

# Addtech General Terms and Conditions - Purchase

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- A PART OF ADDECH GROUP

### 1. Object of the Terms and Conditions of Purchase

- 1.1 These Terms shall govern the conclusion, contents and handling of Agreements for Buyer's purchase of Goods and Services. The Terms shall apply to any supply of Goods or Services specified in a separate agreement or Purchase Order insofar as they are not explicitly amended in writing by a Purchase Order or by a written agreement between the Parties.
- 1.2 Unless Buyer has explicitly agreed otherwise in writing, Buyer is not bound by and expressly rejects the Supplier's general terms and conditions for sale or delivery and any other additional or different terms or conditions used or provided by the Supplier, irrespective of what is stated in such terms or conditions. Accordingly, such terms or conditions shall be invalid even if Buyer is aware of the Supplier's deviating conditions and submits a Purchase Order or makes a reference to the Supplier's offer documents in a Purchase Order.
- 1.3 The parties' course of performance, course of dealing or trade practices shall not operate as to modify or replace these Terms or the Agreement.

### 2. Offers, orders and order confirmations

- 2.1 All offers to Buyer shall be binding, made in writing and submitted to Buyer in the manner and within the time limit indicated by Buyer. Unless otherwise has been indicated by Buyer, offers shall be submitted to Buyer by way of e-mail.
- 2.2 Any offer, presentation or demonstration as well as travel and similar expenses in connection with the offer, shall be prepared at the Supplier's cost and without charge to Buyer. Buyer does not assume any obligation whatsoever by requesting or receiving an offer.
- 2.3 Unless otherwise has been specified by Buyer, an offer shall be binding for a period of not less than 6 months from the date the offer was duly submitted to and received by Buyer.
- 2.4 Any Purchase Order made by Buyer shall be confirmed by the Supplier in writing not less than 3-5 Business Days after the Purchase Order was submitted. Should such Purchase Order confirmation not be made, Buyer shall be entitled to cancel the Purchase Order at any time by giving notice to the Supplier, without incurring any liability or expense whatsoever in relation to the Purchase Order. The Purchase Order confirmation shall contain the references requested in the Purchase Order. Should a Purchase Order confirmation contain any deviations whatsoever from the Purchase Order, such deviation shall be deemed invalid with respect to the purchase, provided that the Supplier has indicated, implied or acknowledged that the Purchase Order confirmation constitutes a confirmation of the Purchase Order and unless the Supplier has explicitly and unambiguously stated in writing in the Purchase Order confirmation that it is conditional upon Buyer's acceptance of the deviation.

### 3. Definitions

- 3.1 The following terms shall have the meaning ascribed to them below, whether in plural or in singular, in definite or indefinite form, when used with initial capital letter herein:

<b>Addtech</b>	means the Addtech group of companies, all owned by Addtech AB (publ).
<b>Agreement</b>	means these Terms together with a confirmed Purchase Order or other binding agreement between the Parties relating to the purchase of Goods and/or Services.
<b>Business Day</b>	means day other than Saturday or Sunday on which banks in Austria are normally open for general business (not including internet banking).
<b>Buyer</b>	means the Addtech company that is the Buyer of the Goods or Services under this Agreement.
<b>Buyer Material</b>	means Services which (i) contain Intellectual Property held by Buyer, (ii) have been produced in accordance with Buyer's specifications, drawings, blueprints or similar written or verbal instruction containing Buyer's Intellectual Property or which (iii) Buyer has or shall have an exclusive right to own, incorporate in its business model, products or services and/or sell, transfer or assign as part thereof.
<b>Buyer Proprietary Goods</b>	means all production tools, patterns, drawings, molds, templates, special equipment, hardware and/or software, or Documentation and Specifications supplied by Buyer to the Supplier for the manufacturing, delivery, installation and/or commissioning of the Goods or Services under the Agreement and which contain Intellectual Property of Buyer or to which Buyer has a right to license or otherwise provide them to the Supplier.
<b>Data Protection Laws</b>	means the Data Protection Directive (95/46/EC) and, from 25 May 2018, the Data Protection Regulation (EU) 2016/679, national implementations of the aforementioned and any other from time-to-time applicable data protection legislation or case law.
<b>Documentation</b>	means any installation and patterns, samples, models, profiles, assembly drawings, instructions, blueprints, test records, certificates and technical specifications; transport, handling and storage instructions; information for the use of Goods; spare parts lists with identification drawings, blueprints and specifications; identification and tracking system (if any); valid and appropriate EC declaration of conformity or declaration of incorporation of partly completed machinery; information regarding the country of origin; information of hazardous Goods and substances (if any); safety labels for the Goods (if any); all other documentation and information specified in the Agreement and any relevant information related to the Services (e.g. user documentation).
<b>Goods</b>	means (i) tangible and intangible goods (including software that is part of the goods), structures, parts, machines, systems, components, raw materials, fluids and (ii) services provided in connection with the delivery of Goods as specified in the Agreement.
<b>Intellectual Property</b>	means patents, trademarks, registered designs or any application or right to apply for the same, copyright or related rights, database rights, unregistered design rights, rights in trade, business or domain names, rights in trade dress, rights in inventions, rights in confidential information or know-how or any similar or equivalent rights in any part of the world, in each case in all countries of the world, for the full term thereof including any renewals.

