

GENERAL TERMS AND CONDITIONS

As at 12/2021

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Goods and services are sold and supplied by Balluff Limited (New Zealand) on the following General Terms and Conditions of business unless otherwise expressly agreed in writing between Balluff Limited (New Zealand) and the Purchaser.

1. DEFINITIONS

- 1.1 „Vendor“ means Balluff Limited (New Zealand).
- 1.2 „Purchaser“ means the person, Vendor or other relevant legal entity to whom or to which this document is addressed.
- 1.3 „Goods“ means the goods, equipment, material and/or chattels supplied by the Vendor to the Purchaser as indicated in an Order.
- 1.4 „Commencement Date“ means the commencement date of the particular contract of which these terms and conditions form part.
- 1.5 „Contract Works“ means, where the additional clauses 23 to 30 apply, the Goods and the erection of other works (if any) to be carried out by the Vendor at the Site.
- 1.6 „Day“ or “days” means calendar days unless stated otherwise.
- 1.7 „Intellectual Property Rights“ means all rights in and to all technology, techniques (both patented and not patented), knowhow, confidential information, patents, copyright, designs, brands, trade names, inventions, discoveries and all other rights as defined by Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation, including all applications for any of such rights as may exist anywhere in the world.
- 1.8 “Force Majeure Event” means any matter or thing beyond the Vendor's control including but not limited to transport and supply stoppages and breakdowns, fire, flood, earthquake, acts of God, strikes, lockouts, work stoppages, wars, riots or civil commotion, pandemics or epidemics (including, without limitation, COVID-19), intervention of public authority, explosion or accident.
- 1.9 „Order“ means the Purchaser's Order issued by the Purchaser and accepted by the Vendor in clause 3.
- 1.10 „PPS Act“ means the Personal Property Securities Act 1999 as amended from time to time.
- 1.11 „Services“ means the services specified in the Vendor's quotation or contract, including any part of the specified services.
- 1.12 „Site“ means, if the additional clauses 23 to 30 apply, the location notified by the Purchaser where the Vendor is required to carry out the Contract Works.

2. GENERAL

- 2.1 These terms form part of any quotation or contract to which they are attached, and any Goods or Services to be supplied, or supplied, by the Vendor pursuant to that quotation or contract will be or are supplied subject to these terms.
- 2.2 If there is any inconsistency or variance between the provisions of any quotation or contract by the Vendor and these terms then the former shall prevail to the extent of the inconsistency or variance PROVIDED SUCH THAT notwithstanding any acceptance by the Vendor of any Order or offer to purchase from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these terms, any contract between the Vendor and the Purchaser arising from the Vendor's acceptance of such Order or offer to purchase shall be subject to these terms unless and to the extent only that the Vendor expressly agrees in writing to any variation thereof.
- 2.3 If one or more clauses of these terms or any provisions included in any quotation or contract arising between the Vendor and the Purchaser is declared legally invalid the remainder of these terms and any such provisions shall be in no way affected.
- 2.4 These terms shall apply to any separable portion of any quotation or contract arising between the Vendor and the Purchaser and to the Goods supplied thereunder.
- 2.5 Any rights, remedies, liabilities, conditions, warranties, standards or specifications which apply to or in respect of any contract arising between the Vendor and the Purchaser under or by virtue of the New Zealand Consumer Law (including the Consumer Guarantees Act 1993) or any other enactment of New Zealand affecting such contract and which cannot be excluded from such contract are deemed to apply to such contract notwithstanding any inconsistency with these terms.
- 2.6 Subject to clause 2.5, to the fullest extent permitted at law, no warranties expressed or implied by law, trade custom or otherwise and no representations, descriptions, conditions or statements are binding on the Vendor unless set out in these terms or expressly incorporated into these terms by reference by the Vendor in writing.
- 2.7 Our sales personnel are not authorized to make oral additional agreements.
- 2.8 All of Purchasers' contracts with Vendor are conditional on the availability of granted export licenses, the absence of export impediments arising out of Vendor's status as an exporter, and the absence of conflicting export requirements with which our suppliers must comply.

3. QUOTATION AND OFFER TO PURCHASE

- 3.1 The Vendor's quotation is not to be construed as an obligation to sell Goods and/or supply the Services to the Purchaser but is rather an invitation to the Purchaser to make an offer to purchase Goods and/or Services subject to these terms and the quotation. The Purchaser's Order shall constitute such an offer to purchase. The Vendor reserves the right to make alterations to its quotation at any time before its acceptance of an Order from the Purchaser, in which case the altered quotation will constitute a new invitation to the Purchaser to make an offer to purchase Goods and/or Services subject to these terms and the altered quotation.
- 3.2 Notwithstanding that a quotation has been provided by the Vendor, no contract exists between the Vendor and the Purchaser until the Vendor accepts the Purchaser's Order in writing.
- 3.3 The Vendor's quotation relates only to such Goods and/or Services as are specified therein. Notwithstanding any stipulation or implication in such quotation, the Vendor reserves the right to obtain such Goods or any part thereof from any factory or works in the Vendor's organisation, including any subsidiary of affiliate thereof.

- 3.4 Prices included in the Vendor's quotation are based upon the quantities of Goods and description of the Services referred to in the quotation. Should the Purchaser's Order constitute an offer to purchase a quantity of Goods or type of Services which is at variance with that referred to in the quotation, the Vendor reserves the right to amend the price quoted for such Goods and/or Services.
- 3.5 The quotation remains valid for a period of thirty (30) days from the date of the quotation unless an alternate period is specified in the quotation.

