

CelSian Glass & Solar BV – GENERAL TERMS AND CONDITIONS – May 2021

1 Applicability

- 1.1 These General Terms and Conditions apply to all offers and agreements that CelSian Glass & Solar B.V. (hereinafter '**CelSian**') makes to or concludes with its (potential) customers (hereinafter the '**Customer**'). Any general terms and conditions of the Customer are herewith rejected by CelSian and shall not apply to CelSian's offers and agreements. CelSian and the Customer may hereafter jointly be referred to as '**Parties**' and each as a '**Party**'.

2 Products & Services of CelSian

- 2.1 CelSian renders several services (hereinafter the '**Services**') and sells certain hardware (the '**Hardware**') all in connection with its principal business. The principal business of CelSian in essence consists of improving process efficiency at glass manufacturers worldwide.
- 2.2 The Services are based on the proprietary software models of CelSian and comprise of advisory and consultancy services, training, providing licenses to use certain software, research and development services et cetera. The exact nature of the Services and/or Hardware that the Customer receives from CelSian, is defined in the agreement between the Parties (hereinafter the '**Agreement**').

3 Intellectual Property

- 3.1 CelSian has extensive knowledge, experience and other information to which it is entitled, and is the owner of certain intellectual and industrial property rights acquired as a result of or vested in such knowledge, experience and other information (all together the '**IP Rights**'). The IP Rights include (but are not limited to) copyrights, design rights, trade secrets, trade name rights, trademarks, software code, patents, knowhow and domain names, regardless of whether the IP Rights are registered or not.
- 3.2 All rights that CelSian has with respect to its IP Rights shall remain vested in CelSian. The Agreement does not entail any transfer of IP Rights to the Customer.
- 3.3 Unless explicitly agreed otherwise, any IP Rights that are developed or come into existence in connection with the performance of the Services, will be owned by CelSian. The IP Rights on any outcome of the Services (including but not limited to information, reports, advise, software code, training material et cetera, hereinafter the '**Results**') shall vest in CelSian as well.
- 3.4 In as far as necessary to give full effect to the articles 3.2 and 3.3 the Customer herewith transfers any intellectual and industrial property rights that come into existence in connection with the Services and that by operation of law are automatically vested in the Customer to CelSian, and CelSian herewith accepts such transfer. In as far as such transfer is not possible in a certain jurisdiction, the Customer herewith grants CelSian an exclusive, royalty free, eternal license to the relevant intellectual and industrial property rights in that jurisdiction, which license CelSian herewith accepts. In order to give full effect to this article, the Customer herewith grants CelSian with an irrevocable power of attorney to do anything that is necessary (including drafting and signing any documents on behalf of the Customer) in order to transfer and/or license the relevant intellectual and industrial property rights to CelSian.
- 3.5 The Customer is granted a non-exclusive, non-transferrable license on the Results that entails that the Customer may use the Results for its internal business purposes. If the Customer requires a broader license this will have to be discussed and agreed in writing between the Parties. The Customer is not entitled to use the Results and/or CelSian's software for the benefit of third parties and/or in such manner

that competes with CelSian's business, for instance by making it unnecessary for a third party to obtain Services from CelSian directly.

- 3.6 Provided that the Customer has fulfilled (and where relevant continues to fulfill) its obligations under the Agreement, the license referred to in article 3.5 will be for an indefinite period of time with respect to Services that lead to a 'one off' Result (such as an advice, report, training or training program). Any license with respect to continuing Services (such as the provision of software by CelSian) will be for a definite period of time. Such definite period of time will be specified in the Agreement. If no definite period of time has been specified, the license will be granted for subsequent one year terms.
- 3.7 The Customer is only entitled to use software made available by CelSian in and for its own organization and only insofar as required for the intended use. The Customer shall not directly or indirectly make (any part of) the software available to third parties. The Parties agree that the Agreement is never intended or seen as a purchase agreement where it is related to making software available for use.
- 3.8 The Customer shall never sell, lease or grant any rights to the software made available by CelSian to a third party. The Customer is also not allowed to grant any third party access to such software, whether remotely or not, or to place the software with a third party for hosting without the prior written consent of CelSian.