<b>Purchase Order</b>	means an order for the purchase of Goods or Services issued by Buyer.
<b>Services</b>	means (i) any consultancy services, advice or other activity or measure performed by the Supplier for Buyer, (ii) thereto related deliverables (including but not limited to reports, calculations, analyses, documentation, blueprints, material, development and software), (iii) any other activity or measure required in order for Buyer to make full use of the Goods and Services or in order for the Goods and Services to function in accordance with the Agreement, and (iv) any other activity or measure required for the Supplier to deliver the Goods and Services in accordance with high industry standards.
<b>Specifications</b>	means all instructions, references to standards, Documentation and other information which together specify the technical form and characteristics of the Goods or the content and characteristics of the Services, such as performance, operation, quality, health, safety, traceability and other requirements of the Goods and the result, quality and other requirements of the Services, as well as any inspection and test procedures and/or any other requirements of the Goods and Services, as specified in the Agreement.
<b>Supplier</b>	means any party that supplies Goods or Services to Buyer.
<b>Supplier Material</b>	means Services (i) which contain Intellectual Property of the Supplier, (ii) which have not been produced according to Buyer's specifications, drawings blueprints or similar written or verbal instruction containing Buyer's Intellectual Property or which (iii) the Supplier has or shall have an exclusive right to own, incorporate in its business model, products or services and/or sell, transfer or assign as part thereof.
<b>Supplier Proprietary Goods</b>	means all production tools, patterns, drawings, molds, templates, special equipment, hardware and/or software or Documentation and Specifications supplied by the Supplier to Buyer required for the manufacturing, delivery, installation and/or commissioning of the Goods or Services under the Agreement and which contain Intellectual Property of the Supplier or a third party.
<b>Terms</b>	means these General Terms and Conditions of Purchase.

### 4. Delivery, title and penalties

- 4.1 Time is of the essence to Buyer. The Supplier shall not, unless otherwise has been explicitly agreed in writing, make partial deliveries or deliver earlier or later than the agreed delivery date. If delivery shall be made within a certain time period, said period shall begin on the date of the Agreement, unless otherwise has been agreed in writing. The Supplier shall promptly notify Buyer in writing if the Supplier anticipates or has reason to anticipate any difficulty in delivering in accordance with the Agreement. The Supplier shall indemnify and hold Buyer harmless from any loss, damage or cost arising out of a late delivery.
  - 4.2 If the Supplier defaults with respect to the manner and time of delivery in the Agreement, Buyer shall be entitled to refuse the delivery of Goods and Services without any liability and to return any Goods and Services at the Supplier's risk and expense. Buyer shall not be liable for any costs incurred by the Supplier prior to delivery in accordance with the Agreement.
  - 4.3 In the event of default with respect to the time and manner of delivery and in addition to item 4.2, the Supplier shall pay an administrative fee of 500 € and liquidated damages of with an amount equivalent of 1 percent of any sum payable to the Supplier in relation to the Goods or Services for each commenced calendar week of delay. This item 4.3 shall not limit Buyer's right to claim damages or any other remedies under the Agreement or applicable law.
  - 4.4 Unless otherwise has been explicitly agreed in writing, all Goods shall be delivered EXW production site, as defined by INCOTERMS, shipped to the final destination determined by Buyer. Transport is usually organized by the Buyer.
  - 4.5 Delivery of the Goods shall be considered as completed as defined by the applicable INCOTERMS or on such later time that the Supplier has provided Buyer with copies of all Documentation in accordance with the Agreement. Delivery to Buyer shall not be considered as Buyer's acceptance of the Goods. Title in the Goods shall pass to Buyer at the time the risk is transferred to Buyer pursuant to the applicable INCOTERMS.
  - 4.6 The Supplier shall at its expense package and mark all Goods as specified in the Agreement. Should packing instructions not be included in the Agreement, the Supplier shall pack the Goods in accordance with good commercial practices in a manner sufficient to prevent damage during transport, unloading, handling and storage and suitable to facilitate efficient unloading, handling and storage of the Goods. Notwithstanding the provisions of the applicable INCOTERMS, the Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package, handle or pack the Goods in accordance with the Agreement. Any claims against the carrier involved in the transport of the Goods shall be made by the Supplier and Buyer shall be under no obligation to assert any such claims.
- ### 5. Documentation
- 5.1 Any marketing material, price lists, Documentation or similar demonstrated or provided to Buyer prior to or in connection with the Agreement shall be binding for the Supplier unless otherwise has been explicitly agreed or explicitly stated by the Supplier in writing prior to the demonstration or providing to Buyer. Buyer shall, without the Supplier's prior consent, be entitled to use and reproduce such material and to provide it to Buyer's subcontractors, customers and potential customers.
  - 5.2 The Supplier shall not make any modifications to the Specifications without Buyer's prior written approval.
  - 5.3 The Supplier shall, no later than upon the delivery of the Goods, provide Buyer with copies of all Documentation, including but not limited to Documentation required for Buyer to assemble, operate and maintain (including repairs) all parts of the Goods. Unless otherwise has been agreed in writing, all Documentation shall be provided in an electronic form that is possible to recreate customized documents for the Buyer.

