

## CelSian Glass & Solar BV, GENERAL TERMS & CONDITIONS, March 1<sup>st</sup>, 2017

### 1. DEFINITIONS AND SUBJECT MATTER OF THE CONTRACT

- 1.1. Acceptance: The declaration of Customer that the Services consisting of delivery of equipment is considered satisfactory by Customer and CelSian is discharged of any further obligations under the Agreement regarding the Services or a specific part thereof.
- 1.2. Agreement: any agreement between CelSian and Customer for the delivery of Services, any amendment or supplement thereto and all (legal) acts in preparation and/or execution of that agreement.
- 1.3. Background: all knowledge, experience and other information to which a party is entitled and which was not developed or created in the context of the Agreement, as well as any IP Rights acquired as a result of or vested in such knowledge, experience and other information. Such knowledge, experience and other information also includes tangible objects mutually made available by the parties in the context of the Services including, but not limited to models, production processes and other processes, working methods, know how and/or computer software.
- 1.4. Customer: any party asking quotations for services and any party on whose behalf the said quotations, orders and subsequent agreements or contracts have been made and any party who enters into an agreement with CelSian.
- 1.5. Foreground: all knowledge, experience and other information developed or created in the context of the Agreement, as well as any IP Rights acquired as a result of or vested in such knowledge, experience and other information. Such knowledge, experience and other information also includes tangible objects mutually made available by the parties in the context of the Services including, but not limited to models, production processes and other processes, working methods, know how and/or computer software.
- 1.6. IP Rights: all intellectual and industrial property rights including, but not limited to, copyrights, trade name rights, design rights, trademark rights and patent rights and domain names.
- 1.7. CelSian: CelSian Glass & Solar B.V., a private company with limited liability, organized under the laws of the Netherlands, having its registered office in Eindhoven, the Netherlands, registered with the trade register of the Dutch Chamber of Commerce with number 54306272.
- 1.8. SAT: Site Acceptance Test that will be run after delivery of equipment at the premises of Customer, which test(s) will be run in the presence of the parties in order to determine if the part of the Services regarding the equipment is performed by CelSian in accordance with the SAT specifications as agreed upon between Parties, and if Services are ready for final Acceptance.
- 1.9. Services: any work performed or to be performed by CelSian to or on behalf of Customer, including but not limited to written advice, software (licence), accreditation, training, delivery of equipment.
- 1.10. Terms and Conditions: these general terms and conditions for commissions to CelSian.

### 2. APPLICABILITY

- 2.1. Unless explicitly agreed otherwise, these Terms and Conditions will apply to all quotations, orders, order confirmations, Agreements, Services and all subsequent contracts of whatever nature which are marketed and/or supplied by CelSian.
- 2.2. Any uniform or specific conditions used by Customer will not be accepted by CelSian and will not be applicable to the Agreement and/or to the Services, unless these are expressly accepted in writing by CelSian.
- 2.3. In the event that one or more provisions of these Terms and Conditions are or become invalid, this shall not affect the validity of the rest of the Agreement. The same shall apply should it become evident that there are omissions in these Terms and Conditions. In either case the void or missing provisions shall be replaced by a legally valid provision which approximates as closely as possible with the intention of these void or missing provisions.
- 2.4. CelSian explicitly reserves the right to modify these general terms CelSian explicitly reserves the right to modify these General Terms and Conditions.

### 3. QUOTATIONS

- 3.1. Prior to concluding an Agreement CelSian will send a quotation to the Customer. The quotation describes the proposed Services and the intended outcome of the Services. Unless stated otherwise in the quotation, the quotation is valid during one month from the quotation date.
- 3.2. An acceptance of a quotation becomes effective at the moment the acceptance in writing or e-mail, reaches CelSian within the time indicated or, if no time is indicated before the quotation expires. If the Customer has asked CelSian to start work before the issuance of a quotation or before the acceptance of the quotation, the request of the Customer will be regarded as consent to the entire quotation. A reply to a quotation which purports to be an acceptance, but contains additions, limitations or other modifications, is a rejection of the quotation and constitutes a counter offer. Counter offers become binding after written confirmation by CelSian.

