



## 1. GENERAL

1.1. These terms and conditions ("Terms") govern the B2B-sale of goods and the provision of services, including repair by H. Güntner (UK) Limited Building Three Watchmoor Park Camberley GU15 3YL United Kingdom ("Seller") to the commercial customer ("Customer") and become integral part of all such current and future contracts between Seller and Customer, even where they are not specifically agreed again.

1.2. The Terms shall apply in the version as published on Seller's website at the time of the Order.

1.3. Any modification of the Terms, in particular individual declarations, recommendations, guarantees or any promises, in particular regarding rebates, bonuses, deadlines or repair, require a written confirmation signed by an authorized Seller representative, namely any of Seller's managing directors or sales directors.

1.4. Any terms and conditions of Customer, be it contradictory, deviant or additional are hereby expressly rejected by Seller, unless accepted by Seller in writing.

## 2. QUOTATION, ORDER AND ORDER CONFIRMATION

2.1 On request of Customer, Seller shall make a quotation including a specification for the requested goods or services to be provided (hereinafter "Goods" or "Services") ("Quotation"). Alternatively, Customer may configure such Quotation for the Goods or Services with Seller's configuration software "Güntner Product Configurator" (GPC).

2.2 The prices in Seller's Quotation are given subject to the agreement of these Terms and are non-binding, unless otherwise noted, and are subject to the quantities, specifications, and conditions received by Seller at the time of the quotation, as well as any exigencies arising from the COVID-19 or any future pandemic or epidemic or the realization of geopolitical risks.

2.3 Customer shall place an order in writing or by phone with reference to the Quotation ("Order"). The Order shall be considered as an offer to Seller to conclude a contract. The Order will only be processed when all information necessary for Seller is received.

2.4 Seller will issue an acknowledgement of order ("Order Confirmation") to conclude the contract.

2.5 For the avoidance of doubt, any written Quotation, estimate and/or advertised price for the Goods or Services shall be an invitation to submit a quotation ("invitatio ad offerendum") and no binding contract shall be created by placing an order on Seller's website or otherwise until Seller has sent an Order Confirmation to the Customer or (if earlier) Seller delivers the Goods to the Customer, whereupon a Contract shall be formed. Customer's acceptance of the Goods or Services shall whatsoever, constitute Customer's complete and unconditional assent to Seller's Quotation, Order Confirmation and the Terms set out herein.

2.6 If Customer requests any changes to its order subsequent to Seller's Order Confirmation or commencement of manufacturing, Seller needs to approve such changes in writing and Seller will separately invoice Customer for the additional costs and/or charges relating thereto.

2.7 Goods or Services cannot be returned or exchanged other than in cases of an approved warranty claim according to clause 8.

2.8 Information of Seller on the Goods or Services (such as illustrations, drawings, details on weight and dimensions, design and performance data) and the representation of the same shall only be approximate. They are not guaranteed quality features but descriptions or characterizations of the supply or service. Deviations customary in the trade and deviations based on statutory provisions or constituting

technical improvements as well as the replacement of components by equivalent parts shall be permissible.

## 3. PRICE & PAYMENT

3.1 Unless otherwise indicated, Seller's prices, proposals, and quotations are net cash (without deduction) plus VAT and shipping.

3.2 Prices are contingent upon exigencies attributable to the COVID-19 or any future pandemic or the realization of geopolitical risks and may change without notice till the COVID-19 - or if the case may be any future pandemic - has been officially declared as ended, unless otherwise agreed to in writing.

3.3 If there is a period of more than four months between the date of Order and delivery, the price for the Goods shall be the price indicated in the price list on the date of delivery, subject to the same contingencies and qualifications.

3.4 Orders are subject to prepayment unless payment terms are otherwise confirmed by Seller in writing.

3.5 Payments shall be in Pounds Sterling to Seller's bank account. Any payment delay shall be subject to the current statutory interest rate for late payment with a minimum of 5%.

3.6 Any Orders will be put on hold if there is any outstanding balance over 30 days on previous orders. A deposit may be required on special built-to-order equipment and cancellations of such orders will incur charges established by the factory of the Seller.

## 4. DELIVERY

4.1 Any delivery date(s) provided by Seller to Customer are non-binding estimates, and Seller reserves the right to modify the delivery date(s) without notice.