4. SPECIFICATIONS AND DRAWINGS

- 4.1 **Not Part of Contract**
All descriptive and shipping specifications, drawings, dimensions and weights submitted by the Vendor in relation to any quotation are approximate only and any descriptions, illustrations and data contained in any catalogues price lists and/or other advertising or promotional material are intended by the Vendor only to present a general view of Goods and/or Services described therein and none of such specifications, drawings, dimensions, weights, descriptions, illustrations or data shall form part of any contract arising between the Vendor and the Purchaser.
- 4.2 **Drawings**
After Acceptance of the Purchaser's Order, the Vendor shall at the Purchaser's request provide to the Purchaser such drawings relating to the Goods the subject of the contract arising between the Vendor and the Purchaser as are in the Vendor's opinion reasonable and necessary to provide to the Purchaser but all and any Intellectual Property Rights in the drawings shall remain vested in the Vendor.
- 4.3 **Confidential Information**
All information relating to patents, designs, other Intellectual Property, drawings, specifications, computer programs, information, samples and the like provided by the Vendor shall be regarded as confidential and shall not be copied or disclosed by the Purchaser to a third party except with the Vendor's prior written consent, and shall only be used pursuant to the contract for which they are provided.
- 4.4 **Sufficient Information to be Provided**
The Purchaser's Order shall be accompanied by sufficient information to enable the Vendor to commence work and proceed without interruption. The Purchaser shall be responsible for, and warrants, the accuracy of the information it provides.
- 4.5 **Purchaser's Approval of Drawings, etc.**
Any drawings or other information requiring the Purchaser's approval shall be approved, amended or rejected and returned by the Purchaser to the Vendor within 14 days of the date of receipt by the Purchaser of such drawings or other information or such other period as may be agreed in writing by the Vendor and the Purchaser. Any delay beyond such 14 day period or such other period agreed to shall constitute grounds for extension of the contract period in which the Vendor is to perform its obligations under clause 6.4 of these terms. The Purchaser will act reasonably and without undue delay in any relevant undertaking or any discretion it exercises as part of the approval process.
- 4.6 **Incorrect Information**
The Purchaser shall be responsible for and bear the cost of any alteration to Goods and/or Services supplied by the Vendor arising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Purchaser.
- 4.7 **Suitability for Purpose**
Unless the Vendor has specifically agreed otherwise in writing, it has no knowledge of the use to which the Purchaser proposes to put any Goods and/or Services supplied by the Vendor to the Purchaser and the Vendor makes no representation nor gives any warranty in respect of such particular use.
- 4.8 **Responsibility for licenses, approvals etc**
Unless otherwise agreed in writing it shall be the responsibility of the Purchaser to obtain and provide any licences, access, approvals, releases, permits and other documents as necessary for performance of any contract arising between the Vendor and the Purchaser.

5. PERFORMANCE

- 5.1 **Performance**
Any performance figures provided by the Vendor are based on the Vendor's experience and are such as the Vendor could expect to obtain on testing. The Vendor shall be under no liability or damages should Goods and/or Services supplied by it fail to attain such performance figures unless the Vendor has specifically guaranteed in writing the attainment of such performance figures, subject always to recognised tolerances applicable to such performance figures.
- 5.2 Where the Vendor has guaranteed performance figures in respect of Goods and/or Services supplied by it and the performance figures attained in respect of such Goods on any test performed in accordance with clauses 5.3 and 5.4 below are outside applicable tolerances, the Vendor shall be given reasonable time to rectify the performance of such Goods and the Vendor's liability shall be subject to clause 13 of these terms.
- 5.3 **Inspection and Tests**
Where inspections and tests are performed they will be undertaken in accordance with the Vendor's standard practice, including test documentation, and will be carried out at the place of manufacture or elsewhere at the Vendor's sole discretion. Such inspections and tests, together with any additional tests as may be specified in the Vendor's quotation, are the only inspections and tests included in the quoted price. Should any further inspection or tests be required by the Purchaser these will be subject to the Vendor's agreement and may result in an increase in the contract price agreed by the Vendor to the Purchaser and an extension to the time for delivery.
- 5.4 Where the carrying out of an inspection or witnessed test has been agreed to, the Vendor shall give the Purchaser seven days' notice that the Vendor is ready to carry out such inspection or witnessed test, and if the Purchaser is absent from a duly notified inspection or witnessed test then such inspection or witnessed test shall be deemed to have been undertaken in the Purchaser's presence such that the outcome of the inspection or test will be deemed to be accepted by the Purchaser.

6. TIME/DATE FOR SUPPLY

6.1 Base Date

All dates or times quoted for completion or delivery shall be calculated or estimated from date of acceptance by the Vendor of the Purchaser's Order, together with sufficient information as referred to in clause 4.4 of these terms.

6.2 Quoted Time

The Vendor will use reasonable endeavours to meet any delivery or completion date or period quoted but such date or time is a bona fide estimate only and is not to be construed as a fixed date or time unless specifically agreed to by the Vendor in writing.

6.3 Extension of Time

Any contract period shall be extended in respect of any delay relating to either instructions given by, or a lack of instructions from, the Purchaser, or any other acts or omissions of the Purchaser or those for whom it is responsible, including fulfillment of payment obligations and any delay or withdrawal of access by the Purchaser to the premises required for the purpose of this Agreement.

6.4 The Vendor shall not be liable to the Purchaser for any failure to meet any obligation under any contract arising between the Vendor and the Purchaser to the extent that such failure is caused by or arises from:

- a) Strikes, lockouts or other industrial unrest and disputes, shortages of labour or materials, transport and supply stoppages and breakdowns, delay in manufacturing by the Vendor, its associates or suppliers, riot, civil commotion, fire, flood, earthquake, drought, acts of God, loss or delay at sea or otherwise, breakdowns, pandemic or epidemic (including, without limitation, COVID-19) or war, riots or civil commotion, intervention of public authority, explosion or accident; or
- b) Any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of the Vendor.

7. PACKING

7.1 Unless stated otherwise in any quotation packing is not included in the contract price. Any packing required by the Purchaser and not specifically stated as being included in any quotation shall be to the Purchaser's account.

7.2 Unless otherwise stipulated in writing by the Vendor any packing which may be provided by the Vendor is not returnable and must be disposed of by the Purchaser. Where such stipulation is made the packing remains the property of the Vendor and must be returned to the Vendor's source of supply carriage paid by the Purchaser.

8. POINT OF DELIVERY

8.1 Delivery ex-works

Unless stated otherwise in any quotation, Goods are supplied ex-works at the place of manufacture and delivery to a carrier's vehicle, including loading, shall constitute delivery by the Vendor to the Purchaser. The carrier's vehicle shall be of a type allowing vertical or horizontal access for loading as required by the Vendor.

8.2 The Vendor will only deliver the Goods to locations within New Zealand and for use in New Zealand.

8.3 Delivery Beyond Place of Manufacture

Unless the Vendor has provided in any quotation for delivery beyond the place of manufacture, where the Purchaser requests delivery beyond such point the Vendor, at its sole discretion, may agree to act as agent for the Purchaser to effect such delivery and all costs of carriage and insurance in relation thereto will be to the Purchaser's account. In any event the Purchaser shall ensure provision of reasonable access to the point of delivery and for off-loading and/or handling without delay.

8.4 Damage or Loss in Transit

Where damage to the Goods in the course of delivery is the Vendor's responsibility, the Vendor shall at its sole discretion repair or replace free of charge Goods so damaged provided the Vendor is notified of such damage within three days of delivery.

8.5 Shortages in Delivery

Any claims for shortages in deliveries shall be notified in writing to the Vendor within ten days of receipt of such delivery.