### 4. PERFORMANCE OF THE AGREEMENT

- 4.1. CelSian shall perform the Services on the basis of the specifications set out in the Agreement. In absence of detailed specifications, CelSian will perform the Services on the basis of its general practices using its professional judgement. CelSian commits to perform the Services with due care in a professional manner and to comply with the agreed standards and to apply the methods explicitly agreed to be applied where applicable to the Services.
- 4.2. The outcome of the Services will be indicated in the quotation: written advice, software licence, accreditation, training, delivery of equipment, etc.
- 4.3. CelSian will perform the Services on the basis of the agreed planning or in the absence thereof, on the basis of a planning determined by CelSian in its reasonable discretion in consultation with Customer. If the planning for Services is likely to be exceeded, CelSian will contact Customer to discuss the impact and both parties will act reasonable in agreeing a new planning for the Services.
- 4.4. CelSian will use all reasonable efforts to perform the Services in accordance with the agreed planning. CelSian shall only be in default for a delay with respect hereto if after missing an agreed date for performing certain Services CelSian continues to fail to perform such Services for reasons attributable to CelSian after receiving a written notice by registered letter from Customer, requiring performance of the Services within a reasonable period thereafter.
- 4.5. If the Services of CelSian are delayed on request of Customer or due to a lack of timely and/or correct input or co-operation of Customer, CelSian is entitled to charge Customer for the additional expenses it incurs, reserved time by CelSian employees and subcontractors for the Services where the relevant employee or subcontractor cannot be reassigned and the additional time it has to spend on the Services as a result of such delay. CelSian will use its reasonable efforts to minimize such additional charges.
- 4.6. CelSian is entitled to replace employees who perform the Services with other employees. CelSian is entitled to have the Agreement or any part thereof performed by third parties under its responsibility, without the consent of Customer.

### 5. COOPERATION BY THE CUSTOMER

- 5.1. Customer shall at all times make any data, information and/or materials required for the execution of the Services on time available to CelSian and guarantees the correctness and completeness of such data, information and/or materials. CelSian is not obliged to commence performance of any Services until all data, information and/or materials to be supplied by Customer to CelSian have been supplied in the agreed form, quantity and/or quality. If CelSian receives these data, information and/or materials later than agreed, the estimated term of performance stated in the Agreement will be extended by the duration of this delay. Furthermore, CelSian will be entitled to pass on to Customer any costs incurred due to delay.

- 5.2. If the Agreement involves Services with regard to any sample, Customer is responsible for their selection, representative range, identification (such as codes, brand or product names) and other relevant information pertaining to the sample.
- 5.3. If employees or subcontractors of CelSian perform work on-site at locations designated by Customer, then Customer shall provide facilities, tools, assistance and working space as reasonably required by those persons, free of charge. The working space and facilities shall comply with all applicable statutory and other requirements concerning working conditions and safety standards. Limitations of liability displayed on signs or included in entry forms at such locations do not bind CelSian, its employees or subcontractors.
- 5.4. CelSian will retain the materials that Customer has made available to CelSian until completion of the Services, unless otherwise agreed in writing. After this term, CelSian will be free to take suitable measures: any related costs (for example costs of transport, storage, destruction, waste disposal, etcetera) will be for the account of Customer.
- 5.5. If the materials that Customer will make available to CelSian for the performance of the Services, are potentially dangerous, in any way whatsoever, Customer is obligated to clearly designate these materials in the customary manner and/or, if applicable, in the manner described by law, and if necessary, provide them with instructions for storage and use, to ensure that CelSian must handle them with care.

### 6. DELIVERY AND ACCEPTANCE OF EQUIPMENT

- 6.1. Delivery of equipment shall take place Ex Works (EXW) laboratory/warehouse of CelSian in Eindhoven, the Netherlands, in conformity with ICC Incoterms 2010.
- 6.2. Parties will perform a SAT. CelSian will timely inform Customer when the equipment as specified in the quotation is constructed and ready for a SAT. The SAT will be run as soon as possible, after Customer has received notification from CelSian. If the SAT will not be run within the agreed period, Acceptance of the constructed equipment shall be deemed granted.
- 6.3. The Parties will make up a report to be used during the SAT to document to what extent the SAT has proven that the Services are ready for Acceptance. This report will be signed by the Parties.
- 6.4. Customer will notify CelSian after the SAT was run if Acceptance is granted or withheld. In case Acceptance is granted, this notification will include a motivation regarding any remaining issues Customer might want to have solved. In case Acceptance is withheld, this notification will include a motivation regarding the reasons why Customer does not want to grant Acceptance.
- 6.5. Minor shortcomings will not be a reason for Acceptance to be withheld by Customer.
- 6.6. Any additional SAT to be run as a result of the withholding of Acceptance will be subject to the conditions as set out in this clause.
- 6.7. From the day on which the SAT has been run and Acceptance has taken place all risk regarding the subject of Acceptance is transferred to Customer.