**6. Intellectual Property rights and rights to development**

- 6.1 Buyer acknowledges and agrees that the Supplier Proprietary Goods and Supplier Material shall at all times be and remain the exclusive and property of the Supplier. The Supplier hereby grants to Buyer, without limiting Buyer's, its successors' or assigns' right to use the Goods and/or Services throughout their lifetime, a worldwide, non-exclusive, perpetual, irrevocable, transferable, sub-licensable, royalty free and fully paid license to use any Supplier Proprietary Goods and Supplier Material for the purpose and to the extent necessary for the utilization of the Goods and/or Services purchased from the Supplier, including but not limited to repair, support and service the Goods and/or Services, as well as to alter, amend or integrate it with other goods/services and/or develop interfaces of interoperability with other goods/services, with no accounting or reporting obligations towards the Supplier or any third party. The Supplier shall provide Buyer with access to any related information or Documentation necessary for the utilization of the Goods and/or Services purchased from the Supplier.
- 6.2 All Buyer Proprietary Goods and Buyer Material furnished to the Supplier by or on the behalf of Buyer, or paid for by Buyer, for use in the performance of the Agreement, shall be vested with and remain the sole exclusive property of Buyer or its licensors (as applicable) and shall not be furnished or disclosed, wholly or partially, directly or indirectly, to any third party without Buyer's prior written consent, and all information with respect thereto shall be confidential and proprietary information of Buyer. In addition, the foregoing shall not, without Buyer's prior written approval, be used for any other purpose than for the manufacturing, production and supply of the Goods and/or Services to Buyer in accordance with the Agreement.
- 6.3 Unless otherwise has been explicitly agreed in writing, in the event that any Goods or Services include or result in the development of a design, product, tool, part thereof or Documentation or otherwise results in the creation of Intellectual Property (either severally or jointly), including but not limited to design changes, updates or upgrades of Buyer Proprietary Goods or Buyer Material, shall be exclusively vested with Buyer. Buyer shall automatically, by virtue of the Agreement, own full, exclusive, fully paid, global and unlimited rights and title thereto, including a right to use, alter, amend, add to, erase from, translate, make derivative works of, transfer, assign or sub-license or otherwise dispose thereof. Buyer shall also be granted an exclusive, fully paid, global and unlimited right to use any supporting Intellectual Property (including but not limited to Supplier Proprietary Goods and Supplier Material) to the extent required for Buyer to exercise its rights to Intellectual Property under this item 6.3. The Supplier expressly waives any and all rights to such Intellectual property and shall, on Buyer's request, provide Buyer with a written and duly signed confirmation thereof.
- 6.4 Upon the request of Buyer and in no event later than upon termination of the Agreement, the Supplier shall return and submit to Buyer any Buyer Proprietary Goods and Buyer Material, including without limitation any copies, translations or derivative works made thereof.
- 6.5 The Supplier shall not without Buyer's prior written approval use the trademarks, trade names or trade dress owned or generally used by Buyer or any company in the Addtech group.
- 6.6 Buyer warrants that Buyer Proprietary Goods and Buyer Material, or the use or transfer thereof, shall not infringe any Intellectual Property rights of any third party if the Supplier manufactures or delivers Buyer Proprietary Goods or Buyer Material according to the Specifications and the Agreement.
- 6.7 The Supplier represents and warrants that the Supplier Proprietary Goods and the Supplier Material, or the use or transfer thereof, shall not alone or in any combination, infringe or cause Buyer to infringe or violate any Intellectual Property rights of any third party. Further, the Supplier warrants that none of the materials, tools, methods or processes used in manufacturing the Goods or producing the Services infringe any Intellectual Property rights of any third party.
- 6.8 The Supplier shall indemnify, defend and hold Buyer and its successors, assigns, agents, employees and anyone selling or using the Goods, Services and/or the Supplier Proprietary Goods or the Supplier Material harmless from and against any and all claims, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with any and all claims made by a third party alleging that the production, use or sale of the Goods, Services and/or the Supplier Proprietary Goods or Supplier Material constitutes an infringement or misappropriation of any third party right, including, without limitation, any third party Intellectual Property right.
- 6.9 Buyer shall indemnify, defend and hold the Supplier harmless from and against any and all claims, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with any and all claims made by a third party alleging that the production or use of the Buyer Proprietary Goods or Buyer Material constitutes an infringement or misappropriation of any third party Intellectual Property right.
- 6.10 The parties shall, without delay, give each other written notice of any third party claims and shall provide each other with all reasonable assistance in connection with the defence of any such claim.
- 6.11 In the event that the Goods or Services in Buyer's reasonable opinion infringe third party Intellectual Property rights, the Supplier shall at Buyer's option but at the Supplier's expense either: (i) replace the Goods or Services with compatible, functionally equivalent and non-infringing Goods or Services; or (ii) modify the Goods or Services so that they become non-infringing; or (iii) procure for Buyer and all end-users of the Goods or Services the right to use the Goods or Services as contemplated by the Agreement.

- 6.12 In the event that the Supplier transfers or assigns any of its Intellectual Property rights to any third party, such assignment shall be made subject to the rights granted to Buyer and Buyer's successors and assigns.

- 6.13 For the avoidance of doubt, all rights, including but not limited to Intellectual Property rights, granted to Buyer under this Section 6 or otherwise under the Agreement shall, unless otherwise has been explicitly agreed in writing, be considered as granted immediately on the date the Agreement is entered into (or such earlier date when any sample or similar is delivered), and shall not be conditional upon the acceptance of the Goods or Services or any other measure or circumstance than the entering into of the Agreement.