8.6 Partial Deliveries

The Vendor reserves the right to make partial deliveries of any Goods the subject of any contracts between the Vendor and the Purchaser and to invoice such deliveries separately. Unless otherwise agreed in writing by the Vendor and the Purchaser, where such invoices relate to complete and usable Goods, payment thereof will fall due in accordance with clause 11.1 of these terms.

8.7 Storage

If after the date of notification by the Vendor to the Purchaser that Goods the subject of a contract between the Vendor and the Purchaser are ready for delivery and delivery of such Goods is delayed for any reason beyond the Vendor's reasonable control the Vendor shall be entitled, at its sole discretion, to arrange for suitable storage of such Goods at its premises or elsewhere and the Vendor shall take reasonable measures to protect the Purchaser's interest in such Goods. To the extent permitted by law, the Purchaser shall pay all reasonable costs of such storage together with all reasonable costs of insurance, demurrage, handling and other contingent charges applicable but not less than 0.5 % of the invoice amount for each week commenced, but in maximum 10 % of the invoice amount. Both parties may prove that greater, lower or no storage costs have resulted. The statutory rights to withdraw from the contract and to claim damages remain unaffected thereby.

8.8 Cost

Except where stipulated in the quotation, all freight and transport costs are at the Purchaser's cost. In the absence of instructions from the Purchaser on the choice of carrier, the Vendor will instruct on the Purchaser's behalf a carrier to complete delivery. For the avoidance of doubt, delivery shall not be by way of airfreight unless agreed to in writing by the Vendor and set out expressly in the Vendor's quotation.

9. INSURANCE, RISK AND PROPERTY

9.1 Insurance

Goods in respect of which the Vendor acts as the Purchaser's agent in accordance with clauses 8.2, 8.6 and 8.7 of these terms will, unless otherwise required in writing by the Purchaser, be insured for their contract value plus 10%. The Vendor's liability in respect of such Goods shall be limited to the net purchase price.

9.2 The Vendor will maintain public and products liability insurance for an amount of \$1 million and in the aggregate and which will note the interests of the Purchaser in respect of the liability of the Vendor arising out of the performance by the Vendor of the contract for the Purchaser, but limited always to the extent of cover and limitation of liability provided in the insurance maintained under this clause.

9.3 Insurance Cover for Goods under Repair

Risk in Goods the subject of any contract for repair, overhaul, modification or other work, between the Vendor and the Purchaser shall remain with the Purchaser. The Purchaser shall be responsible for effecting insurance which provides cover for the goods which are being repaired, including at the Vendor's premises, or at subcontractor's premises, or in transit to and from those premises.

9.4 Risk

Risk in Goods the subject of any contract between the Vendor and the Purchaser shall remain with the Vendor only until the first in time of any one of the following events:

- a) The passing of property in such Goods to the Purchaser; or
- b) The delivery of such Goods by the Vendor to the Purchaser or to a carrier at the contractual point of delivery; or
- c) Upon such Goods leaving the Vendor's premises at the request of the Purchaser; or
- d) The expiry of 14 days from the date of notification by the Vendor to the Purchaser that such Goods are ready for delivery;

And thereafter risk of damage, loss or deterioration of the Goods from any cause whatsoever shall pass to the Purchaser.

The Goods are entirely at the risk of the Purchaser from the moment the Goods leave the Vendor's premises even though property in and title to the Goods may not have passed to the Purchaser at that time.

The extra costs and risks of customary shipping shall be borne by the Purchaser. The Vendor does not bear risks of accidental loss or deterioration during the transportation outside EX-WORKS in transit.

9.5 Preservation of Property Rights

Notwithstanding that risk in any Goods the subject of a contract between the Vendor and the Purchaser may in whole or in part be with the Purchaser title and property in such Goods shall remain with the Vendor until paid for in full by the Purchaser. Prior to the passing of property in such Goods they may not be resold, pledged or, subject to clause 9.7 below, given in security by the Purchaser in any circumstances whatsoever.

9.6 Until such time as title and property in such Goods passes to the Purchaser the relationship between the Vendor and the Purchaser shall be fiduciary and the Purchaser shall hold the Goods as bailee for the Vendor, and:

- a) The Purchaser will store such Goods in his/its premises separately from his/its own Goods or those of any other person and in a manner which makes them readily identifiable as the Vendor's Goods;
- b) The Purchaser is licensed by the Vendor to, in the ordinary course of his/its business, process in such fashion as he/it may wish and/or incorporate such Goods in or with any product or products, subject to the express condition that the new product or products or any other chattel whatsoever containing any part of such Goods shall be separately stored and marked so as to be identifiable as being made from or with Goods the property of the Vendor;
- c) If Goods the property of the Vendor are mixed with goods and/or material the property of the Purchaser or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Vendor;
- d) If Goods the property of the Vendor are mixed with goods and/or material the property of a third party or are processed with or incorporated therein, the product thereof shall be deemed to be owned in common by the Vendor and that third party;
- e) The Purchaser shall be at liberty to agree to sell Goods the property of the Vendor or any product produced from or with such Goods on the express condition that such an agreement to sell is made on the basis that the Purchaser is the agent of and bailee of the Vendor in respect of such Goods and/or products and that the entire proceeds of sale and monies therefore shall be held in trust on behalf of the Vendor by the Purchaser and shall not be mingled with any other monies and shall at all times be identifiable as the Vendor's monies the Purchaser shall however not represent to any third parties that it is in any way acting for the Vendor and the Vendor will not be bound by any contracts with third parties to which the Purchaser is a party; and
- f) If the Purchaser does not receive the proceeds of any such sale he/it will, if called upon so to do by the Vendor, within seven days thereof assign and sell to the Vendor for nominal consideration all rights against the person or persons to whom such Goods and/or products were to be sold by the Purchaser.

9.7 Purchase Money Security Interest

9.8 Clause 9.5 creates a security interest in the Goods. On the request of the Vendor, the Purchaser shall promptly execute any documents, provide all necessary information and do anything else required by the Vendor to ensure that the security interest created under these terms constitutes a perfected security interest in the goods and their proceeds which will have priority over all other security interests in the goods. The Purchaser will pay to the Vendor all costs and expenses incurred by the Vendor in relation to the filing, amending and discharging of a financing statement or financing change statement in connection with these terms. If the Vendor registers the security interest created by these terms under the PPS Act, the Purchaser waives its rights in sections 121 and 131 and the Vendor and the Purchaser contract out of part 9 of the PPS Act including without limitation any rights the Purchaser may have in sections 114, 116, 120(2), 125, 126, 127, 129, 132, 133 and 134 of the PPS Act. The Purchaser must not grant any other security interest or lien over the Goods that we have a security interest in. If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. The Purchaser shall not grant any other security interest or any lien in either the Goods or in the whole.