### 7. RIGHT OF RETENTION

- 7.1. CelSian has the right to retain possession of all materials that in ownership belong to Customer but are or will be, for whatever reason, in its possession, until the moment that all amounts due to CelSian, including the invoice, interest and judicial and extrajudicial cost, are paid in full by Customer or until Customer has provided sufficient security for payment in the opinion of CelSian.

### 8. PRICE AND PAYMENT TERMS

- 8.1. All prices quoted by CelSian are net cash, in euro, without any discount and/or reduction and exclusive of any taxes, duties, costs and charges owed at the time of delivery. Any later or extra tax, assessment, duty or other charge, of whatever nature and however named, or any increase thereof, coming into existence after the Agreement has been concluded, will be added to the agreed price, provided that CelSian will give Customer notice to this effect.
- 8.2. If a quotation is agreed and no final price has been agreed upon in advance, the Agreement will be executed on the basis of time spent and costs made at the standard prices of CelSian which are valid at the time of the execution of the Agreement. Services performed on a time and material basis are invoiced monthly in arrears.
- 8.3. If a fixed price has been agreed, the price will be the price for the Services as agreed upon in the Agreement, excluding the expenses incurred by CelSian in consultation with Customer. If a fixed price is agreed but with written consent of Customer the Services are changed or expanded or if it turns out during the performance of the Services Customer did not, or insufficiently, inform CelSian about wishes, requirements or preconditions when the Agreement was concluded, CelSian will invoice additional work resulting from this on the basis of actual costs.
- 8.4. If CelSian communicates an estimate, submits an indicative budget or agrees a project planning or other indication of the expected Services to be performed by CelSian, this does not imply that such estimate or planning is a fixed price or maximum price chargeable for the Services.
- 8.5. If the period between the quotation date and the date on which the performance of the Services will end is one year or more, CelSian shall be entitled to index the part of the Services not yet invoiced after each year in accordance with the annual adjustments of the rates used by CelSian by providing at least one month written notice of the price adjustment. Customer may object to such adjustment in case it is higher than last years published general inflation index for the Netherlands.
- 8.6. If Customer wishes to terminate (part of) the Agreement before the agreed Services are completed, then in case a fixed price was agreed CelSian is entitled to invoice Customer a proportional part of the agreed fixed price set by CelSian in its reasonable discretion plus any unavoidable (third party) costs incurred due to the early termination. In case of Services to be performed on a time and material basis CelSian will invoice all time spent and all costs made up to the moment of termination plus all unavoidable (third party) costs incurred due to the early termination. Any discounts or rebates offered by CelSian in the Agreement or in the context of the Agreement may be retroactively annulled by CelSian.
- 8.7. Subject to any other specific written Agreement, invoices of CelSian will be due and payable 30 days from the date of the invoice without deduction of any discount or set-off. The Customer shall not be entitled to suspend a payment of an invoice for any reason. Payments must be made in the currency and at the bank account indicated by CelSian on the respective invoice.
- 8.8. Customer shall be in default after the expiry of the payment term without any notice of default being required. If Customer does not pay the invoice price due in time, he will owe CelSian an interest of 1% of the invoice price for every month or part of the month by which the term of payment has been exceeded, plus all actual and reasonable judicial and other costs incurred by CelSian to obtain payment, even where this exceeds the liquidated legal costs.
- 8.9. In case of late payment any adverse exchange rate difference shall be for account of Customer. Reference dates are the due date of the invoice and the date on which it is paid.
- 8.10. Payments made by Customer, will, notwithstanding the description, be credited with costs, subsequently with interest and thereafter with invoices in the order of their age.
- 8.11. CelSian shall at all times be entitled to set off any claim which Customer has against it and which can be expressed in pecuniary terms, against any claim whatsoever which CelSian has against Customer.
- 8.12. CelSian is entitled to ask for advance payments.

**9. TERM AND TERMINATION**

- 9.1. Each Agreement comes into effect as of the date the relevant quotation is accepted by Customer or the relevant Agreement is signed by both parties and remains in effect for the term set out therein, or in absence thereof for the term required to perform or deliver the relevant Services.
- 9.2. CelSian shall be authorised to terminate the Agreement in full or in part or to suspend the execution, with immediate effect, without judicial intervention, notwithstanding the other rights to which CelSian is entitled (to fulfillment and/or compensation), where:
- Customer acts in contravention of any provision of the Agreement between the parties or these Terms and Conditions;
  - Customer applies for suspension of payment or makes an application for adjudication of bankruptcy;
  - bankruptcy of Customer has been applied for or a composition of creditors is offered;
  - the business of Customer is shut down or liquidated.
- 9.3. In the cases described in clause 9.2 above, any claim against Customer shall be immediately payable, without CelSian being held to any compensation or guarantee.
- 9.4. In the event of early termination, Customer is not entitled to use any preliminary or interim outcome of the Services, neither for itself, nor may Customer use such outcome for the benefit of third parties or have third parties use such outcome.
- 9.5. Following termination of this Agreement all data, documents and materials that parties had made available to the other party in connection with the Agreement, shall be returned immediately upon written request, unless in case of a right of retention as described in clause 7.

