that case, and without prejudice to the other remedies available to Alfen, Alfen will be entitled to (i) suspend performance of the payment-related obligations under the Agreement and, if payment in instalments has been agreed, to suspend its work in relation to the subsequent instalments, and (ii) charge the Customer interest on all amounts due and unpaid at a rate of 2% above the statutory interest rate for commercial contracts (Section 6:119a of the Dutch Civil Code) from the Due Date of the unpaid invoice and statutory extrajudicial collection costs.

**7.4** Discount agreements are nullified in full as soon as the Customer fails to make a payment before the Due Date.

**7.5** Alfen is entitled - with immediate effect after prior written notification - to increase the price of the Products or Services in case the factors determining cost price have become more expensive. These factors include, but are not limited to:

- (a) raw and auxiliary materials, intermediate products, auxiliary materials such as oil, water and energy;
- (b) government measures and changes in exchange rates, products and services procured from third parties, freight

rates, import and export duties, excise duties, levies, taxes (to the extent that these rates, duties, excise duties, levies and taxes are included in the price of the goods), wages, salaries, social security contributions, freight charges and insurance premiums.

**7.6** Furthermore, Alfen is entitled - with immediate effect after prior written notification - to increase the price of the Products or Services in case of a delay in the delivery periods and dates, if the delay in question is not attributable to Alfen.

## **8. Obligations of the Customer**

**8.1** If the Customer has undertaken to supply parts required for making the Products or performing the Services, such parts must be delivered to Alfen free of charge and in time for the production process (DDP in accordance with Incoterms 2020).

**8.2** Alfen will report defects in components as soon as the defects manifest themselves during normal operations. The Customer hereby waives the right to object to defects that are reported late.

**8.3** In case of delayed or defective delivery or defective quality of such parts, any delivery times that may have been agreed between the parties will expire and the Customer will indemnify Alfen against additional costs and expenses and against damage and loss resulting from such delay, defective quality or defect. In such cases, Alfen is entitled, at its discretion, to interrupt the production process until suitable parts of good quality are received.

**8.4** The Customer is responsible for an obstacle-free construction site, free of cables, pipes and other obstacles in the ground. Therefore, the Customer shall submit a mandatory excavation notification (Klic notification based on the WION) to the Land Registry in a timely manner. Before commencement of the excavation works, Alfen shall assess the Klic notification after receipt thereof from the Customer in order to prepare the works. Any necessary measures arising from the excavation notification are not included in the quotation and will be settled based on subsequent calculation. Insofar as Alfen undertakes the coordination of the excavation notification by a third party for the Customer, the Customer indemnifies Alfen from any and all liability of third parties for compensation for damages if damage occurs to the underground networks, cables or pipes during the excavation work.

**8.5** The Customer will at all times ensure and guarantee at its own risk and expense that:

- 8.5.1** all permits, licences, consents and notices required for the performance of the Agreement, the installation of the Products and the performance of the Services at the Location, including, but not limited to, a clean soil certificate, have been obtained or made, and that the conditions thereof are met;
  - 8.5.2** all local, regional or national planning and environmental regulations have been met;
  - 8.5.3** it has taken out and maintains construction all risk insurance (CAR) for an amount at least equal to the price for all Products that Alfen supplies to the Customer;
  - 8.5.4** the Location is suitable for installing, commissioning and operating the Products and performing the Services, and access roads to the Location are suitable for the necessary transport (trucks and cranes) and unloading of the Products;
  - 8.5.5** all safety and precautionary measures relevant to the performance of the Services at the Location have been taken;
  - 8.5.6** employees and third parties engaged by Alfen may start performing the Services as soon as they arrive at the Location, both during regular business hours and outside them if Alfen considers it necessary in performing the Services;
  - 8.5.7** there is coordination of cooperation between Alfen and third parties involved in the project or present at the Location;
  - 8.5.8** the network connection is arranged;
  - 8.5.9** the Customer will act in accordance with all applicable laws and regulations, including, but not limited to, applicable laws and regulations at the Location, relating to the environment.
- 8.6** Damage and costs resulting from failure to comply or comply on time with the provisions of Article 8.4 will be at the expense and risk of the Customer.

## **9. Intellectual property and other protected rights**

- 9.1** Alfen is and remains the owner of all documents, models, samples and examples provided in relation to offers and Agreements and these items may not be shared by the Customer with third parties or disclosed, reproduced or copied in any way without Alfen's prior written consent.
- 9.2** If Products are produced or Services are performed based on the Customer's ideas, proposals, models, drawings, modifications or samples, the Customer guarantees

that this does not infringe any protected rights of third parties. In legal proceedings due to (alleged) infringement of patented rights, trademark rights, protected designs, trade secrets or copyrights of third parties, the Customer will indemnify Alfen against all claims (for damages) of third parties and costs arising therefrom. The Customer will immediately arrange to participate in or take over the court proceedings in case Alfen requests the Customer to do so.

- 9.3** All ideas, inventions, designs and samples, copyrighted works, patents, design rights, trademarks, copyrights and trade secrets and any knowledge or other intellectual property in the matter of the Products or Services produced or performed by Alfen or generated within the framework of the performance of an Agreement, as well as any techniques applied by Alfen for production and design of the Products or performance of the Services, prior to or during the performance of the Agreement, will at all times be the exclusive (intellectual) property of Alfen.

## **10. Confidential information and confidentiality**

- 10.1** The Customer will treat all information, specifications, business information and knowledge provided by Alfen about and by Alfen as confidential. At Alfen's request, the Customer will return the aforementioned information to Alfen in good condition or destroy it within fourteen days.
- 10.2** Notwithstanding the confidentiality obligations of the parties, the Customer hereby agrees that Alfen may use the Customer's name and general information about the project for publicity announcements and reference purposes.

