

# General Terms and Conditions of Purchase

## PART I: GENERAL PROVISIONS FOR GOODS AND SERVICES

### 1. APPLICABILITY, DEFINITIONS

1.1 These General Terms and Conditions of Purchase ("**Conditions**") govern the purchase of Goods and/or Services by the Purchaser from the Supplier.

1.2 These Conditions shall apply to the exclusion of, and shall prevail over, any terms and conditions of the Supplier (including any pre-printed standard terms and conditions on the reverse of, or attached to, any offer, invoice, delivery note or any other correspondence issued by the Supplier in connection with a Contract). Such terms and conditions of Supplier are excluded. The Purchaser's failure to object to such standard terms and conditions shall not be regarded as a waiver of this requirement.

If Purchaser and Supplier entered into individual agreements (e.g. frame supply agreement, quality assurance agreement, consignment or buffer stock agreement), the provisions of the individual agreements shall prevail in case of discrepancies between Part I of the Conditions and the provisions in the individual agreements.

1.3 These Conditions shall, in their respective latest version, also apply for future Contracts of the Purchaser with the Supplier regarding the supply of Goods and/or the performance of Services, without special reference to these Conditions being required in the Purchase Order, Confirmed Purchase Order or elsewhere.

1.4 Within these Conditions and unless expressly set forth otherwise herein or a Contract, the following terms shall have the following meaning:

1.4.1 "**Affiliate**" of Purchaser shall mean any company that Controls Purchaser, is Controlled by Purchaser or that is Controlled by the same company that controls Purchaser. "**Control**" or "**Controlled**" shall mean direct or indirect beneficial ownership of at least more than fifty percent (50%) of the stock.

1.4.2 "**Delivery Date**" means the date(s), and "**Delivery Place**" means the location(s) for the delivery of the Goods and/or the performance of the Services as specified in the Purchase Order or elsewhere or as otherwise reasonably directed by the Purchaser from time to time. If no Delivery Date is specified in the Purchase Order or any other document, the Goods and/or the Services shall be promptly delivered and/or performed, as the case may be. If no Delivery Place is specified in the Purchase Order or elsewhere, the Delivery Place shall be the registered office of the Purchaser.

1.4.3 "**Goods**" mean any products described in the Purchase Order, including, but not limited to parts, materials or components and any deliverables resulting from a Service.

1.4.4 "**Purchaser**" means the legal entity issuing a Purchase Order for Goods and/or Services to the supplier of such Goods and/or Services ("**Supplier**").

1.4.5 "**Purchase Order**" means a request (in whatever form) of Purchaser to the Supplier for the supply of Goods and/or Services, which is deemed to always include these Conditions.

1.4.6 "**Services**" mean any services described in the Purchase Order and shall be deemed to include any task and activity reasonably incidental for the performance of the Service.

1.4.7 "**Specifications**" mean any specifications for the Goods and/or Services contained in or incorporated in the Contract by reference, or any other specifications agreed between the Purchaser and the Supplier from time to time.

1.4.8 Insofar as individual provisions of these Conditions contain further terms/definitions, these terms/definitions shall have the meaning given to them in the respective provisions, unless expressly set forth otherwise in these Conditions.

### 2. PURCHASE ORDERS

2.1 Within three (3) business days (Monday to Friday, with the exception of public/bank holidays at the Supplier's registered office) of Supplier's receipt of a Purchase Order, or any other period specified in the Purchase Order ("**Confirmation Period**"), the Supplier shall confirm acceptance of such Purchase Order ("**Confirmed Purchase Order**") and such Confirmed Purchase Order shall form a binding contract between the Supplier and the Purchaser for the supply of the Goods and/or Services so ordered ("**Contract**"). In any event, any act taken by Supplier for the fulfillment of a Purchase Order will constitute acceptance of such Purchase Order. In the event that Supplier does not submit acceptance or does not start performance on the Purchase Order within three (3) business days following Supplier's receipt of the Purchase Order, Purchaser

shall be entitled but not obliged, to revoke such Purchase Order without giving rise to any claims against Purchaser by Supplier.

