

General Terms and Conditions

(Version of 13.1.2018)

1. Scope

These General Terms and Conditions apply to all deliveries of work, services, testing, goods and deliverables (the "project") which are provided by Power Vision Engineering Sàrl (the "Agent" or PVE) to the client (the "Principal") in the scope of its activities in the field of conception, expertise and development in the field of the optimization of hydroelectric power plants.

These General Terms and Conditions apply as well to the selling, the maintenance and the exploitation of all type of software provided by PVE.

These General Terms and Conditions are fully integrated in the contracts signed between PVE and the Principal.

Unless Agent expressly agrees in writing, Agent shall not be bound by any terms or conditions, whether written, oral or otherwise that are different, or vary from or are in addition to the present General Terms and Conditions and any such terms or conditions shall be null and void and of no effect whatsoever.

2. Coming into force of the contract

The contract becomes effective:

- upon the signature by both parties of a written contract;
- after the acceptance by the Principal of the offer from PVE. In this particular case, the contract becomes effective at the moment when PVE receives the final offer with the signature of the Principal.

If the Principal, after having received the offer from PVE, sends a written order to PVE, the order shall be considered as a full acceptance of the final offer made by PVE.

3. Hierarchy of the provisions and of the documents (applicable rules and regulations)

Relations between Power Vision Engineering and the Principal are ruled by the following provisions, according to the following order of priority:

- a) The written contract signed by both parties
- b) The final offer from Power Vision Engineering Sàrl
- c) The present General Terms and Conditions
- d) Request for proposal (RPF) from the Principal
- e) SIA** rules and regulations
- f) Swiss Law exclusively

4. Services

Scope of the services: the services provided by PVE exclusively comprise the services listed in the contract and the subsequent modifications expressly agreed by written between the parties.

Nature of the services:

Consulting engineer activities:

Within the framework of its activities of conception, expertise and development in the field of the optimization of hydroelectric power plants and electric power networks, the mission of PVE implies an obligation of means and not the obligation to deliver a work.

Once the contract being effective, PVE commits to carry out the contract with all due diligence, at the best of its knowledge and of its competence, with the purpose to achieve the objectives set in the contract. These obligations shall be considered neither as an obligation to deliver a work, nor as a guarantee.

SIMSEN and Hydro-Clone Software:

- Definition of the Software and scope of the benefit: SIMSEN is a simulation software developed by the EPFL for the analysis of electrical power networks, adjustable speed drives and hydraulic systems. The software remains the exclusive property of EPFL.

Hydro-Clone is a real-time simulation monitoring system, protected by a European patent, allowing to benefit from a numeric clone of a hydroelectric power plant that provides a real-time replica of the dynamic behavior, in order to control its correct functioning, as decision-making support for the operator or the asset manager.

- Distribution: the use of the software is submitted to license agreements, between the license taker (licensee) and the EPFL for the use of the SIMSEN software or Power Vision Engineering Sàrl for the Hydro-Clone system. The license is non-exclusive and each agreement is concluded for a unique user and one single power plant for the case of Hydro-Clone.

PVE only provides the license taker with the software, its protection system and the related documentation.

- Technical support: in the event of a problem related to the use of the software, PVE shall make its best efforts to provide in a reasonable delay the required information for the correct use of the software.

- Maintenance: the maintenance of the software by PVE comprises exclusively the hereinafter tasks:

- Distribution of the last updates of the software;
- Distribution of the passwords;
- Support to identify any malfunctioning of the SIMSEN software and communication to EPFL;
- Support to identify any malfunctioning of the Hydro-Clone software and email or phone assistance directly provided by PVE;
- To provide the license taker with a corrected version as soon as such a version is available.

After the initial 2-year period of the license agreement, PVE reserves the right to adapt the annual support and maintenance fee. The new price conditions will be communicated to the license taker within a 3 months' notice. In case the license

taker does not accept the new conditions, the license taker shall inform of such a decision in writing within 30 days from the notification of the new conditions. PVE will then end providing support and maintenance.