4 Termination

- 4.1 In addition to the termination possibilities under Dutch Law, the Agreement may be terminated in accordance with the following provisions unless agreed otherwise in the Agreement:
- (a) Either Party may terminate (*opzeggen*) the Agreement in writing, in whole or in part, without notice of default being required and with immediate effect, if the other Party is granted a suspension of payment, a petition for bankruptcy of the other Party is filed, or the company of the other Party ceases its business, is liquidated or dissolved other than for restructuring purposes.
 - (b) CelSian may terminate (*opzeggen*) the Agreement, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of the Customer's company.
- 4.2 Any Agreement that has been concluded for a definite period of time or if an agreement has a definite period of time on the basis of article 3.6 of these General Terms and Conditions may, unless agreed otherwise, be terminated by either Party for convenience taking into account a notice period of two months prior to the end of the then current term. Notice will be provided in writing.

5 Liability

- 5.1 Each Party's liability for any damage, including but not limited to costs and expenses, caused as a result of such Party's actions or inactions towards the other Party (including but not limited to any default in the performance of obligations arising out of or in connection with the Agreement and/or the Services), shall at all times be limited to the total amount of invoices of CelSian (a) that the Customer has actually paid to CelSian in the twelve months prior to the first day of the incident that caused the damage, (b) in relation to the specific project in which the damage has occurred. This liability cap shall not apply:
- (a) to death or personal injury and damages directly related thereto;

(b) in the event of willful misconduct or gross negligence of the management of the Party that has caused the damage;

(c) to interest, extrajudicial costs and legal costs that CelSian incurs in the event that Customer fails to pay any invoice of CelSian.

5.2 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 misconduct or gross negligence.

5.3 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 misconduct or gross negligence.

5.4 The limitations of liability shall also apply for the benefit of the employees and the subcontractors of CelSian.

5.5 If any materials that Customer makes 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 provide them with instructions for storage and use, to ensure that CelSian must handle them with care and without the risk of harming any CelSian employee or subcontractor.

6 Warranties

6.1 CelSian does not guarantee that any software it makes available is free of errors, or that it functions without interruptions. CelSian does not guarantee that its software is timely adapted to any amendments in the relevant laws and regulations.

6.2 Any defects on Hardware delivered to the Customer by CelSian that arise and are reported to CelSian within six (6) months after delivery of the Hardware, will be remedied by CelSian without any cost to the Customer, unless the defects are the result of the Customer's incorrect use of the Hardware.

7 Confidentiality

7.1 Both Parties shall treat information received from the other Party confidential if it concerns information of which the receiving Party knows or should reasonably know it is confidential (even if the information is not marked as confidential). This obligation does not apply if and insofar as the information concerned must be provided to a third party in compliance with a court decision of a competent court, a statutory requirement or statutory order of a government authority or for the proper performance of the Agreement.

7.2 Each Party shall only use the confidential information received from the other Party in as far as necessary to perform the Services.

- 7.3 The receiving Party is only allowed to disclose the confidential information to the persons among its own employees and/or directors who have a legitimate need to know in view of the execution of the Services.
- 7.4 Without the prior written consent of the disclosing Party, the receiving Party may not analyze, (de)compile, modify, edit, format, improve, copy, derive from, reproduce, reverse engineer, transfer, distribute, publish, (sub)lease, market and/or sell the confidential information in whole or in part, or do anything else that may impair the confidentiality of the confidential information in whole or in part.
- 7.5 The obligation of secrecy laid down in this article 7 does not apply to information that:
- (a) is in or enters into the public domain other than as a result of a breach of these confidentiality obligations;
 - (b) has been or is received by the receiving Party from a third party which has legitimately obtained such information and is under no confidentiality obligation in respect of that information;
 - (c) was independently developed by the receiving Party without using the confidential information;
 - (d) is required to be disclosed to any competent court or competent government authority (subject to the obligation of the receiving Party to give immediate notice of such requirement to the disclosing Party (where lawful to do so) so that the disclosing Party has the opportunity to prevent or control the manner of disclosure by appropriate legal means. If this situation occurs, the receiving Party will in its turn use diligent efforts to limit disclosure and obtain confidential treatment.

For the avoidance of doubt: the burden of proof that any of the foregoing exceptions applies, lies with the Party that invokes such exception.

- 7.6 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.
- 7.7 All material (whether tangible or intangible) containing the confidential information furnished by the disclosing Party to the receiving Party remains the property of the disclosing Party and will be clearly marked as property of the disclosing Party by the receiving Party.

8 Applicable law and jurisdiction

- 8.1 These Terms and Conditions, all quotations of CelSian and the Agreement are construed in accordance with and shall be solely governed by the laws of the Netherlands. The applicability of the Vienna Convention 1980 (The United Nations Convention on Contracts for the International Sale of Goods (CISG)) is excluded.
- 8.2 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 of Oost-Brabant, the Netherlands, location Eindhoven.