**10. WARRANTY**

- 10.1. CelSian does not give a warranty on the outcome of the Services except with respect to equipment as described in this clause.
- 10.2. Defects on the delivered equipment proven by Customer to have arisen within six (6) months after delivery of the equipment by CelSian solely or mainly contributory to inferior design by CelSian or inferior construction or the use of inferior material as provided by CelSian under the Agreement, will be remedied by CelSian without any cost to Customer. In all cases, the Customer's right to make claims due to inferior design, inferior construction or use of inferior material lapses at the end of the warranty period.
- 10.3. In so far Customer appeals on the warranty of clause 6.2, Customer has to prove to CelSian that the maintenance of the equipment has been performed correctly, that it has been correctly used and that none of the exclusion grounds mentioned in this clause are applicable.
- 10.4. In case any defects under the warranty must be remedied, CelSian is entitled to require that Customer returns the defective equipment or parts thereof to CelSian's address Delivered Duty Unpaid, in conformity with the Incoterms 2010.
- 10.5. On (parts of) equipment delivered by CelSian, which CelSian has obtained from a third party, CelSian does not give any other or further warranty, under renounce of this warranty clause, than is granted to CelSian by its supplier.
- 10.6. This warranty clause does not cover any defects, which are caused by: (i) the connection to or equipment from Customer or third parties which is connected to CelSian equipment or in which CelSian equipment is integrated; (ii) governmental or international rules and regulations in respect of the nature and quality of applied materials; (iii) defects in wires and connections if cables and connections as materials are incorporated in equipment delivered by CelSian.
- 10.7. All warranty obligations expire if:
- Customer makes changes, repairs and/or performs other activities on the equipment by itself or has this done by a third party;
  - the equipment is or has not been accurately used or treated in accordance with the delivered or applicable regulations or the directions for use or is or has been in any other way improperly used, maintained or treated;
  - the equipment is or has been used for other purposes than for what it is meant to be used;
  - Customer does not fulfill his payment obligations.
- 10.8. CelSian's warranty does not cover normal wear and tear.
- 10.9. If Customer invokes the warranty obligations and the equipment that has been given to CelSian for repair does not give evidence of any defect, all costs and expenses made by CelSian shall be borne by Customer.

**11. LIABILITY/INDEMNIFICATION**

- 11.1. Unless covered by the warranty mentioned in clause 10, CelSian shall not be liable for any damage, including, but not limited to costs and expenses, caused as a result of any default in the fulfillment of its obligation(s) towards Customer, unless in the event of willful intent or gross negligence by CelSian.
- 11.2. In no event will CelSian be liable to Customer for any special, consequential, indirect or incidental damages, however caused, regardless of the basis of liability and whether or not it was advised in advance of the possibility of such damages, arising in any way out of the Agreement between CelSian and Customer.
- 11.3. In no event shall CelSian's liability for damages exceed an amount equal to the amounts received under the Agreement by CelSian from Customer for the Services provided by CelSian which caused the liability.
- 11.4. Customer always remains fully responsible for selecting, using and applying the outcome of the Services in its production process, designs and other aspects of its business. CelSian will not be liable for damage or loss which Customer suffers when applying or using the outcome of the Services. Customer shall indemnify CelSian and hold CelSian harmless against (i) all claims and threatened claims of third parties, (ii) costs including legal fees incurred in defending against such claims, and (iii) all liabilities of CelSian to third parties, with regard to damage or loss resulting from the application or use of the Services by Customer or a third party to whom Customer had made the outcome of the Services available, unless and to the extent that such damage or loss is due to CelSian's willful intent or gross negligence.
- 11.5. CelSian does not accept any liability for damage or loss which arises due to the fact that the use of Services infringes (intellectual or industrial property) rights of third parties, unless and to the extent that such damage or loss is due to CelSian's willful intent or gross negligence.
- 11.6. CelSian shall not be liable for damage or loss which is the result of defects in items, including software and materials, supplied to CelSian by its supplier, and which CelSian has supplied on to Customer, unless and insofar as CelSian has recourse on its supplier for such damage or loss.
- 11.7. The limitations of liability shall also apply for the benefit of the employees and the subcontractors of CelSian.