9.9 The Purchaser waives its right under the PPS Act to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPS Act).

9.10 The Purchaser must give the Vendor prior written notice of any proposed change of name or address.

- 9.11 If the Purchaser acts in breach of contract, in particular if the Purchaser fails to pay the purchase price due, the Vendor shall be entitled to withdraw from the contract and to demand the return of the Goods on the basis of the retention of title. The demand for return also includes the declaration of withdrawal. If the Purchaser does not pay the due purchase price, the Vendor may only assert these rights if the Vendor has previously set the Purchaser a reasonable deadline for payment without success or if such setting of a deadline is dispensable under the statutory provisions.

10. PRICES AND CONTRACT PRICE ADJUSTMENT

- 10.1 Price Basis
Unless otherwise stated in writing, prices quoted by the Vendor are based on the costs of material, labour, freight, insurance, and duties and other costs and charges (Costs) ruling at the date of any quotation or such other date specifically referred to therein in respect of such matters and such prices shall be subject to adjustment in respect of any variation in such Costs or their method of assessment occurring after that date and until the conclusion of any contract between the Vendor and the Purchaser based on such quotation including, without limitation, changes in:
- New Zealand costs;
 - Overseas costs;
 - Foreign currency and exchange rates (refer to clause 10.15);
 - Customs and excise duties, levies, charges, imposts and the like; and
 - Transport costs.
- 10.2 The Vendor may vary such prices also after acceptance of the Order to take account of:
- any alteration to the manufacturer's price list or quotation on which the Vendor calculated the prices;
 - any changes in freight rates, insurance premiums, exchange rates, customs, levies, charges, imposts, rates of duty, and any other costs of supply; and
 - any alteration to the specifications of the Goods which may be required by law;
 - Any other changes in the costs to the Vendor of performing its obligations under any contract with the Purchaser by reason of the creation or amendment of any law or of any order regulation or by-law having the force of law or any applicable standard. The amount of such increase or decrease shall, as applicable be added to or deducted from the contract price;
 - Overheads and interests paid by the Vendor.
- 10.3 The Vendor will give the Purchaser reasonable notice of any increase in the prices quoted where the amount of such increase is, in the Vendor's opinion, substantial. Upon receipt of such notice, the Purchaser may terminate the contract with the Vendor without liability, provided that the Purchaser gives the Vendor 5 business days notice in writing of such termination and provided that it has first made payment to the Vendor for any Goods and/or Services supplied by the Vendor to the Purchaser prior to such termination.
- 10.4 An additional transportation surcharge of NZD 20 will be charged for each order; for orders containing linear transducers (BTL), an additional transportation surcharge of NZD 35 will be charged.
- 10.5 Tax and other excluded charges
Charges specifically excluded in any quotation shall be to the Purchaser's account at cost.
- 10.6 Unless otherwise stated in writing in any quotation sales tax or any other tax, levy or the like imposed on either the sale, manufacture, dealing with, distribution, import or use of goods or measured by the selling price of goods or otherwise howsoever levied against or added to the price of goods shall in all cases be an excluded cost that shall be added to the price for payment by the Purchaser.
- 10.7 Unless otherwise stated in writing in any quotation customs duties, levies, taxes, (carbon) costs and the like imposed in respect of the Goods (but always excluding those taxes referred to in clause 10.3 of these terms) applicable at the date of any quotation or such other date specifically referred to therein in respect of such matters will be added to the price.
- 10.8 GST
GST means any tax, levy, charge or impost implemented under the New Zealand Goods and Services Tax Act 1985 or any Act of the Parliament of New Zealand substantially in the form of, or which has a similar effect to, the New Zealand Goods and Services Tax Act 1985.
- 10.9 The price shown in these terms does not include GST.
- 10.10 If the Vendor becomes liable to pay GST in respect of the sale or supply of the subject matter of these terms, the price payable under these terms will be increased so that after payment of the GST by the Vendor, the net amount retained by the Vendor is the same as before GST applied.
- 10.11 If the Vendor becomes liable to pay GST, the Vendor will notify the Purchaser of the amount of GST to be paid and will provide the Purchaser with the appropriate invoice including a reference to the applicable amount of GST.
- 10.12 The Purchaser shall pay that invoice pursuant to the terms and conditions of these terms.
- 10.13 Costs of Complying with Regulations
If the costs to the Vendor of performing its obligations under any contract between the Vendor and the Purchaser shall be varied by reason of the creation or amendment after the date of quotation of any law or of any order regulation or by-law having the force of law or any applicable standard, the amount of such increase or decrease shall, as applicable be added to or deducted from the contract price.
- 10.14 Cost
For the purpose of Clause 10 of these terms the expression 'cost' is deemed to include overheads and interest paid by the Vendor.
- 10.15 Exchange Rate Variation
Exchange rate variation payable shall be calculated at the rate of exchange actually paid by the Vendor against the exchange rate in the quotation. If prices are expressed in different currencies and the Purchaser seeks or requires payment in any different currency, the Purchaser shall bear any foreign exchange risk arising from such payment.
- ## 11. PAYMENT
- 11.1 Payment Due
Unless otherwise expressly agreed in writing by the Vendor and the Purchaser, payment terms are cash in advance. The Purchaser is not entitled to withhold payment or make any deduction from the contract price in respect of any setoff or counter claim.