**7. Inspection of Goods and Services**

- 7.1 Buyer's inspection, testing or payment for Goods or Services shall not constitute acceptance thereof except as provided for in section 8. Inspection, testing or payment for the Goods or Services shall not release the Supplier from any obligations, representations or warranties under the Agreement or limit Buyer's right to make claims relating to the Goods and Services.
- 7.2 The Supplier shall at its own expense conduct all necessary tests and inspections of the Goods and Services prior to the delivery to ensure that the Goods and Services meet the Specifications and agreed quantities and shall, on Buyer's request, provide documentation demonstrating the results of such tests and inspections. In the absence of Specifications, the tests and inspections conducted by the Supplier shall demonstrate that the Goods or, if applicable, the Services, conform with the warranties in section 10. The Supplier shall obtain all inspection or test certificates required by the laws and regulations of the country of manufacture or as specified in the Agreement.
- 7.3 Buyer or its representative shall be entitled to perform and conduct tests and inspections of the Goods and, if possible, the Services at the Supplier's premises during normal working hours. If any inspection or test by Buyer is made on the premises of the Supplier, the Supplier shall provide reasonable facilities and assistance for the safety and convenience of Buyer's or its representative's inspection personnel.

**8. Acceptance**

- 8.1 Buyer is entitled to choose between a test acceptance procedure and a delivery acceptance procedure. If an acceptance procedure is not stated in the Purchase Order or otherwise agreed in writing, the delivery acceptance procedure shall be applied by default, however the test acceptance procedure shall be applied for the first delivery of new or modified Goods. For the avoidance of doubt, any acceptance or lack of notice of conformity, shall not release the Supplier from any obligations, representations or warranties under the Agreement.
- 8.2 Test acceptance procedure
- Upon completion of training, delivery of the complete Documentation, installation, assembly and/or carrying out of all required installation tests and commissioning of the Goods, acceptance tests shall be carried out by the Supplier, unless otherwise has been agreed.
  - In the event that the Goods are not in conformity with the Specifications or are otherwise defective, the Supplier shall without undue delay and at its own cost remedy any and all non-conformities or defects found during the acceptance tests and promptly notify Buyer when new acceptance tests can be performed.
  - When the acceptance tests are successful, Buyer shall provide the Supplier with a written and unambiguous confirmation of acceptance of the Goods. The Goods shall not be considered as accepted until such written confirmation has been issued to the Supplier.
- 8.3 Delivery acceptance procedure
- The delivery acceptance procedure consists of two (2) steps; (a) a delivery inspection and, at Buyer's option, (b) delivery tests. Both steps are carried out by Buyer without the participation of the Supplier, unless otherwise has been agreed.
- 8.4 Delivery inspection
- In order to verify the full and proper delivery, a visual inspection of the quantities and condition of the Goods may be carried out by Buyer. At such delivery inspection, Buyer may visually inspect: (a) that the Goods and the Documentation are in conformity with the Agreement, and (b) that the Goods appear to be intact and non-damaged.
- 8.5 Delivery tests
- In order to verify the proper functioning of the Goods, Buyer may, in connection with assembly or installation, carry out delivery tests of the Goods in order to test that the Goods are in conformity with the Agreement.
- 8.6 Notice of non-conformity
- Any defects or non-conformities with the Agreement found during the delivery inspection and/or the delivery tests, shall be documented and notified to the Supplier within 10 Business Days from delivery of the Goods. In the event that no such notice is given within such time, the Goods shall be considered as accepted by Buyer.
  - In the event that Buyer notifies the Supplier of any defect or non-conformity, the Supplier shall, at its own cost and without delay, however not later than 2 Business Days after the notice, remedy any and all defects and non-conformities. When all defects and non-conformities notified by Buyer have been remedied and accepted by Buyer, Buyer shall within 3 Business Days acknowledge the acceptance in writing. Such notice shall be considered as acceptance by Buyer.