4.2 Seller shall inform Customer on its readiness to ship and Customer shall confirm a delivery date within latest 30 days after such confirmation. Customer is aware and acknowledges that any failure to communicate a delivery date within the said period will cause a default of acceptance of Customer.

4.3 Any customary costs incurred in particular for storage, and with a minimum as charged by Seller's logistic company, be it at Seller's premises or be it at a third party storage company, shall be reimbursed to Seller within 14 days after receipt of the invoice notwithstanding Seller's right to claim further damages incurred.

4.4 For any deferral of any delivery periods, if so agreed by Seller, Customer hereby agrees that storage shall be done at Seller's affiliate company or nominated supplier according to the respective terms and conditions as valid at the time.

4.5 If Seller has agreed in writing to a specific delivery or shipping schedule, (i) it shall commence on the date of Seller's Order Confirmation, but not before Customer's delivery of other necessary documents, including any agreed security if any and (ii) end on the date on which Seller delivers the Goods to the carrier.

4.6 Seller shall be entitled to partial shipments within reason. Seller will also have the option of billing for partial shipments. Partial shipments will be made and invoiced by Seller when ready according to clause 4.2.

4.7 Delay in delivery of any partial shipments shall not relieve Customer of its obligation to pay for any shipments received prior to such delay or its obligation to accept the remaining deliveries.

4.8 If Customer is unable to receive the Goods when tendered, Customer shall be liable to Seller for any loss, damage, or additional expense incurred or suffered by Seller as a result thereof.

4.9 Any quoted lead time(s) may be impacted due to the COVID-19 or any future pandemic and any related foreseeable or unforeseeable circumstances arising from it, including but



not limited to government regulations, labour shortages, supply chain disruptions, or measures taken to preserve the health and safety of Seller's workforce. Any quoted lead time(s) shall be considered an estimate based upon the best information available to Seller at the time the estimate is made and is subject to change without notice.

4.10 In case of a delay of Seller, Customer notify the Seller, stating a reasonable deadline for the fulfilment of the performance. Failure to accept delivery of the Goods in whole or in part in accordance with the provisions of these Terms and Conditions shall entitle the Seller to rescind the contract and upon rescission any supplied Goods of the Seller shall be identified as the Sellers and shall at the Customer's expense be stored separately from the Customer's Goods and the Customer shall refrain from selling or mixing or processing the Seller's Goods so identified.

4.11 Delay of delivery at the Customer's request shall give rise to the Customer's payment of storage charges at the Seller's discretion and failure to take delivery of the stored Goods after one month from such request shall give the Seller the right to dispose of the contracted for Goods.

4.12 Where the Customer incurs damage due to a delay arising from Seller's slight negligence, the Customer shall be entitled, in exclusion of further compensation for damages resulting from delay, to claim a half percent (0.5%) for each full week, but overall not more than five percent, of the value of the part of the total delivery that cannot be used in due time because of the delay. If the delay is caused intentionally or by negligence by Seller or constitutes a violation of a material obligation of Seller, statutory liability if any shall apply. Seller reserves the right to demonstrate that the Customer has suffered lesser damage.

## 5. SHIPPING

5.1 All Goods are shipped FCA INCOTERMS 2020 with a carrier as selected by Seller, if not otherwise agreed. Customer shall be responsible for providing Seller with all necessary shipping instructions to ensure that delivery can take place as agreed.

5.2 Customer shall procure and maintain at its cost insurance for the Goods with a reputable insurer and shall produce a certificate of insurance upon request by Seller.

5.3 Effort is made to ensure that Customer's order is delivered trouble free; however, all freight must be inspected at delivery point for freight damage. Any damage must be noted on the bill of lading and signed by the driver. A copy of the bill of lading must be retained by Customer for submission during the freight claim process. Pictures should be taken in all instances. All freight claims must be submitted by Customer. Seller will lend assistance when necessary to help resolve freight damage claims.

5.4 All Goods shall be examined and counted immediately on delivery to ensure they are in agreement with the carrier's bill of lading. Any shipping shortages or damages must be noted on the delivery receipt before the truck leaves the delivery site.

5.5 All claims for any nonconformity in any shipment of Goods delivered to Customer must be made in writing to Seller's office as specified in the invoice within a period of five (5) days after Customer's receipt of such Goods. Customer's failure to make such claims within such time period shall constitute an acceptance of the particular shipment.