2.2 Any comments and/or changes by the Supplier to a Purchase Order shall only be binding for the Purchaser if they are expressly confirmed by the Purchaser in writing, e.g. by a Purchase Order amendment or by placing of a new Purchase Order. Until a Purchase Order has been duly confirmed by the Supplier, the Purchaser may revoke, modify or change the Purchase Order at any time. Fulfillment by the Supplier of a Purchase Order shall be deemed as confirmation of the Purchase Order.

### 3. GENERAL OBLIGATIONS OF THE SUPPLIER

3.1 The Supplier shall supply the Goods and/or perform the Services within regular business hours on the Delivery Date at the Delivery Place (or at any other location or time as reasonably directed by the Purchaser from time to time) and in accordance with the Specifications, the Supplier's Warranties, good industry practice, the terms of the Contract and these Conditions, any applicable laws, and any reasonable direction given by the Purchaser from time to time. Unless otherwise requested by the Purchaser, delivery of the Goods shall be according to DDP (Incoterms 2022). Until the Delivery Date, the Purchaser may change the Delivery Place without additional costs and/or postpone the Delivery Date by up to 14 calendar days.

3.2 Time shall be of the essence in relation to the delivery of the Goods and the performance of the Services. The Supplier shall inform the Purchaser in writing as soon as it is aware of any events or circumstances which may, or have, adversely affect(ed) the supply of the Goods and/or the performance of the Services. The Supplier shall use best efforts to minimize negative effects of any delay, including the use of the fastest possible method of delivery or performance of the Goods and/or Services at the Supplier's expense.

3.3 The Supplier shall not make any changes to or modifications of the Goods and/or the Services without the Purchaser's prior written approval.

3.4 The Goods and/or Services shall be accompanied by all information, warnings, instructions and documentation relevant and appropriate for the use, storage, operation, consumption, transportation and disposal of such Goods and/or Services.

### 4. DELIVERY OF GOODS

4.1 The Goods must be packaged (i) securely so as to prevent damage during loading, transportation and off-loading, (ii) in compliance with the Specifications, and (iii) in compliance with the Purchaser's packaging specifications (if any) as reasonably known or as notified to the Supplier from time to time.

4.2 The Purchaser shall not be obliged to accept deliveries in excess of or below the quantity ordered or before the Delivery Date. The Purchaser reserves the right, at its sole discretion, to return any such deliveries to the Supplier at the Supplier's risk and expense, or to receive the same and charge the Supplier with all storage charges incurred by the Purchaser until the Delivery Date.

4.3 If, for any reason, the Purchaser is unable to accept the Goods on the Delivery Date, the Supplier shall, if requested by the Purchaser, delay the delivery for a reasonable period of time and store and maintain the Goods in good order and condition. The Purchaser shall reimburse the Supplier for the reasonable, actual and documented costs of such storage and maintenance.

4.4 Unless otherwise agreed, the risk of loss and damage to the Goods shall not pass to the Purchaser until the Goods have been handed over to the Purchaser at the Delivery Place. This shall also apply if the delivery shall be effected by the Supplier by way of shipment. If the Goods are subject to an acceptance testing by the Purchaser, the risk shall not pass until the Goods have been successfully accepted by the Purchaser. In the event of inconsistencies between the provisions of this Sec. 4.4 and the applicable Incoterms, the provisions of this Sec. 4.4 shall prevail.

4.5 Title to the Goods passes to the Purchaser in full, unconditionally and irrespective of payment of the price upon handover to the Purchaser or to a third party designated by the Purchaser (excluding any carrier or transporter). Where title to the Goods has passed to the Purchaser but the Goods remain in the possession of the Supplier, the Supplier shall clearly label the Goods as the property of the Purchaser and store such Goods separately from all other goods and insure the Goods at the replacement value on appropriate terms.

4.6 Where the Goods are processed, mixed, combined or transformed by the Purchaser, the Purchaser shall be deemed to be the manufacturer of such products and shall acquire all right of ownership and title in the final product.