- 8.7 Unless otherwise has been agreed, Services shall be considered as accepted when completed by the Supplier when and the result of the Service has been accepted in writing by Buyer. If Buyer does not accept the Services, Buyer shall apply without undue delay notify the Supplier the rejection, and the Supplier shall, at its cost expense, carry out the necessary corrections, additions and modifications requested by Buyer or required for the Services to be in conformity with the Agreement, within 5 Business Days of the notice. Notwithstanding the foregoing, items 8.1–8.6 shall apply mutatis mutandis to Services that comprise of software.
- 8.8 Any payment made for not accepted Goods or Services shall be reimbursed to Buyer and Buyer shall have no payment obligation for any Goods or Services not accepted by Buyer.
- 8.9 Should during any inspection or acceptance testing any portion of a lot, shipment or similar of the Goods or Services be found to not be in conformity with the Agreement, Buyer shall be entitled to reject and return the entire lot, shipment or similar without further inspection or, at its sole option, inspect, perform or have performed acceptance testing of all Goods and/or Services in the lot, shipment or similar, reject and return any or all non-conforming Goods or Services (or accept them at a reduced price). Any return made pursuant to this item 8.9 shall be made at the Supplier's cost.
- 8.10 If Buyer has not accepted the Goods or Services on the date specified in the Agreement, Buyer shall be entitled to liquidated damages of with an amount equivalent of 1 percent of any sum payable to the Supplier in relation to the Goods or Services for each commenced calendar day of delay, unless the Supplier can demonstrate that the Goods and Services not accepted by Buyer were in conformity with the Agreement. This item 8.10 shall not limit Buyer's right to claim damages or any other remedies under the Agreement or applicable law.
- 9. Spare parts etc.**
- 9.1 Unless otherwise has been explicitly agreed in writing, the Supplier shall, for a period of ten (10) years after each purchase of Goods, offer to sell and deliver spare parts relating to the Goods to Buyer. Spare parts shall be offered and delivered at commercially reasonable prices and terms and in no event at prices or terms that are less favourable for Buyer than for other customers.
- 9.2 The Supplier shall inform Buyer in writing not less than twelve (12) months in advance of any plans to phase out or discontinue Goods or Services of its offering and shall, if requested by Buyer, participate in good faith negotiations regarding any such phase out. Such notice shall include information on the last order date, potential substitute Goods or Services (including such that are provided by third parties), and the last shipment date.
- 9.3 In the event that the Supplier discontinues any Goods or Services that include software, the Supplier shall, on Buyer's request and to the extent permissible, provide Buyer with a copy of any source code relating to the software. The Supplier hereby grants Buyer the same rights to source code provided pursuant to this item 9.3 as granted under item 6.1.
- 10. Warranty**
- 10.1 The Supplier warrants and represents that the Goods and/or Services for a period of 24 months from the date of Buyer's acceptance, but in no event for a shorter operating period than 15.000 hours, with the exception of items e)–g) which shall apply without limitation in time:
- are in conformity with the Specifications and all other requirements under the Agreement;
  - are free from defects including defects in design, material and/or workmanship;
  - perform the functions stated in the Agreement and are fit and safe for the intended purpose;
  - have been performed with the utmost skill and care, in a first class, professional and workmanlike manner, using the proper materials and employing sufficiently skilled and qualified personnel, and otherwise in accordance with the Agreement and, unless otherwise has been agreed in writing, in accordance with or better than the Supplier's standard procedures or practices;
  - include any and all Intellectual Property rights and licenses provided for in the Agreement, duly cleared with any third parties;
  - complies with relevant laws, standards and regulations;
  - are free from any and all liens and encumbrances and do not infringe or violate any Intellectual Property rights or other rights of third parties;
  - have been designed, manufactured and delivered in accordance with the from time to time applicable Addtech Code of Conduct which can be found at <https://www.addtech.com/about-addtech/sustainability/code-of-conduct>
  - are provided with and accompanied by all Documentation, information and instructions, free from defects (including errors, omissions or unclear statements) and necessary for proper and safe use, including any information required to enable Buyer to comply with laws, rules and regulations in its use of the Goods and/or Services;
  - will be accompanied by written and detailed Documentation with respect to the composition and characteristics of the Goods and/or Services, to enable Buyer to transport, store, process, use and dispose of such Goods or Services safely and in compliance with laws, rules and regulations.
- 10.2 In the event of any non-conformity with a warranty, the Goods or Services shall be considered as defective. The warranties in item 10.1 are not exhaustive and shall not be deemed to exclude any warranties under applicable law, the Supplier's standard warranties (if and to the extent advantageous to Buyer) or any other rights or warranties that Buyer may be entitled to.
- 10.3 All warranties under items 10.1 and 10.2 shall survive any delivery, inspection, acceptance, payment of the Goods or Services, and shall extend to Buyer and its successors and assigns.