Shipments shall at all times be subject to the provisions of Clause 11.

## 6. RETENTION OF TITLE

6.1 The Goods delivered to the Customer shall remain the property of Seller until the payment in full of all secured claims

("retention of title"). The Customer shall store the reserved Goods free of charge for Seller.

6.2 The Customer shall be entitled to process and sell the reserved Goods in the normal course of business until the occurrence of the liquidation event. Pledges and assignments as security are not permitted.

6.3 If the reserved Goods are processed by the Customer, it is agreed that the processing shall take place on behalf of and for the account of Seller as manufacturer and Seller shall directly acquire property or – where the processing takes place from material provided by several owners or the value of the processed article is greater than the value of the reserved Goods – the joint ownership (ownership in fractional shares) in the newly created article in the proportion of the value of the reserved Goods to the value of the newly created goods. In the event that no such ownership should be acquired by Seller, the Customer hereby transfers the Customer's future ownership or – in the aforementioned ratio – the Customer's joint ownership in the newly created goods to Seller as collateral. If the reserved Goods are connected or inseparably mixed with other articles into a uniform article and one of the other articles is to be considered the main item, then, where the main item belongs to Customer, Customer shall transfer the joint ownership to Seller in the uniform article in the ratio designated in sentence 1.

6.4 In the case of the resale of the reserved Goods, the Customer hereby assigns by way of security the claim arising therefrom against the Customer – in the event of joint ownership in the reserved Goods on a pro-rated basis according to the joint ownership share – to Seller.

6.5 If third parties gain access to the reserved Goods, whether by garnishee or otherwise then the Customer shall immediately advise them of Seller's ownership and shall notify Seller thereof in order to enable Seller to enforce Seller's property rights. If the third party is unable to reimburse Seller for the judicial and extrajudicial costs arising in this connection, the Customer shall be liable towards the Seller for these.

6.6 The same shall apply to other claims that take the place of the reserved Goods or that are otherwise arising with regard to the reserved Goods, such as insurance claims or tort claims for loss or destruction. Seller revocably authorizes the Customer to redeem claims assigned to Seller in the Customer's own name. Seller may revoke such collection authorization only in the case of exploitation.

6.7 Seller shall release the reserved Goods as well as all claims or goods replacing such Goods on Seller's request, if its value exceeds the secured claims by more than 50%. In case Seller terminates the agreement for reasons vesting with Customer – in particular delay with payment – Customer shall be entitled to request that the reserved Goods be released.



## 7. SPARE PARTS

7.1 Replacement parts can be ordered by phone, by email or at the Güntner Online-Shop by providing the information as requested by Seller to carry out its spare part order.

7.2 If not otherwise agreed, Seller shall have no obligation to provide spare parts beyond the Warranty Period.

7.3 All replacement warranty parts will be shipped FCA 2020 INCOTERMS by normally used shipping at Customer's flatrate freight costs.

7.4 Spare parts cannot be returned or exchanged.

## 8. WARRANTY

8.1 Customer shall conduct a reasonable and complete inspection of the Goods after Customer's actual receipt of the Goods within a reasonable deadline (3 working days).

8.2 In this clause a Defect or Defective shall mean any deviance of the Goods or Services from the agreed Specification

8.3 Customer must request repair or replacement of the defective component through a written notice, preferably Seller's form, delivered to Seller as soon as reasonably possible after Customer becomes aware of the Defect and providing the information as requested by Seller. All claims for any Defect in the Goods delivered to Customer shall be stating the serial number of the alleged Defective Good, both the serial number of the affected unit and the serial number (if any) of the defective component.

8.4 An invoice will be generated by Seller for any failure analysis of the allegedly Defective Good. It shall in all cases be returned for failure inspection by the Seller. If a failure is determined due to Customers neglect, the invoice will become due and payable. If it is determined to be a manufacturing or vendor supplied Defect, a credit will be issued against the invoice. In some instances, Seller may determine that the Good be scrapped at the Customer's site, after which no invoice will be issued and no return of the part will be required.