4.7 If the Goods contain software, the Supplier hereby irrevocably grants to the Purchaser a royalty free, non-exclusive, worldwide, perpetual and irrevocable and transferable right and license to use the software in connection with the Goods (including the resale of the Goods). The Purchaser is entitled to grant the aforementioned rights to its customers and their customers.

## 5. PERFORMANCE OF SERVICES

5.1 The Supplier is, inter alia, responsible for: (i) informing itself of the Purchaser's requirements in respect of the Services; (ii) regularly consulting with the Purchaser regarding the performance and suitability of the Services; (iii) cooperating with all Service review procedures reasonably implemented by the Purchaser; and (iv) implement such recommendations and directions as may reasonably be given by the Purchaser from time to time as to the nature and scope of the Services.

5.2 The Supplier shall verify the Delivery Place in good time prior to the Delivery Date and shall advise the Purchaser as soon as possible as to the suitability of the Delivery Place for the purposes of performing the Services. If the verification reveals the Delivery Place to be unsuitable for the purpose of performing of the Services, the Supplier shall provide the Purchaser with reasons in writing for such finding of unsuitability as soon as possible and in any event prior to the Delivery Date. If the Supplier fails to verify the Delivery Place, the Delivery Place shall be deemed to have been approved by the Supplier.

## 6. PRICE AND PAYMENT

6.1 Unless otherwise agreed in writing, the price(s) for the Goods and/or the Services remain fixed for the term of the Contract.

6.2 The Purchaser shall pay, in addition to the price(s) for the Goods and/or Services, for the Supplier's expenses (e.g. for accommodation and travel) only, if the Purchaser has agreed in writing to pay the expenses.

6.3 Unless otherwise agreed in writing, the price(s) payable for the Goods and/or Services are (i) exclusive of value added tax ("VAT") or other sales tax; and (ii) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods, accommodation and other costs related to the Goods and/or Services and all duties, licenses, permits and taxes (other than VAT or other sales tax) as may be payable for the Goods and/or Services from time to time.

6.4 Unless otherwise agreed in writing, and subject to the Supplier complying with its obligations under the Contract, the Purchaser shall pay for the Goods and/or the Services within 90 days after receipt of the Supplier's invoice.

6.5 The Purchaser may withhold payment of any disputed or insufficiently documented amounts included in any invoice. The Purchaser may set-off any sum due from Supplier to the Purchaser against any amount due from Purchaser to Supplier under the Contract, or to recover such sums as a debt.

6.6 Payment of an invoice by the Purchaser does not constitute acceptance of the Goods and/or Services and is without prejudice to any other rights or remedies of the Purchaser.

## 7. LATE PERFORMANCE

7.1 Where the Supplier fails to deliver the Goods or fails to perform the Services on the Delivery Date, Purchaser may, claim charges for late performance of one point five per cent of the price of the delayed Goods and/or Services for each commenced week of delay, excluding VAT (or other sales taxes), up to an overall maximum of fifteen per cent.

7.2 Any incurred late performance charge may be claimed by the Purchaser up to six (6) months following the receipt of the delayed Goods and/or Service. The Purchaser reserves the right to claim additional damages. Any incurred late performance charges pursuant to Section 7.1 above, however, shall be credited against such additional damages of the Purchaser based on the same cause of damage. For the avoidance of doubt, any mutual postponement of the Delivery Date shall not be construed as a waiver of the Purchaser's rights under this Section.

7.3 If Supplier's failure to deliver the Goods or to perform the Services on the Delivery Date exceeds two (2) weeks, the Purchaser may withdraw from the relevant Contract without prior notice and claim damages.

## 8. INCOMING INSPECTION BY PURCHASER

8.1 Any obligation of the Purchaser under applicable law or for any other reason to inspect the Goods upon delivery or to notify the Supplier of any defects within a certain period of time is hereby excluded to the extent permitted by the applicable law.