- 10.4 Notwithstanding the warranty period provided to Buyer in item 10.1, in the event defective Goods or Services are repaired or replaced by or on the behalf of the Supplier, a new warranty period of 24 months shall commence on the date Buyer accepts the repaired or replaced Goods or Services.
- 11. Breach of warranty**
- 11.1 If any Goods or Services are defective or otherwise not in conformity with the Agreement, Buyer shall notify the Supplier and may, without prejudice to any other right or remedy available to it under the Agreement or applicable law, at its sole discretion:
- require performance by the Supplier;
  - require delivery of substitute Goods or Services;
  - require remedy by the Supplier of the defect or non-conformity by means of repair or other rectification;
  - reduce the price in proportion to the value of the Goods or Services actually delivered (even if such price reduction results in a full refund of the price paid), and/or
  - declare the Agreement rescinded.
- 11.2 The Supplier shall bear all cost of repair, replacement and transportation of the defective or non-conforming Goods or Services and shall reimburse Buyer for all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by Buyer in connection therewith.
- 11.3 The risk for any non-conforming Goods shall pass to the Supplier immediately from Buyer's notice pursuant to item 11.1. Replacement Goods shall be delivered to Buyer at the Suppliers cost in accordance with the provisions in Section 4.
- 11.4 Repair or other rectification of Goods or Services shall be carried out at the place where the Goods or Services are located or accessible unless the Supplier deems it more appropriate that the Goods or Services are, at the Supplier's cost and risk, transported to the Supplier or another destination as specified by the Supplier.
- 11.5 The Supplier is not responsible for defects or non-conformities caused by:
- failure by Buyer to follow the instructions in the Documentation;
  - modifications or alterations made to the Goods after the delivery (unless such have been agreed or are made in accordance with the Documentation) without the prior consent of the Supplier, or
  - materials or structures prescribed or provided by Buyer.
- 11.6 In addition to item 11.5, the Supplier is not responsible for defects or non-conformities occurring after 2.500 operating hours and which are caused by normal wear and tear.
- 11.7 Buyer shall notify the Supplier in writing without undue delay after discovering a defect or non-conformity. Warranty claims by Buyer against the Supplier shall be made not later than within twelve (12) months from the expiry of the warranty period. The Supplier shall within five (5) Business days after the claim was made respond to the claim and provide the results of a preliminary assessment thereof.
- 11.8 In urgent cases or in the event the Supplier fails to remedy any defect or non-conformity in the Goods and/or Services within a reasonable time (as specified by Buyer in the request for remedy), Buyer or a third party appointed by Buyer shall be entitled to repair, rectify or replace such defect or non-conformity at the Supplier's cost or, if the defect is not reasonably capable of such repair, to terminate the Agreement and withhold payment of invoices wholly or in part. Any repair by Buyer or a third party appointed by Buyer in accordance with this item 11.8 shall not release the Supplier from any responsibility under its warranties, provided that such repair has been performed in accordance with the instructions of the Supplier or otherwise with reasonable skill and expertise. In case the Agreement is terminated, Buyer shall be entitled to compensation for its loss, costs and damages up to a maximum of 100 percent of the part of the purchase price attributable to the part of the Goods and/or Services in respect of which the Agreement is terminated.
- 11.9 The parties agree to handle warranty claims in a practical manner and in a way that minimizes the costs and damages to Buyer, its customers and other end-users. In order to limit its damages in the event of, inter alia, safety risks, Buyer may replace or repair the defective or non-conforming Goods or Services, or part thereof, without prior notice to the Supplier, and the Supplier shall compensate the purchase price of replacement parts, materials and labour used for the replacement or repair, and related travel and freight costs.
- 11.10 In the event that a defect or non-conformity in the Goods or Services is such that Buyer deems it appropriate to carry out a product recall to repair or replace the defective or non-conforming Goods or Services, Buyer shall promptly notify the Supplier thereof. The Supplier shall at its own cost give such assistance to Buyer as is reasonably requested and shall, without limitation, indemnify and hold Buyer harmless for any and all costs or expenses relating to such product recall.
- 12. Prices and payment**
- 12.1 Unless the prices for the Goods or Services has been agreed in writing, the lower of (i) any price stated by the Supplier to Buyer and (ii) the price for the Goods or Services according to the Supplier's price list shall apply. Unless otherwise has been expressly agreed, prices shall be fixed and include any and all license fees and exclude value added tax, sales tax or any other taxes or duties that shall be paid by Buyer in addition to the price for the Goods or Services but include any other taxes, duties, fees and other charges that must be added to the prices for the Goods or Services according to statutory provisions in the country of origin/manufacture and/or country of delivery, and any packaging and packing costs. The Supplier shall be responsible to pay any applicable value added tax, sales tax or any other taxes or duties to the relevant authorities.