- Malfunctioning of the software: PVE shall not be liable for any malfunctioning of the software and for the damages which may result from this malfunctioning, unless contrary provision of imperative law.

In case of any eventual malfunctioning of the SIMSEN software, PVE undertakes to report to the EPFL any malfunctioning identified in the software. In accordance with the license agreement between the license taker and the EPFL, the fixing of the malfunctioning is the responsibility of the EPFL in the limits set out in the license agreement.

In case of any eventual malfunctioning of the Hydro-Clone software, PVE undertakes to correct them as far as possible in the upcoming update.

- Responsibility: PVE shall not, in any case, be held responsible towards the license taker or any third party for any damage, direct or indirect, such as loss of profit or income, following the use of the software.

The software provides the license taker (in particular the operator or the asset manager) a decision-making support (such as in the fields of risk management, malfunctioning, dangers, operational measures, security, investment, shutdown, investigation works on the power plant, repair on the infrastructure, preventive or corrective maintenance, etc...).

Although PVE commits itself to particular care for the correct content of the software, the information provided can be incomplete or contain errors. No assurance or guarantee, explicit or implicit, can be given by PVE concerning the accuracy and reliability of the information and data from the software. The use of the software is a personal risk taken by the license taker and its auxiliaries. PVE shall not be liable in the event of an incorrect interpretation (action or abstention), by the license taker or its auxiliaries, on the basis of the data or information provided by the use of the software and that creates a damage. The license taker and its auxiliaries must at every occasion control the relevance of the data and information given by the software and are solely responsible for their decisions.

PVE shall not be liable for any improper use of the software, in particular contrarily to the manual of use or other instructions for use. PVE shall not either be liable for wrongful use of the software and/or material, lack of maintenance of it or the necessary interfaces for its use, erroneous use of the software, use of non conventional systems. The obligations of PVE, in the terms of the agreement concluded with the license taker, are obligations of means (mandate) and in any way obligations of result.

5. Duration of validity of the offer

Unless agreed otherwise by written by the parties, the offer has a duration of validity of 90 days starting from the day of the sending of the offer by PVE to the Principal, as attested to by postmark.

In the event the offer is sent to the Principal by electronic means (e-mail), the period of 90 days starts from the day of the sending of the offer to the Principal by e-mail.

6. Language

All documents, texts, annotations, etc. are written in French or in English. When documents have been translated in other languages, only the original documents are valid in case of a divergence of interpretation.

The General Terms and Conditions are drafted in French and in English.

In the event of a divergence of interpretation between the French version and the English version, only the French version is valid.

7. Rights & Obligations of Power Vision Engineering Sàrl

Duty of diligence: to achieve the objectives set out in the contract, PVE commits to serve the interests of the Principal at the best of its knowledge and expertise. PVE provides the contractual services in accordance with the state of the art generally admitted in its field of activity.

Duty of warning: PVE is due to bring the Principal's attention on the consequences of his instructions, in particular for the periods (duration of time), the quality and the costs, and to warn him against inadequate dispositions and demands.

In the event the Principal keeps an instruction, despite the express warning of PVE, he shall take the entire responsibility for the consequences in case of damages. Moreover, PVE has the possibility to terminate the contract in order to exclude its own responsibility, towards third parties as well. In this particular case, PVE shall not indemnify the Principal for premature termination of the contract.

Confidentiality and Data protection: the parties promise to keep secret any information submitted by one party to the other and expressly appointed as being confidential.

Any confidential information submitted orally shall be considered as confidential, provided that the confidentiality of this information is confirmed by written within a period of 10 days after having been submitted.

Shall in no case be considered as confidential:

- Information that was already in the public domain or that was freely accessible at the moment when it was transmitted to the other party;
- Information that enters in the public domain independently of any action or omission from the other party;
- Information that was already in the possession of the other party before the conclusion of the contract and that was not confidential;
- Information that has been transmitted by a third party to the other party without mentioning that it was confidential and that was received by the other party in good faith.