8.2 If such obligation cannot be excluded under applicable law, the following shall apply: Purchaser is only required to visually inspect the Goods for deviations in identity, quantity and obvious transport damage without being required to open any shipping or other packaging of the Goods; insofar as the Goods are subject to an agreed acceptance testing, Purchaser shall not be obliged to inspect the Goods upon receipt. Insofar as

no longer period is provided for by applicable law (or case law), the Purchaser will notify the Supplier of any such discrepancies and damages (if any) within eight (8) working days after receipt of the Goods at the Delivery Place or, in case of latent defects, after discovery of such discrepancies and damages.

## 9. ACCEPTANCE TESTING

9.1 If, pursuant to the Contract or under the applicable law, the Purchaser is allowed or required to test and approve the Goods and/or Services as to their compliance with the Supplier's Warranties, the Supplier shall request the Purchaser in writing to carry out such acceptance test in accordance with the dates as specified in the Contract or, if no dates are specified, as soon as possible after delivery of the Goods or completion of the Services.

9.2 Purchaser may reject the Goods and/or Services in whole or in part if they are not proven by the Supplier to be compliant with the Supplier's Warranties and/or any other acceptance criteria. If Purchaser does not accept the Goods and/or Services in whole or in part, the Supplier shall promptly investigate the non-conformity, correct such non-conformity and repeat the acceptance procedure. After failure of the repeated acceptance procedure, Purchaser may at its discretion elect to repeat the acceptance procedure or to claim the remedies of Section 11.

9.3 Purchaser will not be deemed to have accepted the Goods and/or Services prior to a successful acceptance testing solely due to its operational use of the Goods and/or Services in whole or in part.

## 10. SUPPLIER WARRANTIES AND OBLIGATIONS

10.1 Supplier warrants and represents that the Goods and/or Services and any parts or materials used in the manufacture of the Goods or performance of the Services: (i) are free from any defects in design, materials, and workmanship (latent or otherwise); (ii) are fit for the intended purpose and/or fit for any special purpose of the Purchaser as reasonably known by or notified to the Supplier; (iii) conform to the Specifications in all respects and, where applicable, to any drawings or initial/master samples approved by the Purchaser; (iv) conform to all applicable laws, regulations, legislations and standards (including International Standards Organization (ISO) standards); (v) are – in relation to Goods – new and unused; and (vi) are – in relation to Services – performed with the highest degree of professional skill, sound practices and good judgment normally exercised by recognized professional firms providing services of a similar nature (collectively, the "Supplier's Warranties").

10.2 Unless a longer limitation period is provided by the applicable law, the general limitation period for the Supplier's Warranties shall be three (3) years from – in relation to Goods – delivery to the Purchaser or – in relation to Services – completion of the Services at the Delivery Place or, where an acceptance is required by law or by Contract, from final acceptance of the Goods and/or Services by the Purchaser. If, for the reselling of processed or unprocessed Goods by the Purchaser to third parties, a longer limitation period is provided by the applicable law, such longer limitation period shall also apply between the Purchaser and the Supplier; the same shall apply if the Purchaser grants its customers a longer limitation period by contract (collectively, the "Warranty Period").

10.3 The expiry of the Warranty Period shall in any case be suspended upon receipt by the Supplier of a notice of defect by the Purchaser. Suspensions of the Warranty Period occurring by virtue of law shall remain unaffected. Any repaired, corrected, replaced or re-performed Goods and/or Services (as applicable) are subject to a warranty on the same terms as the Supplier's Warranties and to a new Warranty Period.

## 11. REMEDIES

11.1 If the Goods and/or Services fail to conform with the Supplier's Warranties ("Defective Goods", "Defective Services") within the Warranty Period, the Purchaser may at its discretion elect to:

11.1.1 require the Supplier to repair, correct or replace the Defective Goods or re-perform the Defective Services within ten days of receipt of the Purchaser's request or any other (longer or shorter) period reasonably specified by the Purchaser; and/or