- 11.2 Without limiting clause 8.6, if Goods the subject of any contract between the Vendor and the Purchaser are in whole or in part ready for delivery and if delivery of such Goods is delayed by reason of instructions given, or lack of instructions by the Purchaser, then full payment of that part of the contract price outstanding shall be due and payable 14 days after notification by the Vendor to the Purchaser that such Goods are ready for delivery as though delivery had been completed in accordance with clause 8.1 of these terms.
- 11.3 Delay or Default in Payment
If:
- a) the Goods are not paid for in accordance with these terms, the contract or any other written agreement between the Vendor and the Purchaser; or
 - b) the Vendor receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Goods;
 - c) the Purchaser or one or more of its directors is or are convicted of a crime of dishonesty;
 - d) a form of payment by the Purchaser to the Vendor, such as a cheque, has been dishonoured for insufficient funds;
 - e) a writ for execution of judgment against the property of the Purchaser in any court proceedings by any judgment creditor against the Purchaser has been returned unsatisfied; or
 - f) any other event occurs which is likely to adversely affect the Purchaser's ability to pay for the Goods (including but not limited to the appointment of a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person [each an "insolvency representative"] to the Purchaser's undertaking, the Purchaser becomes insolvent, is wound up, enters into a composition arrangement with creditors, does any act which would render the Purchaser liable to be placed into liquidation or have a receiver appointed to the Purchaser's property or commits an act of bankruptcy),
- then the Vendor may
- g) charge interest on the overdue amount at three percent (3%) above the rate charged to the Vendor by its major banker for overdraft accommodation and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Purchaser to the Vendor shall be credited first against any interest so accrued;
 - h) suspend all deliveries or works and any contract period shall be extended by the period of the suspension; or
 - i) at any time thereafter, without notice to the Purchaser and without prejudice to any other rights which it may have against the Purchaser, terminate any contract relating to the Goods or Services.
- An election to apply any one of the above remedies shall not preclude the Vendor from subsequently electing another of them.
- 11.4 Right to enter Premises
In any of the circumstances referred to in the preceding clause occur, the Purchaser:
- authorises the Vendor by itself, its agents or representatives, at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and
 - assigns to the Vendor all the Purchaser's rights to enter onto and remain in and on such premises until all the Goods have been collected.
- 11.5 Administration, Receivership etc.
In any of the circumstances referred to in clause 11.3 (f) occur:
- a) neither the Purchaser nor its insolvency representative or any other person acting for the Purchaser and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Vendor's ownership of the Goods, without the Vendor's prior written approval;
 - b) the Purchaser, its insolvency representative or any other person acting for or on behalf of the Purchaser and/or its creditors is obliged to re-deliver the Goods to the Vendor immediately on the appointment of the insolvency representative at its or his expense;
 - c) if the Goods are returned to or collected by the Vendor, the Vendor will within 28 days, account to the Purchaser or its legal representative for all monies received for those Goods from the Purchaser, less the Vendor's reasonable administration charges, expenses incurred, and loss of profits involved; and
 - d) the insolvency representative will become personally liable to the Vendor on a full indemnity basis in respect of any dealings with or use of the Goods by the Purchaser or the insolvency representative occurring after the date of appointment of the insolvency representative and will account to the Vendor or reimburse the Vendor for all monies received as a result of such dealings or use of the Goods.
- 11.6 Purchaser as Trustee
If the Purchaser carries on business as trustee of a trust, then the Purchaser warrants that:
- a) the Purchaser enters into these terms as trustee of the trust;
 - b) the Purchaser has all requisite powers to enter into these terms;
 - c) the beneficiary of the trust approves the purchase of the Goods on these terms; and
 - d) the assets of the trust are available to the Vendor in satisfaction of any debt incurred by the Purchaser.
- 11.7 If as a result of the Purchaser's default in payment, a solicitor or debt collector is instructed by the Vendor, the Purchaser agrees to pay the solicitor or debt collector's fees and disbursements and charge to the Vendor in full. The Vendor shall be entitled at any time to assign to any other person all or any part of the debt owing to the Vendor and notwithstanding any rule of common law or equity to the contrary, or the appointment of a liquidator, receiver and/or manager over the Purchaser and the assets thereof, and the assignee thereof shall be entitled to claim full rights of set-off or counter-claim against the Purchaser as charge holders or successors in respect of the debt or part thereof so assigned.
- 11.8 Security
Any security agreed to by the Vendor will be given in the form of a bank guarantee issued by the Vendor's bankers and will contain an expiry date not exceeding two years. The Purchaser must return and release the security on expiry of the defects liability period specified in clause 12.5(b) of these terms.

12. WARRANTY

- 12.1 Where the Purchaser is in trade and is acquiring the Goods in trade, the Purchaser and the Vendor acknowledge and agree that the Goods are both supplied and acquired in trade, agree to contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 ("FTA") and agree that all warranties, conditions or other terms implied by the Consumer Guarantees Act 1993 ("CGA") are excluded from these terms to the fullest extent permitted by law. The Purchaser and the Vendor agree and acknowledge that it is fair and reasonable that the parties are bound by this clause 12. Nothing in these terms (including in this clause 12) is intended to have the effect of contracting out of the provisions of the CGA or the FTA except to the extent permitted by those Acts.
- 12.2 The Vendor hereby warrants to the Purchaser that Goods manufactured by the Vendor, or its related companies and/or Services provided by the Vendor, shall be free from defects due to faulty design, materials and workmanship (except as regards defects specifically drawn to the Purchaser's attention, before any contract is formed between the Vendor and the Purchaser or, if the Purchaser examines the Goods the subject of such contract before such contract is formed then except as regards defects which that examination ought to reveal).
- 12.3 If it is proven to the Vendor's reasonable satisfaction that Goods manufactured by the Vendor or its related companies and/or Services provided by the Vendor are not free from defects due to faulty design, materials and workmanship (except as revealed by examination as referred to in clause 12.2 of these terms) then the Vendor shall, at no cost and at its option, either:
- Repair such Goods;
 - Replace such Goods with the same or equivalent Goods at the point of delivery applicable to the contract under which such Goods were supplied to the Purchaser by the Vendor;
 - Re-perform the Services or payment of the cost of having the Services supplied again; or
 - Refund to the Purchaser the contract price of such Goods and/or Services.
- The warranty above does not extend to include the Vendor's labour costs. Any removal, reinstallation and other consequential costs will be for the Purchaser's account. The warranty cover for repaired/replaced items will expire on the same date as the warranty for the rest of the Goods and/or Services. When warranty repairs are required to be carried out at locations other than Vendor Service Centres, then the cost for labour, travel, travel time and accommodation costs incurred by the Vendor will be to the Purchaser's account.
- 12.4 This warranty does not apply in respect of defects due to or arising from:
- Incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection (unless carried out by the Vendor), acts of God, causes beyond the Vendor's control or whilst unauthorised repairs or alterations have been carried out or noncompliance with Goods' power and grounding specifications;
 - The use of goods of consumable nature; or (iii) Fair wear and tear.
- 12.5 This warranty does not apply unless (all below provisions must apply):
- The Goods have been properly handled, located, used, maintained and stored;
 - Defects occur within 24 calendar months after the Goods have been delivered to the Purchaser or, if delivery was delayed for reasons beyond the Vendor's control then within 24 calendar months of deliveries or within 24 calendar months after the Vendor first notified the Purchaser that the Vendor was ready to deliver the Goods (whichever period expires earlier);
 - The Vendor is notified in writing within seven days of the alleged defect first coming to the notice of the Purchaser;
 - If the agreed number of operations or switching cycles of a product is not reached prior to the expiration of the limitation periods described in Section 12.5 (b) above. Should the agreed number of operations or switching cycles been reached prior to the expiration of the limitation periods described in Section 12.5 (b) above, all performance and warranty claims resulting from such an agreement shall cease with immediate effect. The agreement of a certain number of operations or switching cycles is only valid if the product is used under the environmental conditions described in the appropriate technical data sheet or in the appropriate instruction manual and within the limitation period prescribed.
 - The Purchaser returns the defective Goods to the Vendor, or if necessary, at the sole discretion of the Vendor, to the works where such Goods were manufactured or assembled, free of charge; and
 - The Purchaser has fulfilled all of his/its contractual obligations.
- 12.6 The parties agree that the Purchaser shall not make a claim against the Vendor and the Vendor shall have no further liability for or in connection with the Goods and/or Services upon the expiry of two (2) years from the date of the end of the defects liability period in clause 12.5(b), and claims made after that period will be time barred absolutely.
- 12.7 The benefit of this Warranty is personal to the Purchaser and is non-assignable without the prior written consent of the Vendor.
- 12.8 Balluff New Zealand Customer Support Centre can be contacted by phone: 04 9250 1460 or email sales@balluff.co.nz.