- 12.2 The Supplier is not entitled to increase prices unless otherwise has been explicitly agreed in writing. In the event of currency fluctuations exceeding 2 percent, Buyer shall be entitled to a corresponding price reduction, irrespective of what price has been agreed between the parties.
- 12.3 The Supplier warrants that the prices are not higher than the lowest prices charged by the Supplier to other similarly situated customers for similar quantities of Goods and/or Services of similar kind and quality. In the event that the Supplier reduces prices prior to Buyer's acceptance of the Goods and/or Services to a level that is lower than the agreed price, Buyer shall be entitled to a corresponding price reduction.
- 12.4 Invoices shall be issued no earlier than at or after the delivery has been completed but no later than 3 Business Days after the delivery has been completed. The Supplier shall comply with Buyer's from time to time applicable invoicing routines and comply with all applicable legal and fiscal requirements. Further, all invoices shall include (i) a Purchase Order number and (ii) any wording required for Buyer to take advantage of any applicable tax deduction. Supplier shall also inform Buyer if Buyer is allowed to apply for an exemption under applicable law. Invoices that do not comply with the Agreement shall be considered incomplete and not due for payment.
- 12.5 In the event of a dispute with regard to an invoice, Buyer may upon notice to the Supplier withhold the disputed amount while the parties attempt to resolve the dispute. Buyer shall also be entitled to withhold payment if it has reason to suspect that the Goods or Services are not in conformity with the Agreement or that the Supplier may otherwise breach any of its obligations under the Agreement. Buyer's withholding of payment shall not constitute a breach of the Agreement or grounds for the Supplier to suspend its obligations under any Agreement.
- 12.6 Subject to the acceptance of the Goods or Services by Buyer, and unless otherwise has been agreed, payment shall be made within 60 Business Days from receipt of the correct invoice. Unless otherwise has been agreed in writing, Buyer shall always be entitled to make payment by means of bank transfer.
- 12.7 The Supplier unconditionally accepts that Buyer shall at all times be entitled to set-off any amounts owed by the Supplier to Buyer under the Agreement or any other agreement, including but not limited to liquidated damages.
- 13. Subcontractors**
- 13.1 Unless otherwise has been explicitly agreed in writing, the Supplier may not subcontract any part of the Services without Buyer's prior written consent. The Supplier shall remain responsible for the performance or non-performance by any subcontractor or other third party contracted in connection with the Services, as if the performance or non-performance was performed by the Supplier itself.
- 14. Liability and insurance**
- 14.1 Without prejudice to any liability set out in any provision in these Terms, the Agreement or under applicable law, a party shall compensate the other party for any loss or damage suffered as a result of a breach of the Agreement.
- 14.2 The Supplier agrees to hold Buyer, its representatives, agents, employees and affiliates harmless from and against any and all claims, costs (including reasonable legal fees), fees, penalties and other liabilities and obligations arising out of any claim or damage relating to breach or non-compliance by the Supplier of any of its obligations or warranties under the Agreement.
- 14.3 The Supplier shall indemnify and hold Buyer harmless from any liability to pay damages as well as other costs (including reasonable legal fees) in connection with any claim, suit or other dispute initiated by a third party (including but not limited to employees) against Buyer for product liability in relation to the Goods or Services.
- 14.4 The Supplier shall maintain a global general liability insurance (that includes global coverage for product liability) with an insured amount of not less than 1 Mio € (1.000.000 €) per event. Such coverage shall be maintained and valid for as long as claims can be made by Buyer against the Supplier under the Agreement or against Buyer under applicable laws or regulations. The Supplier shall at Buyer's request provide a copy of the insurance certificate. The Supplier shall not terminate the insurance without Buyer's prior written consent.
- 15. Limitation of liability**
- 15.1 Except as set out in the Agreement, the maximum liability of each party shall, per event of damage, be limited to 20 percent of the price for all Goods and Services purchased by Buyer from the Supplier during the twelve (12) months preceding the event triggering the liability.
- 15.2 Except as provided for in the Agreement, neither party shall be liable to the other party for any incidental, consequential or indirect damages, including but not limited to lost profits or loss of anticipated savings or revenues.
- 15.3 The limitations of liability set out in this section 15 shall not apply to any claim or penalty related to product liability, recalls of Goods or Services, third party Intellectual Property rights, data protection, breach of confidentiality, breach of laws, or to damages caused by gross negligence, wilful misconduct or injury to life and health.
- 16. Audits**
- 16.1 Buyer and/or a third party appointed by Buyer shall be entitled to be present at the Supplier's and at the Supplier's subcontractors' facilities at any time to inspect, audit and review the compliance with the Agreement and other standard industry practices and procedures. The Supplier and its subcontractors shall also provide any relevant information in relation thereto upon Buyer's request. In the event it is discovered that the procedures applied are not in conformity with the Agreement or otherwise insufficient as to ensure consistent acceptable quality, then reasonable corrective measures shall be taken by the Supplier without delay.
- 17. Export and import controls, certifications etc.**
- 17.1 The Supplier warrants that it shall comply with all applicable national and international export and import control laws and regulations and shall not export, import or re-export, directly or indirectly, any information, goods, services, software and/or technology to any country without first obtaining any required license or government approval.
- 17.2 The Supplier shall inform Buyer in writing of any Goods, Services or Documentation or other information is export or import controlled under the export or import control laws of the Supplier's country and shall, when applicable, provide information regarding the extent of the restrictions and any license, approval and other documentation or information needed to comply with the restrictions.
- 17.3 The Supplier shall obtain any national and international export or import licenses or similar permits required for the Goods and Services under any applicable export and import control laws and regulations and shall provide Buyer with all information and documentation required for Buyer, its customers and other end-users to comply with such laws and regulations.
- 17.4 The Supplier shall indemnify and hold Buyer harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including reasonable legal fees) which Buyer may be incurred due to the Supplier's non-compliance with applicable laws and regulations. The Supplier shall without delay inform Buyer of any notice of a violation of any export or import control related law or regulation that may, directly or indirectly, affect Buyer.
- 17.5 Any certification of Goods or Services shall, unless otherwise has been agreed in writing, be paid for by the Supplier.
- 18. Force Majeure**
- 18.1 Neither party shall be liable in respect of any breach or non-performance of the Agreement if and to the extent that such party is prevented or delayed from performing its obligations under the Agreement due to extraordinary circumstances outside such party's control and provided that such circumstances could not have been avoided by such party and were not possible to foresee at the time of execution of the Agreement. The foregoing may include strike/lock out (but not if relating to a party's own employees), lightning, fire, earthquake, flood, war, mobilization or major military conscription, uprisings or riots, and any act or omission of government or other competent authority from performing any of its obligations.
- 18.2 A party that wishes to rely on an event or circumstance referred to in item 18.1 for its discharge from liability must, without delay, notify the other party thereof in writing. Such party shall also keep the other party informed of the development of the event or circumstance and notify the other party in writing when the event has come to an end.
- 18.3 Should the Supplier's performance of any of its rights or obligations under the agreement be prevented for a period exceeding three (3) months from the date notice in accordance with item 18.2 was or should have been made, Buyer shall be entitled to terminate the Agreement wholly or in part without any liability.
- 19. Termination**
- 19.1 Without prejudice to any other right or remedy available under the Agreement or applicable law, either party shall have the right to terminate the Agreement wholly or in part with immediate effect and without any liability if there is a significant risk that:
- the other party goes into liquidation, enters into composition proceedings with its creditors, becomes insolvent or is unable to pay its major debts or the majority of its debts or fails or admits in writing its inability to pay its major debts or the majority of its debts as they become due, makes a general assignment for the benefit of creditors or if a reasonable petition under bankruptcy law or under any insolvency law is filed by or against the other party or a secured party takes possession of all or substantially all of its assets, or
  - a party has committed a material breach of the Agreement, and if capable of cure, the breach has not been cured within 20 Business Days after the other party's written notice.
- 19.2 Buyer shall be entitled to terminate the Agreement for convenience (without cause) wholly or in part or with respect to a specific purchase prior to the delivery of the Goods or Services. In the event Buyer exercises such right, Buyer shall:
- for Goods or Services that are ready for delivery from the Supplier, and which the Supplier cannot reasonably reallocate to a third party, take delivery of such part of the Goods or Services and pay the relevant parts of the agreed price set forth in the Agreement;
  - for Goods or Services that are not ready for delivery from the Supplier, and which the Supplier cannot reasonably reallocate to a third party, pay the Supplier's proven direct costs incurred prior to the termination for such Goods, Services or the relevant parts thereof, or
  - for Goods or Services that the Supplier can reasonably reallocate to a third party, be entitled to such cancellation without paying any part of the price for such Goods or Services or incurring any costs.
- 19.3 Buyer shall be entitled to terminate the Agreement wholly or in part or with respect to a specific purchase and without any liability if the Supplier ceases to carry on its business or a material part thereof, or in the event of a change of ownership or control of the Supplier or a material part of its business.
- 19.4 The Supplier shall immediately inform Buyer in writing when it becomes aware of circumstance that may give Buyer a right to terminate the Agreement.