11.1.2 in case of imminent danger or urgency or if the Supplier refuses or is unable to rectify the Defective Goods and/or Defective Services: (i) repair the Defect Goods or re-perform the Defective Services instead of the Supplier or have the Defective Goods repaired or have the Defective Services re-performed by a third party, or (ii) obtain identical or similar goods or services from an alternative supplier, each at the Supplier's sole cost and expense; and/or

11.1.3 claim a reduction or refund (as the case may be) of the price in the amount of the reduced value of the Defective Goods and/or Defective Services; and

11.1.4 require the Supplier to reimburse the Purchaser for all costs, expenses, damages and other losses incurred by the Purchaser associated with the supply of Defective Goods or performance of

Defective Services, including, without limitation, costs for investigation and analysis of the defect, for installation/de-installation, for the use of its own or external personnel, costs for parts, attorneys' fees, travel or transportation costs.

11.2 If the Supplier fails to remedy its breach of the Supplier's Warranties within the period according to Section 11.1.1, the Purchaser may, in addition to the remedies set forth in Section 11.1, at its discretion: (i) terminate the Contract and request a refund of the purchase price, if already paid, or (ii) claim a reduction or refund (as the case may be) of the purchase price in the amount of the reduced value of the Defective Goods and/or Defective Service.

11.3 If the Defective Goods are part of a batch of Goods, and if it is only possible to inspect each Good of this batch at a considerable expense, the Purchaser may return the entire batch or demand that the Supplier inspect the entire batch at the Purchaser's premises. Supplier may deliver remedied Goods from this batch to the Purchaser once the Goods have successfully passed inspection and been marked accordingly.

## 12. LIABILITY, INDEMNIFICATION

12.1 Supplier shall defend, indemnify and hold harmless Purchaser and its Affiliates, Purchaser's and its Affiliates' employees, officers, agents, customers, suppliers, consultants, contractors and successors and assignees against any liability, loss, costs (including legal fees, costs for recalls and costs for its own employees), damage or injury arising in connection with:

12.1.1 any Defective Goods or Defective Services,

12.1.2 any breach by Supplier or its personnel of the Contract (including any late delivery of Goods or failure to complete the Services by the Delivery Date),

12.1.3 any negligence, willful default or wrongful act or omission of the Supplier or its personnel; and

12.1.4 an infringement or alleged infringement of any third party right (including intellectual property rights) as a result of the provision, receipt, importation, export, distribution, sale, use or possession of any Goods and/or Services provided by or on behalf of the Supplier.

12.2 In case of Sec. 12.1.4, Supplier shall inform Purchaser promptly thereof and shall at its own cost and at the Purchaser's discretion:

12.2.1 acquire for the Purchaser, Purchaser's Affiliates and their customers the unconditional, irrevocable, perpetual and worldwide license to use the Goods and/or Services without restriction and to exercise its other rights granted with regard to the Goods and/or Services under the Contract;

12.2.2 modify or replace the Goods and/or Services so that they comply with the Supplier's Warranties and do not infringe any third-party right, without impairing however in any material respect the functionality or performance of the Goods and/or Services;

12.2.3 take back the Goods and/or Services at Supplier's expense and reimburse the price for any affected Goods and/or Services plus VAT or other sales taxes (if applicable). In such case Purchaser may cancel all Purchase Orders and Confirmed Purchase Orders for each such Goods and/or Services.

12.3 Claims owing to an infringement of third-party rights through the use of the Goods and/or Services shall not become statute-barred as long as the third party is able to assert such claims against the Purchaser, in particular, if the third-party claim is not statute-barred.

## 13. PRODUCT LIABILITY

13.1 If the Goods may result in death or personal injury or other damage to third parties, including financial losses, the Purchaser may take all measures at the Supplier's expense, such as public warnings and recall actions, to which the Purchaser is obliged or which are otherwise appropriate in order to avoid such risks. The Purchaser will - if possible and deemed reasonable - inform the Supplier as early as possible and give the Supplier an opportunity to state its case. The Supplier shall cooperate with the Purchaser in good faith in order to eliminate the risks arising from the Goods as quickly and effectively as possible and shall, in particular, immediately upon request hand over to the Purchaser any necessary documentation therefore.