8.5 Customer shall return any allegedly defective goods, postage or freight paid, to Seller from the place of its current whereabouts. Seller may waive this obligation of Customer's in writing. Customer shall only be entitled to scrap any defective good after Seller has confirmed so in writing. Customer agrees and consents that Seller may scrap a returned part held as defective by Seller two weeks after Seller's report on diagnostic finding, unless Customer expressly informs Seller to return the Defective part at Customer's costs.

8.6 Customer shall not return any material without first obtaining a Returned Merchandise Application (RMA) number from Seller, the provision of which is subject to Seller's sole discretion which can at any time be revoked. Seller will not be responsible for the disposition of any returned materials that are not marked with an RMA. Credit for any returns is subject to inspection and handling charges.

8.7 Seller, at its discretion shall repair or replace ("subsequent performance") all components of the Goods which have been Defective in the moment of transfer of risk and that show as defective during the Warranty Period. Ordinary wear and tear shall be excluded, and a repair shall not contain costs for assembling or disassembling of the defective goods, provided they had not been part of the Specification.

8.8 In case Seller and Customer have agreed that the repair or replacement shall be carried out by Customer, Customer shall submit a cost estimate to Seller prior to any works carried out for approval. Seller shall not refund costs beyond those of such approved cost estimate.

8.9 Customer shall bear all costs for services carried out by Seller for claiming Defect without cause. Seller shall charge such services at current prices, including expenses (e.g. traveling expenses).

8.10 Warranty Period: All claims for warranty shall be barred 24 months from Seller's information to customer of his readiness to ship. For spare parts as under section 7., all claims for warranty shall be statute-barred 12 months from the transfer of risk.

[8.11 In case that German law applies only: Exceptions shall apply in the cases of §§ 438 Abs. 1 Nr. 2, 438 Abs. 3, 634a Abs. The Warranty Period as defined under section 8.10 shall be minimum 12 months from the transfer of risk. 1 Nr. 2, 634 a Abs. 3 BGB for which the statutory period shall apply. A longer period may apply for guarantees or service promises if agreed in writing and in conformance with these Terms.]

8.12 Any warranty shall be excluded a) for attrition and natural wear and tear, b) for dynamically stressed components and goods, c) for unauthorized assembly or commissioning by the Customer or a third party, d) for unsuitable or improper use, e) for faulty or negligent handling, f) for non-compliance with installation, operating and maintenance instructions, g) for non-compliance with technical documentation, h) for the use of unsuitable operating material (fluids), i) for unauthorized changes or repairs undertaken by the Customer or by a third party, j) for unsuitable subsoil or assembly site, k) for chemical or electro-chemical influences, unless Seller is responsible for them, l) system component and piping design is not in accordance with state-of-the-art HVAC practice, m) forming gas is not introduced into the piping during the brazing of the piping installation.

8.13 If, for any reason, a visit by Seller's factory personnel for the purpose of service evaluation or assistance is requested, a purchase order by Customer for the visit is required. All forms of corrective remedies must be exhausted before an authorization for a factory visit occurs. If a field service inspection is required, this will be billed at the current applicable date per day plus all related travel, lodging, sustenance, and incidental expenses. In case that the job site visit results from a confirmed Defect in the Goods and Services, Seller shall bear the respective costs on the basis of a fair compensation.

8.14 Continuous conformity of the Goods with the applicable guidelines can only be ensured if assembly or replacement work in explosion-proof environments is carried out by a qualified person of Customer or a third party, holding a qualification according to Technical Rules for Operating Safety (TRBS) 1203 (or such other pertinent rules issued by the Health and Safety Executive) This shall include the assembly or replacement of: explosion-proof fan motors; fully explosion-proof fans; repair switches for explosion-hazard environments; and terminal boxes for explosion-hazard environments. In such event, Customer must ensure that the necessary tests are carried out in order to guarantee the ongoing admissibility of the operation of such device in explosion-proof areas. The company performing any such work shall be liable therefore, and Customer shall hold Seller harmless respectively. Industry standard refrigeration practices must be observed and utilized by certified refrigeration technicians, mechanics, pipe fitters, design engineers, etc. when installing and servicing Seller's Goods.