13. LIMITATION OF LIABILITY

- 13.1 The Purchaser acknowledges and agrees that:
- the Purchaser has determined that the Goods are fit for the purpose for which the Purchaser requires them;
 - the Purchaser has not relied on the Vendor's skill and judgment in selecting the Goods; and
 - the Vendor is not responsible if the Products do not comply with any applicable safety standard(s) or similar regulation(s), and the Vendor is not liable to the Purchaser for any claim resulting from such non-compliance.
- 13.2 Notwithstanding anything else contained in these terms to the contrary, the Vendor shall not be liable (to the fullest extent permitted at law) whether by way of indemnity, or by reason of any breach of contract, or of statutory duty or any other legal principle or doctrine for:
- any loss of profits, loss of use, loss of revenue, loss of anticipated savings, any financial or economic loss (whether direct or indirect), product or production (including delayed, postponed, interrupted or deferred production and/or inability to produce, deliver or process), bargain, contract, expectation or opportunity, access to markets, goodwill and/or business reputation even if such loss is a direct loss or a loss that flows naturally from the relevant breach or for any consequential or indirect loss or damage whatsoever;
 - any cost of removal or storage of defective goods or plant or materials;
 - remote or unforeseeable loss or damage;

- d) liquidated sums including liquidated damages, penalties, losses or damages arising under any contracts or agreements other than these terms;
 - e) kind of loss or damage considered other than loss arising in usual course of things;
 - f) any similar loss or damage, whether or not in the reasonable contemplation of the Parties at the time of execution of the contract, and in each case arising from or in connection with the performance of the applicable contract, whether arising from a breach of contract or tort (including negligence) or under any statute or any other basis, in law or equity, and whether or not foreseeable by the Vendor or the Purchaser at the time of entering into the contract; or
 - g) any other amount which in aggregate with any other liability (being any past, present or future liability) to which this clause applies, that exceeds the aggregate net value of all payments of the contract price made under these terms .
- 13.3 The limitations or exclusions of liability provided in clause 13.2. shall however only apply to the extent permitted by applicable mandatory laws and shall not apply in case of gross negligence or willful misconduct. Those damages which arise from injury to life, limb or health, the assumption of a guarantee or of a procurement risk, or the violation of material contractual obligations shall be excluded as well.
- 14. INSPECTION**
Unless the Purchaser has inspected the Goods and has given written notice to the Vendor within seven (7) days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.
- 15. SAMPLES**
Any sample inspected by the Purchaser is solely for the Purchaser's convenience and does not constitute a sale by sample. All samples remain the property of the Vendor.
- 16. PATENTS AND DESIGN RIGHTS**
- 16.1 Except where such claims relate to Goods or parts thereof based on designs, drawings or instructions specified or provided by the Purchaser, if any sustainable claim is made in relation to infringement or any Patent, Registered Design, Trademark or copyright or other intellectual property right, in respect of which publication occurs prior to the date of any quotation relating to Goods and/or Services the subject of such claim, and in respect of which quotation such Goods and/or Services were supplied by the Vendor to the Purchaser, the Vendor will at its expense either replace or modify the part the subject of such infringement with a non-infringing part or procure for the Purchaser the right to use such part provided that the Vendor is given the full opportunity to conduct all negotiations in relation to such a claim AND PROVIDED THAT the Vendor shall not incur any liability for losses arising from the Purchaser's use or non-use of any infringing part.
- 16.2 The Purchaser warrants that any designs, drawings or instructions furnished or given by him/it to the Vendor shall not be such as to cause the Vendor to infringe any Patent, Registered Design, Trademark or copyright or other intellectual property right, and the Purchaser hereby indemnifies the Vendor and agrees to keep the Vendor indemnified against any costs which may directly arise against or be incurred by the Vendor by reason of any such infringement.
- 16.3 Unless expressly agreed otherwise, the Vendor is obliged to supply the Goods free of third-party Industrial Property Rights only in the country of the place of manufacture and delivery. If a third party lodges claims on the grounds of a breach of its Industrial Property Rights related to the Goods supplied by the Vendor, the Vendor will, within the period defined in clause 12.5(b) and subject to clauses 16.4 and 16.5, be liable to the Purchaser as follows:
- a) at the Vendor's discretion and expense, the Vendor will either obtain a right of use for the respective Goods, modify the Goods so that the Industrial Property Rights are not breached, or exchange the respective Goods.
 - b) if the Vendor is unable to do this under reasonable conditions, the Purchaser may terminate the contract and the Vendor's liability is limited to a refund of the purchase price for the Goods
- 16.4 The Purchaser must immediately inform the Vendor in writing of the claims asserted by the third party, must not acknowledge a breach, and leave any protective measures and settlement negotiations to the Vendor's discretion.
- 16.5 The Vendor will not be liable if:
- a) the Purchaser is solely responsible for the breach of the Industrial Property Rights; or
 - b) the breach of the Industrial Property Rights is caused by an application that was not foreseeable by the Vendor or caused by the fact that the Goods were subsequently modified by the Purchaser without authorization by the Vendor.
- 16.6 Ownership of Intellectual Property Rights (other than third party intellectual property rights) associated with the Contract Works and any documentation provided by the Vendor pursuant to these terms is vested and shall remain vested in the Vendor. The Vendor grants the Purchaser a royalty free, non-exclusive, non-transferable, perpetual (subject to compliance with the terms of the license) license to use all Intellectual Property Rights associated with the Contract Works and any documentation provided pursuant to these terms for the installation, use, support, repair, or maintenance of the Works by or on behalf of the Purchaser."
- 17. BANKRUPTCY, LIQUIDATION AND DEFAULT**
- 17.1 If the Purchaser makes any default under these terms, any contract between the Vendor and the Purchaser, or:
- a) Being a person, dies or commits an act of bankruptcy;
 - b) being a business, takes or shall have taken against it any action for the winding up of the business or the placing of the business under official management or receivership other than for purposes of reconstruction or has an execution levied against it;
- then the Vendor at its sole discretion and without prejudice to any other rights it may have under such contract or at law may give notice in writing to the Purchaser and after 14 days from the date of such notice may, unless otherwise by law, suspend or cancel such contract (including, without deferring manufacture or delivery of Goods) or require payments in cash before or on delivery of the Goods notwithstanding the terms of payment specific or may cancel any undelivered or uncompleted Goods then outstanding under such contract or may take possession of the Goods or any part thereof and for the purpose thereof enter upon any premises where such Goods are stored or reasonably thought to be stored and dispose of them in its own interest without prejudice to any claim it may have for damages for any loss resulting from such disposal and may retain any security or monies held paid by the Purchaser in relation to such contract and apply such security or monies against assessed loss or damage incurred by it in relation to such default.