13.2 If Supplier believes that the Goods may result in death or personal injury or other damage, including financial losses, the Supplier shall immediately inform the Purchaser thereof and of the facts of the case.

13.3 Supplier shall ensure the traceability of the Goods at all times in order to be able to carry out batch tracking in the event of damage or loss. For this purpose, the Goods shall be marked at least with a consecutive serial number or batch number and the manufacturing date. Moreover, the Supplier shall take appropriate measures to ensure that, if specific Goods have been identified as defective, it can be determined immediately which other Goods could be affected by such defect.

## 14. EXPORT REGULATIONS, SUPPLIER INFORMATION

14.1 Prior to the release of the Goods, the Supplier shall inform the Purchaser whether the Goods are covered by the respective national, European or US American law related to export control. Should changes occur during the term of the Contract, the Supplier undertakes to notify the Purchaser of these changes without delay.

14.2 If the Purchaser is obliged to obtain an export and/or import permit, the validity of a Purchase Order shall be subject to the condition precedent of the granting of such permit. The Supplier is obliged to immediately provide the Purchaser with all information and documents required for the granting of such permit. In addition, the Supplier shall provide the Purchaser with the following customs information:

14.2.1 Statistical commodity code as defined in the Goods Classification for External Trade Statistics (WA) and the HS Code (Harmonized System);

14.2.2 Indication of origin (non-preferential, commercial origin) of the Goods;

14.2.3 Supplier's declaration (preferential origin);

14.2.4 Certificates of origin/certificates of preference (if requested by the Purchaser).

14.3 The Supplier undertakes to maintain an appropriate conflict minerals reporting system on the basis of Regulation (EU) 2017/821 as well as Sec. 1502 of the Dodd-Frank Act of the US Securities and Exchange Commission (SEC), insofar as the Supplier delivers Goods to the Purchaser, in the manufacture or processing of which the (conflict) minerals and/or metals described in the aforementioned regulations are used to the extent applicable to the Goods. In addition, Supplier undertakes to carry out a sanction list check of the smelters in the supply chain prior to each delivery and shall provide to Purchaser a confirmation that such sanction list check was made, including the provision of the name and address of the smelters in writing to the extent applicable to the Goods. Furthermore, the Supplier undertakes to make available to the Purchaser or the third party commissioned by the Purchaser an update of the "Reporting Template" used by a recognized institution such as the "Conflict Minerals Reporting Template" (CMRT) of the "Responsible Minerals Initiative" (RMI), at least once a year as well as in the event of changes to the smelters in the supply chain and at the request of the Purchaser or a third party commissioned by the Purchaser to the extent applicable to the Goods. The Purchaser only accepts compliant CMRT's, which exclusively contains smelters that have been certified by a qualified auditor such as RMI or are still in the certification process. If the Supplier's CMRT report lists a non-certified smelter or a smelter that is not in the certification process or documents a non-conformity with the above-mentioned regulations, the Supplier is obliged to immediately develop a corrective action plan suitable from the perspective of the Purchaser and to show the Purchaser how the Supplier will establish conformity with the above-mentioned regulations. In addition, the Supplier undertakes to actively participate in measures taken by the Purchaser to comply with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. This includes, among other things, obtaining information on minerals in the supply chain that are not subject to legal reporting (e.g. cobalt, lithium, rare earths, etc.).

## 15. COMPLIANCE

15.1 Supplier shall comply with all laws and regulations which relate to it and the business relationship with the Purchaser, that it will not commit and refrain from any acts which could lead to a criminal act owing to fraud or a breach of trust, an insolvency criminal act, a criminal act against competition, granting of advantages or bribery of individuals employed by the Purchaser or other third parties.

15.2 Supplier further agrees to comply with the Code of Conduct of the Responsible Business Alliance (RBA) as amended from time to time. Upon request, the Supplier shall immediately provide written information on its compliance with the RBA Code of Conduct. The Supplier is required to ensure compliance with the principles and requirements of the RBA Code of Conduct throughout the supply chain, including but not limited to the prohibition of forced labor. Supplier shall be liable for non-compliance with the principles and requirements of the RBA Code of Conduct by its sub-suppliers, sub-contractors and other vicarious agents and their sub-suppliers, sub-contractors and other vicarious agents.