Unless agreed otherwise by written by the parties, PVE is entitled to:

- Indicate in its list of references the name of the Principal as well as a short description of the work performed;
- Publish its work, on the condition that the interests of the Principal are preserved. Furthermore, PVE is entitled to be mentioned as the creator in the corresponding publications of the Principal or third parties.

Intellectual Property (hereinafter "IP"): PVE and the Principal mutually agree to respect the IP rights of the other party and to take all required measures in order to avoid any infringement against these rights.

PVE shall remain the exclusive owner of the IP rights resulting from its work. Projects, pieces of work, plans, ideas, processes, methods, etc. shall be considered as works as well and be protected by IP rights, on condition that they result from an intellectual creation and that they present individual characteristics.

PVE shall remain the exclusive owner of the IP rights, including their advantages and profits, linked with the intellectual benefits that PVE provides, even if the IP rights arise in the course of the fulfillment of the contract or in the framework of the instructions of the Principal. The rights to the IP shall remain the exclusive property of PVE.

The Principal shall refrain from disclosing to unauthorized third parties the software, calculations' notes, work methods, advices and recommendations, contracts and any other intellectual work provided by PVE.

By accepting the offer provided by PVE, the Principal grants PVE a license free of charge, but not transmissible, for the use of the existing IP owned by the Principal, in the required measure in order to allow PVE to achieve its contractual tasks.

Utilization of the results of the work and conservation of documents: payment of the fees gives right to the Principal to use the work documents of PVE, but exclusively according to the objectives set in the contract.

The Principal acquires the property of the results of the studies for which he pays fees and of the related documents. He is entitled to reproduce these documents for internal use in his own organization, on condition that such an internal use matches with the objectives of the project.

PVE remains the exclusive owner of the original work documents. The original documents (or a reproducible version) shall remain stored for a period of 10 years after the fulfillment of the contract.

Recourse to third parties in order to fulfill the contract: PVE is entitled to have recourse to third parties, at its own costs, in order to fulfill its contractual obligations. Within this framework, PVE is entitled to grant the third parties an access to the documents and to provide them information. The previously mentioned third parties shall keep secret all received information as well as the acquired knowledge.

8. **Delivery period**

Delivery dates are set in the contract.

If one of the parties is not in the position to deliver a contractual service according to the delivery date set in the contract, the delivery dates and deadlines incumbent upon the other party are extended accordingly.

Power Vision shall not be held liable for damages resulting from delays independent of any fault, namely if Agent is subject to an event of force majeure, or an event unpredictable at the moment when the contract was finalized, or in case of a delay in the delivery of a subcontractor or in case of a lack of cooperation from the Principal.

Les délais de livraison sont fixés dans le contrat.

9. **Rights & Obligations of the Principal**

9.1 **Obligations**

- a) **Obligation to inform:** in order to execute the contract, the Principal shall deliver to Power Vision all the required information necessary to the good completion of the contract.

The principal remains exclusively responsible for the accuracy, completeness and reliability of the information transmitted to Power Vision. Power Vision works on the assumption that the information provided by the Principal are complete, reliable and accurate, including in the case if the information has been provided to the Principal by a third party.

The Principal remains exclusively responsible for any damages, delays or additional costs resulting from delayed, missing or incomplete information that he has provided. En vue de l'exécution du mandat, le mandant transmettra à Power Vision Engineering Sàrl toutes les informations nécessaires à la bonne réalisation du mandat.

- b) **Confidentiality:** unless agreed otherwise, the Principal is bound by confidentiality towards third parties about all confidential information provided by the Agent.
- c) **Acceptance of the services:** services provided by the Principal are considered as accepted if not rejected by written by the Principal. Rejection must be justified and demonstrated.

9.2 **Rights**

Principal is entitled to give instructions to the Agent.

The agent shall catch the Principal's attention on the consequences of his instructions, according to his duty of warning, as foreseen by art. 7 of the present General Terms and Conditions.