18. SERVICE OF NOTICES

For the purpose of service of any document or notice in connection with any quotation or contract it shall be sufficient for either party to forward such document or notice by first class surface mail if within New Zealand or first class air mail beyond New Zealand, with appropriate postage prepaid to the last known address of the other party and shall be deemed to have been received by the other party on the second business day following the date of posting. Everyday communications may be sent by electronic mail but those communications will not be construed to be notices for the purposes of this clause.

19. PRIVACY

- 19.1 The Purchaser authorises the Vendor to make credit reference and other enquiries in respect of the Purchaser and to collect, store and use personal information in relation to the Purchaser or, if the Purchaser is a company, its directors and officers, from any person as may be required for the purposes of considering any credit application from the Purchaser (including for the purposes of assessing the Purchaser's financial standing and creditworthiness) or any other purpose related and incidental to the business relationship between the Purchaser and the Vendor. The Purchaser authorises the Vendor to disclose personal information about the Vendor to any credit rating/reporting agencies and to any other person as may be necessary or desirable to enable the Vendor to enforce or attempt to enforce its rights under these terms.
- 19.2 The Vendor may also disclose the Purchaser's personal information to its affiliates, business partners, and other third parties, in which case the Purchaser's personal information may be transferred to countries outside New Zealand, which do not have comparable safeguards as the New Zealand Privacy Act 2020.
If this is the case, the Vendor ensures measures are in place to protect your personal information. This is possible through binding company rules, standard contractual terms on the protection of personal data, certificates, or recognized codes of conduct. The Purchaser consents to such disclosure. Please contact the Vendor's Data Protection Officer if you would like more information on this topic.
Please note that particularly in the case of transmission to the USA there is a risk that the Purchaser's data may be processed by US authorities for control and monitoring purposes and the Purchaser may not be entitled to any legal remedies.
- 19.3 The Vendor provides additional information within the framework of our [privacy statement](#).

20. CODE OF CONDUCT/BUSINESS ETHICS

- 20.1 The Purchaser hereby warrants that he will not, directly or indirectly, and it has no knowledge that other persons connected with his business will, directly or indirectly, make any payment, gift or other commitment to any person including without limitation directors and employees of the Vendor or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member States and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), policies or standards of conduct, for the purposes of obtaining or facilitating the Purchaser's activities under these terms.
- 20.2 Nothing in these terms shall render the Vendor liable to reimburse the Purchaser for any such consideration given or promised.
- 20.3 The Purchaser herewith acknowledges and confirms that he has received a copy of the Vendor's Code of Conduct or has been provided information on how to access the Code of Conduct online. Purchaser hereby warrants to fully comply with such Code of Conduct.
- 20.4 The Purchaser shall, at all times, comply with all relevant laws, regulations, ordinances and rules having the force of law.
- 20.5 The Purchaser herewith takes note that the Vendor has established the following reporting channels where the Purchaser may report suspected violations of applicable laws, policies or standards of conduct:
- Email: admin@balluff.com.au Phone: 03 9780 9200
 - Mail: Balluff Pty Ltd Legal & Compliance Department, 25/18 Malvern Street, Bayswater, VIC, 3153

21. DISPUTE RESOLUTION

- 21.1 If there is a dispute between the parties arising out of, or in connection with, this Agreement, neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:
- a) the party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute (Dispute Notice) which:
 1. States that it is a Dispute Notice under this clause;
 2. Identifies the dispute; and
 3. States the alleged relevant facts that are relied on;
 - b) Within 5 Business Days of a Dispute Notice being received by a party, a senior representative (such as the CEO) of each party must meet and will endeavour, in good faith, to:
 1. Resolve the whole of the dispute or as much of the dispute as possible; and
 2. To the extent the dispute is not wholly resolved, decide what process will be used to resolve the dispute or the remaining matters that are not agreed.
- 21.2 Any agreement reached at a meeting pursuant to this clause 21 must be in writing and signed by both parties.
- 21.3 If a dispute has not been resolved within 30 Business Days after the relevant Notice of Dispute was given, then either party may (subject to any agreement to the contrary) issue proceedings to have the dispute determined, whether or not any negotiation process has commenced or concluded.
- 21.4 A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.
- 21.5 Pending resolution of the dispute, these terms will remain in full effect without prejudicing the parties' respective rights and remedies.

22. GENERAL

22.1 Severance

If any provision of these terms is declared by an judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority, that provision will be severed from these terms and the remaining provisions of these terms will remain in full force and effect unless the Vendor decides that the effect of such severance is to defeat the original intention of the parties in which event the Vendor will, to the extent permitted by law, be entitled to terminate these terms by thirty (30) days' notice to the Purchaser.

22.2 Whole Agreement

Without limiting clause 4.1 and to the extent permitted by law, each party acknowledges that these terms contains the whole agreement between the parties in relation to the subject matter of their dealings and it has not relied upon any oral or written representation made to it by the other party, or its employees or Distributors, and has made its own independent investigations into all matters relevant to the subject matter of their dealings.

22.3 Supersedes prior Agreement

These terms supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the commencement date but without prejudice to any rights which have already accrued to either of the parties.

22.4 Change of Address

Each of the parties will give notice to the other of the change or acquisition of any postal or email address or telephone, fax or similar number at the earliest possible opportunity but in any event within forty-eight (48) hours of such change or acquisition.

22.5 Interpretation

a) Headings contained in these terms are for reference purposes only and will not be deemed to be any indication of the meaning of the clauses and sub clauses to which they relate.
b) In this Agreement, the singular includes the plural and vice versa, and each gender includes every other gender.