## 16. CONFIDENTIALITY

16.1 Supplier shall keep all business and technical information made available by Purchaser (including features which may be derived from items or documents provided by Purchaser and any other knowledge or experience) confidential as long as and to the extent that it is not proven public knowledge, and it may disclose such information only to those employees and representatives who necessarily need to know it for the purpose of the Contract, and who are themselves bound to confidentiality. Title to all information remains with Purchaser. At Purchaser's request, Supplier shall return to the Purchaser or, if a return is not possible, destroy

all files, documents and other items which embody or contain Purchaser's information. Supplier may retain copies of Purchaser's information that are stored on Supplier's IT backup and disaster recovery systems until the ordinary course deletion thereof or as required by applicable law or regulatory requirements. Supplier shall continue to be bound by the terms and conditions of this Section 16.1 with respect to such retained information.

- 16.2 Purchaser reserves all rights to such information (including copyright and the right to file applications for intellectual property rights such as patents and utility models, etc.). In the event third parties provided the information to Purchaser, the reservation of rights shall also apply for the benefit of such third parties.

## 17. GOVERNING LAW AND JURISDICTION

- 17.1 The Conditions, the Contract and any supply of Goods and/or Services thereunder shall be construed and governed by the laws applicable in the country in which the Purchaser has its registered office, without regard to principles of conflicts of laws and excluding the application of the UN-Convention on Contracts for the International Sale of Goods.

- 17.2 The parties shall submit any dispute, controversy or claim arising out of or in connection with the Contract, including any dispute as to the validity of the Contract, and any supply of Goods and/or Services thereunder exclusively to an appropriate court in the country or jurisdiction in which the Purchaser has its registered office and at the place of such registered office, save that the Purchaser may always initiate court action against the Supplier at the court of general jurisdiction at the place of the registered office of the Supplier.

## 18. MISCELLANEOUS

- 18.1 The Contract may only be amended, modified or supplemented by an instrument in writing signed for and on behalf of each of the parties. Such

writing requirement may only be waived through an instrument in writing signed for and on behalf of each of the parties.

- 18.2 Supplier may not set-off any claims it may have under the Contract against any claims of the Purchaser or refuse to perform any obligation on the grounds that it has a right of retention, unless the rights or claims of the Supplier are undisputed by the Purchaser or have been confirmed by a final decision of a competent court.
- 18.3 No failure or delay on the part of the Purchaser to exercise any right or remedy under the Contract shall be deemed as a waiver thereof. No waiver by the Purchaser is validly made unless made in writing.
- 18.4 All rights of the Purchaser set forth in these Conditions apply cumulatively and shall not exclude or otherwise affect any other rights or remedies the Purchaser may have under the Contract or by virtue of the applicable law.
- 18.5 The Contract is personal to the Supplier and the Supplier shall not, without the prior written consent of the Purchaser, assign or transfer any rights or obligations under the Contract to any third party. The Purchaser may at any time assign the Contract or any rights or obligations under the Contract to any third party without the prior written consent of the Supplier.
- 18.6 If any term or provision of the Contract is void or unenforceable, the remainder of the provisions of the Contract shall remain in full force and effect to the fullest extent permitted by the applicable law. In place of the invalid or unenforceable provision, or to fill a contractual loophole, such valid and enforceable provision shall apply which reflects as closely as possible the commercial intention of the parties as regards the invalid, unenforceable or missing provision.

## PART II: SPECIFIC PROVISIONS FOR SOFTWARE

### 1. APPLICABILITY

- 1.1 The provisions of this Part II apply to the delivery of Standard Software and supplement the provisions of Part I relating to Goods and, if there is an inconsistency, take precedence over the provisions of Part I.

- 1.2 "Standard Software" means software being Supplier's or a third party's software that is or could be offered by the Supplier or the third party to customers generally.