8.15 Beyond the aforesaid, for dry coolers/condensers and the Seller's HydroSpray system as the following shall apply: The design and the material combination of air-cooled finned heat exchangers are optimized for their operation with dry air. Spraying and evaporating water may cause calcification that leads to incrustation. The minerals dissolved in the water (salt, among other things) may lead to various forms of corrosion. The percentages of lime and minerals in the water can greatly differ and depend on the site. Therefore, the water quality of the site must be analyzed in every project. In order to ensure long-term trouble-free operation of sprayed dry



coolers/condensers, Seller has defined corresponding requirements for the water quality that are considered part of the Specification. Any warranty for sprayed dry coolers/condensers and the HydroSpray system shall thus only apply if Customer takes appropriate measures to meet Seller's defined water quality standards for such systems. Appropriate measures include use of a softening system or, in addition to a softening system, demineralizing the water by means of reverse osmosis (depending on the initial water quality at the location of such equipment).

8.16 In case refrigerant needs to be replaced as part of a subsequent performance measure, Seller shall bear costs with a maximum up to the amount of 27 pounds sterling per kg or as defined by Seller if the case may be. Customer shall bear all exceeding amounts and shall ensure a respective coverage by his insurance.

8.17 Considering the particular requirements of the special surroundings on/for ships or vessels or respective objects, any claims of the Customer with respect to compensation of subsequent performance or damages from Defects in connection with the subsequent performance, in particular any costs arising in connection with the provision for the subsequent performance, in particular charges for docking and costs for towage, are excluded. Excluded from this are damages that are based on a provision of the Product Liability Act or the Consumer Protection Acts where applicable and/or damages which result from a deliberate or negligent breach of contractual or statutory duties.

8.18 This warranty in clause 8 is given subject to the following conditions:

8.18.1 Any items returned to the Seller shall be at the Customer's risk at all times in transit to and from the Seller's works. Repaired or replacement items will be dispatched carriage paid by the Seller to the address to which the contracted Goods were dispatched.

8.18.2 The Seller shall be under no liability in respect of any defect in the Goods:

- Arising from any drawing design or specification supplied by the Customer or
- Arising from for any purpose other than for which they were designed or otherwise than in strict accordance with the Seller's instructions for use, or
- Arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instruction (whether oral or in writing) or alteration or repair of the Goods without the Seller's approval, or
- Have had any of their identification marks altered or removed or
- As result of use or operation after any defect in them has become apparent. The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

8.18.3 Subject as expressly provided in these conditions and (except where the Goods are sold to a person dealing as a consumer) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.18.4 Where the Goods are sold to a consumer (as defined above) the statutory rights of the Customer are not affected by these conditions.

8.18.5 Where any valid claim is made in respect of the Goods that they are defective the Seller will make good by repair or at is option replace them free of charge or refund the price of those Goods but the Seller shall have no further liability to the Customer.

8.18.6 The express benefits of the warranty set out in sub-clause 18.6 above represent the entire responsibility and

liability of the Seller in respect of all conditions and warranties express or implied whether statutory or otherwise and any obligations and liabilities whatsoever of the Seller relating to the Goods or advice or information supplied in relation thereto whether in contract, tort or otherwise (except liability for death or personal injury arising out of negligence by the Seller) is excluded.

8.18.7 Without prejudice to the foregoing conditions and terms of this contract any liability of the Seller to the Customer for any loss or expense occasioned by the delivery of Goods which do not comply with the contract shall be limited to and shall not exceed a sum equal to the contract price of the whole of the Goods or that part of the Goods in respect of which the default has been made, (whichever is the lower) and the Seller shall not be liable to the Customer for any indirect special consequential or economic loss or any loss of contracts goodwill revenue profits anticipated savings or other benefits or any loss arising out of claims against the Customer by third parties.

## 9. LIABILITY

9.1 Seller's liability for compensation of damages, irrespective of legal grounds, in particular due to impossibility, delay, default, defective or incorrect delivery, breach of contract, infringement of duties during contract negotiations and liability in tort, to the extent that culpability is involved, shall be limited as follows:

9.2 Seller shall not be liable in the event of negligence of its bodies, legal representatives, employees or other vicarious agents, unless material contractual obligations are breached. "Material" for the purposes of the contract are, in particular, obligations for delivery of the Goods or Services free of significant Defects.