10. **Liability**

- a) **In general**

Agent shall be liable for damages only if Agent is held responsible for intentional misconduct or gross negligence. Any liability for slight negligence is expressly excluded. These rules are valid for contractual as well as extra contractual public liability.

When the realization of the objectives set into the contract depends on circumstances which go beyond the scope of the mission of the Agent, the Agent shall not be held liable if the objectives shall not be achieved. This clause is namely valid for decisions made by third parties which are foreseeable with difficulty (e.g. assignment of credits, loans or authorizations).

Agent shall not be held liable for the services provided by third parties independent who are in direct contractual relationship with the Agent.

The agent is not liable for the activities of third parties which have been required by the Agent, if that transfer was contractually agreed with the Principal and as far as the Agent

has chosen the third party and has given instructions with all required conscientiousness and diligence.

According to art. 101 al. 2 CO, any liability due to an associate, in the sense of art. 101 al. 1 CO, is excluded.

Within the remit of the execution of the contract, PVE is entitled to assume that:

- The Principal and the third parties appointed by him provide PVE with correct and complete information and documentation in order to execute the contract;
- The results provided by PVE will not be partially used;
- The results provided by PVE will not be used for another purpose than the one the parties agreed upon in the contract.

If these conditions are not observed by the Principal, PVE expressly rejects any liability for the damages which might occur.

If a third party uses the results of the work or if he makes any decision based on the work achieved by PVE, PVE expressly rejects any liability for the indirect and direct damages which might result from it.

- b) **Limitation of liability**

In case if the liability of PVE has been engaged towards the Principal, it is limited to 50% of the fees paid for the activity bound to the detrimental event.

Power Vision Engineering Sàrl shall not be responsible for any loss of profit, indirect, consequential nor direct economic damages.

- c) **Public liability Insurance**

PVE has a public liability insurance which cover is as follows:

CHF 5'000'000.- for each detrimental event for the whole damages (physical injuries and material damages).

In any case, the contract of public liability insurance is valid. The Principal is entitled to ask for a copy of the contract.

11. **Suspension & termination before due date**

- a) **Suspension:** In case if, after having suspended the execution of the contract, the Principal asks for the resumption of the contract after a period of 180 days or more, PVE is entitled to refuse the resumption of the contract and to consider it as being terminated, without being obliged to provide any justification nor owing the Principal the payment of damages.

In case of resumption of the contract, PVE is entitled to demand a compensation equal to the cost of reorganization generated by the suspension and the resumption of the contract.

- b) **Termination of the contract before due date:** if the Principal terminates the contract before due date, PVE is entitled to demand a compensation for the fees which have been lost. The compensation is equal to 25% of the fees from the part of the contract which could not be completed because of the termination before due date.

If PVE terminates the contract before due date in an inopportune moment, the Principal shall demand the repayment of the prejudice which has been caused.

12. **Applicable Law and Jurisdiction**

In case of controversies or disputes between Agent and Principal, the competent courts are those of headquarter of Power Vision Engineering Sàrl.

According to art. 3 of the present General Terms and Conditions, the contract shall be construed and interpreted exclusively according to Swiss Law.

13. **Financial provisions**

Unless agreed otherwise:

- Prices are stipulated in Swiss francs, without VAT;
- Power Vision is entitled to demand the payment of monthly instalments up to the limit of the delivered contractual benefits.
- Payments shall be done by the Principal to the Agent within 30 days net of the receipt of the invoices.

Interest will be charged on overdue accounts at the rate of 5% at the time a payment is due.

PVE is entitled to demand a guarantee for the payment of its fees or an appropriate anticipated payment.

Additional benefits: all the benefits which are not expressly mentioned in the contractual documentation shall be considered as additional benefits. Unless agreed otherwise, additional benefits will be charged according to the hourly rate of PVE applicable at the time the benefits are delivered.

Additional services: all the services which are not expressly mentioned in the contractual documentation shall be considered as additional services. Unless agreed otherwise, additional services will be charged according to the hourly rate of PVE applicable at the time the services are delivered.