**12. FORCE MAJEURE**

- 12.1. Neither party shall be responsible for any delay or error in the performance of its obligations due to reasons beyond its reasonable control including, but not limited to fire, flood, strikes, war (declared or undeclared), terrorism, embargoes, blockades, legal restrictions, riots, government measures in the broadest sense.
- 12.2. In case of force majeure the execution of the Agreement will be suspended for the duration of the said circumstances. The party which incurs force majeure will immediately notify the other party in writing.
- 12.3. In the event of force majeure lasting for more than 3 consecutive months, either party shall be entitled to terminate the Agreement(s) by rescinding it in writing. The Services that have been performed pursuant to the Agreement shall in such case be paid for proportionately, without the parties otherwise owing each other anything pursuant to such termination.

**13. INTELLECTUAL PROPERTY**

- 13.1. All rights CelSian owns and obtains with regard to its Background will remain vested in CelSian. All rights Customer owns and obtains with regard to its Background will remain vested in Customer. CelSian does not acquire the right to use the Background of Customer, other than and only in so far as necessary to perform the Agreement.
- 13.2. If Customer has created any Foreground, or part of it, within the context of the Services, the relevant IP Rights or the exclusive right to vest these will accrue to Customer. The written documentation pertaining to the Services is decisive for the scope of the IP Rights (or the exclusive right to vest them). Foreground created by or on behalf of CelSian accrues to CelSian, unless provided otherwise in these Terms and Conditions or explicitly agreed otherwise by parties in writing.
- 13.3. The IP Rights, or the exclusive right to vest them, with regard to methods or software developed by CelSian, the development of which was not directly intended with the award of the Services, accrue in full to CelSian, unless provided otherwise by Agreement (which will also lay down the specific terms and conditions under which the right will be transferred to Customer).
- 13.4. Unless otherwise agreed, all written reports, analyses, test results and Customer specific designs delivered by CelSian to Customer in the performance of CelSian's obligations under the Agreement, exclusive of works embedded therein which were created outside of the scope of the Agreement, shall belong to Customer. Copyrights with respect to documents created for training purposes always accrue in full to CelSian.
- 13.5. Customer will acquire the right to use part of the Foreground accrued to CelSian - as provided to Customer by delivery of the Services, except with regard to any incorporated CelSian' Background and subject to other limitations as laid down in these Terms and Conditions and the Agreement.
- 13.6. CelSian will be permitted at all times to use its Background for the benefit of other parties or have such third parties use it. At all times, CelSian will be entitled to use the methods and/or software developed in the context of the Services, the development of which was not directly intended with the award of the Services, by or for the benefit of third parties. CelSian acquires the right to make free use at all times of the knowledge and experience gained by CelSian during the performance of the Services on its own behalf or for the benefit of third parties.
- 13.7. In the event a party discovers an infringement of IP Rights with regard to the other party's Foreground, the party must notify the other party as quickly as possible to discuss the matter.
- 13.8. CelSian is not obliged to investigate the existence of third party IP Rights, nor is CelSian obliged to investigate the possibility of protecting Foreground with an IP Right.
- 13.9. Each party undertakes to observe full confidentiality of everything which comes to his knowledge (in any way whatever) with regard to the other party's Background and the Services in the broadest sense, therefore including, but not limited to, ideas, processes, procedures, work, prices, customers, relations, know-how and IP Rights. This confidentiality obligation shall continue after termination of the Agreement and the relation between parties.

**14. SECURITY**

- 14.1. CelSian will be obliged to observe secrecy in respect of all data, information and materials of Customer which become known to CelSian when carrying out the Services and which Customer has designated as confidential ('Information'). This obligation to secrecy does not apply to:
- Information which was already in the possession of CelSian when the Information was given to CelSian;
  - Information which is or will become publicly known, without this being due to any imputable acts or omissions by CelSian;
  - Information which CelSian obtains in a rightful way from a third party, or from its own research, without using the Information in any way;
  - Calculation methods, software and experimental methods whereby the development is not intended to be directly related to the Services.
- 14.2. If any misunderstanding arises due to Customer disclosing the outcome of the Services, CelSian will be released from the obligation to secrecy to the extent as is in reason required for CelSian to clarify the outcome of the Services to third parties.

**15. LAW AND JURISDICTION**

- 15.1. These Terms and Conditions, quotations and the Agreement shall be solely governed by the substantive laws of the Netherlands. All disputes arising from these Terms and Conditions and/or an order and/or an Agreement, including disputes regarding its existence and validity, shall be settled by the competent court in the district of Eindhoven, the Netherlands, with the exclusion of all other courts.