### 2. LICENSED RIGHTS

- 2.1 Supplier hereby grants (or shall procure the grant) to the Purchaser a license to use, copy and distribute the Standard Software and any related documentation in the course of its business and the business of any entity of Purchaser's Affiliates and for purposes reasonably incidental thereto, on the following terms:

- 2.1.1 non-exclusive, worldwide, irrevocable and transferable; and  
2.1.2 except for the license fee, royalty-free and fully paid up.

- 2.2 The Purchaser may make such copies of the Standard Software and related documentation as are reasonably required for backup and security purposes.

- 2.3 The Purchaser shall be entitled to appoint a third party to run or host the Standard Software for the benefit of the Purchaser or any entity of Purchaser's Affiliates under the terms and conditions of this Section 2.

- 2.4 The license commences on the Delivery Date and shall, as specified in the Contract, either (i) continue in effect for the duration of the license term or (ii) be for perpetual use by the Purchaser.

- 2.5 Unless the parties have specified a maximum number of permitted users of the Standard Software, the Standard Software shall be licensed to the Purchaser on the basis of an enterprise license, i.e. allowing the Purchaser an unlimited use of the Standard Software throughout its organization.

- 2.6 Purchaser may, at no additional charge and without consent of the Supplier, change the designated equipment, i.e. the hardware configuration, operating system, network structure, or transfer the Standard Software from the designated equipment to any new equipment.

### 3. DELIVERY, INSTALLATION

- 3.1 Supplier shall deliver to the Purchaser the Standard Software in its latest release on a magnet medium in machine-readable object-code form, and/or source code form, if licensed, or in any other format as agreed by the parties, e.g. by download.

- 3.2 If so agreed, the Supplier shall install the Standard Software on the designated equipment on the date or period for the assembling, erection,

control and test of the Standard Software or any component thereof as specified by the parties.

- 3.3 Where the Supplier needs to install Standard Software on behalf of the Purchaser which is subject to click-on, click-wrap or similar license terms, the Supplier shall request the Purchaser's written consent to such license terms in good time prior to accepting such terms on the Purchaser's behalf.

### 4. UPDATES AND NEW RELEASES

- 4.1 Unless otherwise agreed in writing, the Supplier will offer to the Purchaser all updates and new releases immediately after becoming available at no additional charge to the Purchaser and without increase of the license fee.

- 4.2 Purchaser shall not be obliged to accept an update or new release, and a refusal by Purchaser to acquire an update or new release shall not affect its entitlement to ongoing support services relating to the Standard Software which are to be performed by the Supplier as specified by the parties and shall not relieve the Supplier from the Supplier's Warranties.

### 5. SUPPORT SERVICES

- 5.1 If the parties have agreed on the provision of support services, the support services shall commence on the day following expiry of the Warranty Period, unless otherwise specified by the parties, and shall continue in effect for the duration of the support term.

- 5.2 Supplier shall provide the support services in response to a report by the Purchaser of a suspected malfunction, defect or error in the Standard Software or at such frequency and duration as are reasonably necessary to ensure that malfunctions, defects or errors in the Standard Software identified by the Purchaser or which otherwise come to the attention of the Supplier are rectified.

- 5.3 The Supplier will use work-around solutions and similar measures to the maximum extent possible to enable the Purchaser to continue to use the Standard Software during the performance of any support services.

### 6. ADDITIONAL WARRANTIES

- 6.1 In addition to the Supplier's Warranties, Supplier represents and warrants it is the owner or authorized distributor of the Standard Software and has the right and authority to grant the rights and licenses in this Part II to the Purchaser. Without limiting the foregoing, Supplier represents and warrants that there are no existing restrictions or constraints on its right and authority to supply, install and license the Standard Software.

- 6.2 Supplier represents and warrants that the Standard Software will be (i) free from viruses, defects and errors and free from any built-in, automatic and/or random expiry dates; (ii) properly installed; (iii) compatible with the designated equipment; and (iv) perform in accordance with the Supplier's Warranties.