## **11. Notification of defects**

- 11.1** The Customer is obliged to check the Products and Services upon delivery or after performance for transport or other damage. The Customer must report any visible defects in writing within 7 days of delivery or discovery of a defect in the Products or a defect in the Services performed with proof and the specific description of the nature of the defect.

## **12. Warranty and liability**

- 12.1** Alfen warrants for a period of 12 (twelve) months after performing Services that they are in accordance with high standards and warrants for a period of 24 (twenty-four) months after installation or delivery of Products to

the Customer, whichever occurs first, that all Products are free from defects. Alfen will remedy defects by - at its discretion - providing repair or replacement of the Products or re-performing the Services, unless:

- (a) the Products have been incorrectly installed or defectively or incorrectly maintained by a party other than Alfen or a certified service partner of Alfen; or
- (b) the Products have been adapted, repaired or modified by a party other than Alfen or a certified service partner of Alfen, including, but not limited to, installing spare parts or changing the operating programme;
- (c) improper operation of the Products, for example by not following manuals, operating and maintenance instructions; or
- (d) use of the Products (i) in the vicinity of explosive or highly flammable substances, or (ii) in or near water, or (iii) when the Product or parts thereof have been damaged, or (iv) by children or persons who are not in a good position to assess the risks associated with the Product; or
- (e) there is normal wear and tear; or
- (f) there are failures of the electricity grid and/or at the grid operator or any other third party, beyond the control of Alfen; or
- (g) there is a force majeure situation or the defect is caused in some other way from outside.

Any costs incurred outside of repair or replacement will be charged to the Customer separately (if applicable: travel expenses, man-hours, transport, installation, removal, etc.). This warranty is an exclusive warranty and is in lieu of any express or implied warranty of merchantability, fitness for a particular purpose or other warranty. Alfen makes no warranties as to fitness for a particular purpose or use of any kind.

- 12.2** Alfen's liability under or in connection with this Agreement, and the Products and/or the Services that have been sold or purchased on that basis will be limited for the delivery of the Products to 50% of the value of the Products as included in the Agreement and for the delivery of the Services to 50% of the value for the annual service charges, irrespective of whether such liability arises from the Agreement (including penalties and indemnities), unlawful act (including negligence), equity, laws or regulations or otherwise.
- 12.3** Alfen will not be liable for loss or damage in respect of profit, revenue, use, production, contracts, goodwill, corruption of software, data or information, or for indirect or special loss, consequential loss or other loss of any kind.

- 12.4** The Customer will indemnify Alfen and respectively hold it harmless against all claims or demands of third parties for compensation of loss in connection with the Products delivered or Services performed.

## **13. Retention of title**

- 13.1** Until the Customer has fulfilled all financial obligations towards Alfen, including interest and costs, title to the Products delivered by Alfen will remain with Alfen. The Customer is obliged to store and manage the Products with due care.
- 13.2** With regard to resale, the Customer hereby assigns to Alfen, and Alfen hereby accepts, all claims including all related rights and collateral security rights accruing to the Customer in respect of its customers and the resold Products. If requested, the Customer will disclose to Alfen the names and addresses of its customers as well as the claims and amounts due as a result of the sales in question. Unless this is revoked by Alfen and without prejudice to Alfen's exclusive right to the outstanding claims, the Customer may collect the claims assigned to Alfen in its own right but for Alfen's account.

## **14. Termination, succession and transfer**

- 14.1** In case of termination of the Agreement by the Customer, Alfen will be entitled to compensation of the total value of the Agreement, including the calculated profit. In case of lawful termination by the Customer pursuant to Article 14.2.1, Alfen is entitled to compensation for the costs incurred by it up to that point.
- 14.2** Both parties have the right to terminate the Agreement in the following cases only:
  - 14.2.1** there is a wilful or gross failure to perform material obligations under the Agreement by the other party, and such failure is not remedied within a reasonable time notified in writing by the affected party; or
  - 14.2.2** the other party ceases or threatens to cease its business, is insolvent, files for bankruptcy, enters into a composition with creditors or goes bankrupt.
- 14.3** Agreements will also be binding on the legal successor of the Customer or Alfen. The rights and obligations contained in the Agreement and these General Terms and Conditions may not be assigned by the parties without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed.

The aforementioned does not apply in case of transfer to  
(a) legal successor(s).

## **15. Export**

**15.1** If the Customer exports (parts of) the Products delivered by Alfen to a foreign country, the Customer thereby undertakes to observe the national and international export regulations and restrictions applicable to it and the Customer will indemnify Alfen for all claims of third parties in connection with these export regulations and restrictions.

## **16. Divisibility**

**16.1** In case any of the provisions of these General Terms and Conditions or any Agreement is found to be void or invalid for any reason, this will not affect the validity of the remaining provisions.

**16.2** The parties undertake to replace the invalid provision with a legally valid provision that comes as close as possible to the economic scope of the invalid provision.

## **17. Applicable law**

**17.1** These General Terms and Conditions and any Agreement, and any dispute or claim arising out of or in connection with such Agreement and its subject matter, will be governed by Dutch law, to the exclusion of Book 7 of the Dutch Civil Code and the rules of the United Nations Convention for the International Sale of Goods.

**17.2** All disputes arising in connection with these General Terms and Conditions and Agreements must be submitted to the District Court Midden Nederland, location Almere, the Netherlands.