19.5 The expiry or termination of the Agreement (unless the Agreement has been terminated by the Supplier in accordance with item 19.1), shall not affect the Supplier's obligation to provide Goods or Services in accordance with the Agreement in relation to Purchase Orders made prior to the expiry or termination of the Agreement.

### 20. Confidentiality

20.1 The parties hereby agree not to, without the other party's prior written approval, publish or otherwise disclose to a third party any information relating to the Agreement or the Goods or Services or the other party's business which is or can be reasonably presumed to be confidential, with the exemption of (i) information that is or becomes publicly known, except through a breach of the Agreement by the receiving party, (ii) information that has provided to the receiving party from a third party, prior to receipt from the other party, without an obligation of confidentiality, (iii) information that was known to the receiving party prior to receipt from the disclosing party, without an obligation of confidentiality and (iv) information that a party is obligated to disclose by a court ruling or stock market regulation. Notwithstanding the foregoing, Buyer shall be entitled to disclose confidential information to any company within the same group of companies, whereupon Buyer guarantees as for its own debt such group company's due performance of this item 20.1.

20.2 The confidentiality obligation set forth in this section 20 shall remain in full force and effect for a period of twentyfive (25) years after the termination of the Agreement, irrespective of the cause thereof.

### 21. Miscellaneous

21.1 Neither party may, in whole or in part, assign or pledge its rights and/or obligations under this Agreement without the prior written approval of the other party. However, Buyer shall be entitled to transfer or assign all of its rights and obligations, including for the avoidance of doubt Intellectual Property rights, under the Agreement to any other company within the same group of companies as Buyer, provided that Buyer guarantees as for its own debt such group company's due performance of the Agreement.

21.2 The Supplier shall provide Goods and render Services hereunder as an independent contractor and not as an agent of Buyer. Nothing contained in the Agreement is intended or shall operate as to create a partnership, joint venture or employment relationship between the parties, irrespective of the extent of economic dependency of the Supplier on Buyer.

21.3 Buyer's rights and remedies under the Agreement are cumulative and shall apply in addition to any other or future rights or remedies under the Agreement or pursuant to applicable law.

21.4 No consent or waiver, express or implied, by either party of any breach or default of the other party in performing its obligations under this Agreement shall be deemed or construed to be a consent or waiver of any other breach or default by the other party of the same or any other obligation hereunder. Any failure by a party to complain of any act or omission of the other party or to declare that other party in default shall not constitute a waiver by the first party of its rights under this Agreement. No waiver of any rights under this Agreement shall be effective unless made in writing and duly signed by the party purporting to give the same.

21.5 If individual provisions of the Agreement should be or become invalid or unenforceable, the remaining provisions shall not be affected thereby. The provision which is or has become invalid or unenforceable shall be deemed replaced by a provision amended and/or altered to the minimum extent required for such provision to be considered as valid and enforceable.

21.6 Any rights or obligations of the parties that by express provision or by the nature of the right or obligation extends beyond the termination of the Agreement shall extend beyond the termination of the Agreement. Such rights and obligations include, but are not limited to, warranties, confidentiality, data protection, Intellectual Property, product liability, recalls of Goods or Services, choice of laws and settlement of disputes.

### 22. Governing law and dispute resolution

22.1 This Agreement shall be governed by and construed in accordance with the substantive laws of Austria, without respect to its principles regarding conflict of laws.

22.2 Any dispute arising out of or in connection with this Agreement shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Handelsgericht Innsbruck (the Institute). The Institute's Rules for Expedited Arbitrations shall apply unless the Institute, in consideration of the complexity of the case, the value of the claim, and other circumstances determines that the Arbitration Rules shall apply to the proceedings. In the latter case, the Institute shall also determine whether the arbitration board shall be composed of one (1) or three (3) arbitrators. The place of arbitration shall be Innsbruck, Austria. Confidentiality in accordance with section 20 shall apply to (i) information that arbitration is taking place or has been taking place between the parties, of such nature that party can be identified, (ii) pleadings in the arbitration as well as oral statements before the arbitration board and (iii) the arbitral award, to the extent there is a risk that a party can be identified. A party requesting execution of the arbitral award shall however, to the extent necessary, be exempted from the confidentiality obligation in relation to the executive authority. The Supplier shall not be entitled to delay or cease, wholly or in part, its performance of the Agreement in the event of a dispute.

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