9.3 If Seller is liable on the merits for compensation of damages, such liability shall be limited to damage, which Seller has anticipated at the time of entering into the contract as a possible consequence of a breach of contract or which Seller should have foreseen by applying due care and attention. In addition, indirect and consequential damage arising from Defects of goods delivered shall only be eligible for compensation if such damage is typically to be expected with intended use of the delivered goods.

9.4 In the event of liability for negligence, Seller's obligation to pay compensation for property damage and additional financial losses arising shall be limited to an amount of pounds sterling 1 million per event of damage, even where it involves an infringement of material contractual obligations.

9.5 The preceding liability exclusions and limitations shall apply to the same extent to the benefit of the bodies, legal representatives, employees and other vicarious agents of Seller.

9.6 The limitations of this Article shall not apply to Seller's liability due to intentional conduct, guaranteed quality features, injury to life, body or health or under the Product Liability Act of the Common Protection Acts where applicable.

9.7 The Seller's liability for compensation of damages, irrespective of legal grounds, in particular due to force majeure, delay, default, defective or incorrect delivery, breach of contract, infringement of duties during contract negotiations and liability in tort, to the extent that culpability is involved, shall be limited as follows:

9.8 If the Seller is liable on the merits for compensation for a claim in damages, such liability shall be limited to damages, which the Seller has anticipated at the time of entering into the contract as a possible consequence of a breach of contract or which the Seller should reasonably have foreseen by the application of due care and attention



9.9 The aforementioned additional limitation of liability does not apply to damages which are based on infringement of material contractual obligations and/or which are concomitant with an applicable guarantee given by the Seller.

## 10. CHANGES

10.1 Changes in specifications or changes in time of delivery time in an order accepted by the Seller are not possible unilaterally by the Buyer unless expressly confirmed by the Seller.

10.2 Changes in specifications or changes in time of delivery will be only permitted if Seller specifically approves such adjustment in writing. Changes or modifications may result in additional costs which will be charged to Customer's account. Changes to specifications may also require adjustment to the delivery schedule, and Seller will advise Customer as soon as practicable of any such adjustments. Additional costs and/or changes to delivery time in respect of any changes requested by Customer must be agreed upon prior to Seller's implementation of any change order.

10.3 Seller reserves the right to change or revise specifications and product design in connection with any feature of its Goods. Such changes do not entitle Customer to corresponding changes, improvements, additions or replacements for Goods previously sold or shipped.

## 11. FORCE MAJEURE

11.1 If Seller is unable to carry out its obligations under any contract of which these Terms form a part either wholly or in part due to a cause described in this Section, such obligations shall be suspended during the continuance of such hindrances and the obligations of any contract of which these Terms form a part shall be extended for such periods as may be necessary for the purpose of making good any suspension of deliveries so caused.

11.2 Seller shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to

11.2.1 – if not in the control of Seller - plant conditions, accident, equipment breakdown or equipment malfunction;

11.2.2 strike, differences with workmen, lockout, or any labor shortage or difficulty; fire, flood, accident, quarantine restrictions, earthquake, tornado, epidemic, or other casualty or act of God; act of terrorism, war, riot, civil disobedience, or other emergency, or acts of civil or military authorities; compliance with orders, priorities, or requests of any government agencies or courts or arbitrators; embargoes; failure of Seller to meet delivery schedules, or any shortage of raw materials however caused; inability or delay in obtaining labor or materials; inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation;

11.2.3 or any cause, condition, or contingency beyond the reasonable control of Seller, whether similar to those enumerated or not. In the event of any of the foregoing, Seller may apportion the Goods among its customers as it considers equitable.

11.3 COVID-19 or future pandemics or epidemics may affect the fulfillment of the Seller's obligations and in case the Seller's fulfillment of any of its contractual obligations fails, is delayed, prevented or unreasonably burdened by or related to COVID-19 - and whether or not this would constitute Force Majeure or may be regarded as predictable - the Seller disclaims any responsibility for failure to fulfill its obligations until such time as where such fulfillment is again possible and within the limits of reasonableness. By way of example, such a situation occurs if; (i) the Seller's workforce is affected by COVID-19, e.g. in the form of quarantines, travel or transportation restrictions or similar circumstances; (ii) if the

Seller is reasonably unable to purchase or deliver the Goods ordered; (iii) in the event of price increases due to or related to COVID-19, and/or (iv) if one of the other above-mentioned COVID-19 circumstances or restrictions occur.

## 12. TERMINATION

12.1 Cancellation of Orders by Customer may be accepted by Seller up to four weeks before the intended delivery date, and any such cancellation will carry a factory handling charge and Seller shall invoice all costs incurred, in particular for any material purchased by Seller. Later cancellations will only be accepted upon full payment of the incurred costs in the amount of the price.

12.2 Upon failure or refusal of Customer to accept conforming Goods, make timely payment of amounts due to Seller, or if Customer's financial responsibility is or becomes impaired or unsatisfactory in Seller's sole discretion, Seller shall be entitled to terminate Customer's order and exercise all remedies to which Seller may be entitled by law or in equity, including accelerating all payments due Seller and/or seeking specific performance.

12.3 In the event of any such termination, Seller may request that Customer segregate the Goods from its other equipment and/or inventory, have the Goods shipped to Seller at Customer's expense and/or enjoin Customer from selling or otherwise encumbering the Goods.

## 13. INTELLECTUAL PROPERTY

13.1 All copyrights, trademarks and all inventions, patentable and un-patentable, relating to any work performed by Seller for Customer, and/or developed by Seller and Customer, and/or in the course and scope of the work shall be the property of Seller.

13.2 Customer agrees to and does hereby grant and assign to Seller any right, title, and interest in and to ideas, inventions and improvements which relate in any way to any task or work of Seller on behalf of Customer, together with any and all domestic and foreign patent or other intellectual property rights in such ideas, inventions and improvements. Customer agrees to execute specific assignments and do anything else properly requested by Seller, at any time, to secure such rights. Under no circumstances shall Customer gain any right or title to any of Seller's intellectual property rights unless expressly agreed to by Seller in writing, including exclusively Customer-supplied designs that need to be separately remunerated.

13.3 All specifications, drawings, technical data, including, but not limited to, drawings, layout details, and specifications, computer programs and their contents which have been furnished by Seller to Customer shall belong to and remain the property of Seller. All intellectual property and results of the work, including software, models, designs, drawings, documents, inventions and know-how, conceived or developed by Seller in connections with the sale of Goods and Services to Customer are the sole property of Seller.

13.4 No right, title, or interest to any of Seller's intellectual property will be transferred to Customer under these Terms, including intellectual property that existed prior to, or is created during or independent of, the performance of any work by Seller on behalf of Customer.

13.5 In the event any Goods furnished hereunder are determined to have infringed any copyright or patent with respect to which Seller has an obligation to indemnify, Seller may, at its option and expense: (i) procure for Customer the right to continue to use the Goods; (ii) replace or modify the Goods so that it becomes non-infringing; or (iii) grant Customer a credit for such Goods, less a reasonable deduction for use, damage, and obsolescence.



13.6 Each party's liability in the aggregate for damages under this paragraph is limited to the total value of the order hereunder.

#### 14. CONFIDENTIALITY

"Confidential Information" means information, whether of a technical, business or other nature, disclosed by or on behalf of Seller to Customer which (i) is not generally known to the public; (ii) is identified by Seller as proprietary or confidential or (iii) by the nature of the circumstances surrounding the disclosure ought to be treated as proprietary or confidential. Customer shall hold all Confidential Information of Seller, whether disclosed by Seller to Customer in connection with Seller's provision of Goods or Services hereunder or otherwise, in confidence and shall not reproduce, use, or disclose such Confidential Information in whole or in part to any third party without the prior written consent of Seller and shall take reasonable precautions to safeguard the secrecy thereof.

#### 15. EXPORT COMPLIANCE

15.1 The fulfillment of the contract is subject to the proviso that there are no obstacles due to national and/or international legal provisions, in particular (US-RE) export control law, embargo regulations or other export restrictions of a national or international nature. When reselling and transferring the goods to third parties, the Customer shall comply with the applicable provisions of national and international (in particular US RE) export control law. In any case, when reselling the goods to third parties, he shall observe and comply with the export control regulations of the Federal Republic of Germany, the European Union and, to the extent applicable, the United States of America.

15.2 Before reselling and passing on the goods to third parties, the Customer shall in particular check and ensure by appropriate measures that

15.2.1 the Terms and Conditions of all relevant and currently applicable sanctions lists of the European Union and, where applicable, of the United States of America concerning legal transactions with companies, persons or organizations listed therein are complied with;

15.2.2 it does not violate any embargo of the European Union, the United States of America and/or the United Nations - also taking into account any restrictions on domestic transactions and any prohibitions on circumvention - by selling or transferring the goods or providing services related thereto to third parties; and;

15.2.3 the goods are expressly not delivered to third parties for military, prohibited or authorized armaments-related, nuclear or weapons-related use, unless a possibly required authorization has been obtained and the delivery does not violate other currently valid international sanctions regulations.

15.2.4 Any further delivery of products by the Customer to a third party, with or without Seller's knowledge, shall simultaneously require the transfer of the export license conditions. The Customer shall be fully liable in the event of non-compliance with the relevant regulations.

15.3 The Customer shall ensure that the goods and services are not intended for a prohibited or authorized use relevant to armaments, nuclear technology or weapons

technology, unless any required authorizations have been obtained.

15.4 In order to carry out export control inspections at the Seller's premises or upon request by external authorities, the Customer shall, upon corresponding request by the Seller, immediately provide the Seller with all information and/or documentation available to the Seller regarding the final recipient, the final destination and the intended use of the Seller's goods delivered by the Buyer to third parties and services provided by the Seller in this context.

15.5 The Customer shall immediately and without delay fully indemnify the Seller against all claims asserted against the Seller by authorities or other third parties due to the Customer's failure to comply with or breach of the aforementioned export control obligations and undertakes to reimburse the Seller for all damages and expenses (including attorney's fees) incurred by the Seller in this connection.

15.6 Insofar as the Seller incurs costs for the performance of export control inspections, the Seller shall be entitled to demand compensation for the same from the Customer in advance. Delivery deadlines shall be postponed until these costs have been settled in full.

15.7 A violation of the aforementioned provisions entitles the Seller to immediately withdraw from the contract.

#### 16. DISPUTE RESOLUTION & GOVERNING LAW

The Seller and Customer irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the terms hereof or its subject matter or formation

#### 17. MISCELLANEOUS

17.1 These Terms shall be binding upon and/or inure to the benefit of Seller, Customer, and their respective successors and assigns. Neither Seller nor Customer hereto shall be relieved of obligations hereunder by any assignment of any interest in any agreement between them.

17.2 Any contract of which these Terms form a part and the terms of Seller's corresponding invoice, represent the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between them with respect to the subject matter. Any representations, promises, warranties or statements by any representative or agent of Seller that differ from the Terms shall be given no force or effect. Any change, amendment, or modification of any of these Terms must be made in writing and signed by Seller. Titles incorporated herein are for reference purposes only and do not have any legal effect.

17.3 If a provision of these Terms is or becomes invalid or unenforceable in any jurisdiction, that shall not affect: (i) the validity or enforceability in that jurisdiction of any other provision of these Terms; or (ii) the validity or enforceability in other jurisdictions of that or any other provision of these Terms. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects as closely as possible result in the economic objective intended by the contracting parties with the invalid or unenforceable provision. The above provisions shall apply in the event that the contract proves to be incomplete.



17.4 Seller reserves the right to correct clerical, arithmetic or typographical errors or omissions in quotes, invoices, price schedules, Order Confirmations, acknowledgements or other relevant documents.

17.5 The Place of Performance or subsequent performance for all obligations arising out of the agreement shall be pursuant to the provisions of Clause 16. Should the Seller also be responsible for the installation or the delivery, the Place of Performance is the location at which the installation and the delivery respectively takes place.

17.6 The offsetting with counterclaims of the Customer or the retention of payments due to such claims shall only be permitted if the counterclaims are uncontested.

17.7 The Buyer shall not assign, charge, sub-contract or in any way dispose of its rights or obligations under the Contract without the prior written consent of Seller. Seller may at any time subcontract, assign, transfer, mortgage, charge or deal with in any manner any or all of its rights and obligations under the Contract to any of its affiliates, meaning any entity that directly or indirectly, by minimum 25% shareholding, controls Seller or is controlled by Seller, or is under common control with another entity of Seller's group, be it as parent, sister company or as a subsidiary. For the avoidance of doubt, in case of assignment or transfer, no liability shall vest with Seller.

03/2023 These terms and conditions will now exclusively be used.