22.6 Warranties by the Parties

a) Each of the parties warrants that it has the power to enter into these terms and has obtained all necessary resolutions and approvals to do so.
b) The Purchaser warrants that when entering into these terms, it is not acting as the agent of any other person, Vendor or other organization; and
2. The Goods will not be used by the Purchaser for personal, domestic or household purposes.

22.7 No Partnership

The parties are not partners or joint venture.

22.8 The Vendor's Right to Assign

These terms and all rights under them may be assigned or transferred by the Vendor. The Purchaser may not assign or otherwise transfer its rights without the prior written consent of the Vendor.

22.9 Proper Law and Jurisdiction

These terms and conditions are governed by and construed with reference to the laws for the time being in force in New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand, and of any courts that have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

22.10 Rights Cumulative

All rights granted to the Vendor are cumulative and no exercise by either of the parties of any right under these terms will restrict or prejudice the exercise of any other right granted by these terms or otherwise available to the Vendor.

22.11 Waiver

The failure by the Vendor to enforce at any time or for any period any one or more of the terms or conditions of these terms is not a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these terms.

22.12 Costs

Each of the parties will pay the costs and expenses incurred by it in connection with this Agreement.

ADDITIONAL CLAUSES IF THE VENDOR IS RESPONSIBLE FOR ERECTION

23. ACCESS TO AND POSSESSION OF THE SITE

The Purchaser will provide timely and suitable access to and possession of the Site for such periods as is reasonably required to perform the Contract Works, proper foundations to receive the Goods as and when delivered, adequate craneage, lifting tackle and scaffolding and suitable protection for the plant from time of delivery until the time of Taking Over.

24. SITE FACILITIES

The Purchaser will be responsible for providing and maintaining proper fencing, lighting, guarding and watching of all the Contract Works comprised in the Contract Works until Taken Over and the proper provision during a like period of temporary roadways, footways, guards and fences as far as they may be necessary by reason of the Contract Works for the accommodation and protection of the owners and occupiers of adjacent property, public and others. The Purchaser will provide without cost to the Vendor such supplies of electricity, water and gas as may be necessary for the purposes of the Contract Works on Site.

25. INSURANCE OF PLANT DURING ERECTION

Unless the Vendor otherwise agrees, the Vendor will insure the Contract Works and keep each part thereof insured for its full value against damage or destruction by fire, explosion, lightning, earthquake, theft, storm, tempest, impact and aircraft damage from the date of dispatch in accordance with the contract or the date on which it becomes the Purchaser's property, whichever is the earlier until it is Taken Over or deemed Taken Over by the Purchaser in accordance with Clause 27 and shall from time to time, when so required by the Purchaser, produce proof of insurance cover. All moneys received under any such policy shall be applied in or towards (in order of precedence):

- a) The replacement or repair of the Plant lost, damaged or destroyed;
- b) Reimbursement to the Vendor of its costs, liabilities, expenses and accounts in relation to such replacement or repair work; and
- c) The remainder (if any) shall be paid to the Vendor, but this provision shall not affect liabilities or obligations under these terms.

26. TESTS ON SITE

Where the contract requires the Vendor to carry out tests on Site, the Purchaser will provide when requested, free of charge, such labour, materials, electricity, gas, fuel, water, stores, apparatus, instruments or other items as may be required from time to time and as may be reasonably demanded to carry out such tests of the plant or workmanship in accordance with this Agreement. Site tests shall be carried out within one (1) month after completion of installation. The Vendor will give the Purchaser twenty four (24)-hour notice of the date on which tests will be carried out. If the Purchaser fails to attend on that date, unless otherwise arranged, the Vendor will proceed with the tests which shall be deemed to have taken place in the Purchaser's presence such that the outcome of the test will be deemed to be accepted by the Purchaser. Where the results of such tests do not fall within any guarantees specified, the Vendor reserves the right to repeat the tests within fourteen (14) days after the date when the plant is ready for retest.

27. TIME OF TAKING OVER

The Contract Works shall be deemed to have been taken over by Purchaser when installation has been completed or on completion of tests on site under clause 26 when these are included or one calendar month after it shall have been put into commercial use (whichever may be the earlier). Provided that in any case the Contract Works shall be deemed to have been taken over at the expiration of two calendar months after Vendor gives the Purchaser written notice that installation is complete. The time of taking over shall not be delayed on account of additions, minor omissions, or defects, which do not materially affect the commercial use of the Contract Works.

28. EXTRA COSTS

Any agreement by the Vendor to undertake Contract Works is based on the assumption that all civil work or other preparatory work for which the Purchaser is responsible has been completed and that the installation can be carried out with continuity during normal working hours. Should the Vendor incur extra costs or other expenses including reasonable overheads because of interruptions, delays, overtime, unusual hours, mistakes, or work for which the Vendor is not responsible under this Agreement, such extra cost, expense or reasonable overhead will be added to the price to be paid to the Vendor by the Purchaser, it being agreed, however, that overtime or unusual hours shall not be worked except with the prior arrangement of Purchaser's representative. Cost will have the same meaning as set out in clause 10.14.

29. TIME OF COMPLETION

For contracts including installation, the delivery date shall include the addition of the period of time set out in the contract for installation or any agreed extension thereof.

30. APPROVALS BY AUTHORITIES

The Purchaser shall obtain all such permits, consents or approvals as required by law for on in connection with the execution of the Contract Works and pay all fees therefore.

SUPPLEMENTARY SOFTWARE CONDITIONS

31. PREVALENCE

- 31.1 For the use of separately purchased software („Software as a Product“), the Vendor's:
- a) Terms and Conditions for the licensing of standard software for a fee;
 - b) Terms and Conditions for the free licensing of standard software or
 - c) Terms and Conditions for the adaption of standard software (customizing) in return for a fee,
- will apply and if there is any inconsistency between them then the above listed Terms and Conditions will prevail over the Terms.
- 31.2 Insofar as software is included in the scope of delivery of Goods and this is made available for use, whether for payment or free of charge, the following provisions will apply in addition, and if there is any inconsistency with regard to software between them and the Terms then the following provisions will take precedence.

32. RIGHTS OF USE

- 32.1 The Vendor grants the Purchaser the non-exclusive right to use the software for its intended purpose. The scope of intended use can be found in the respective software datasheet or the operating instructions for the software. The right of use is limited to the agreed period, in the absence of such an agreement the right of use is for an indefinite period.
- 32.2 The Purchaser may only use the software with the hardware stated in the datasheet or the operating instructions, in the absence of such reference only with the Goods delivered together with the software. The use of the software with another device requires the Vendor's prior written consent; in the case of culpable breach of this obligation, the Vendor is entitled to demand an appropriate additional remuneration. Further claims remain unaffected thereby.
- 32.3 If several devices are mentioned in the datasheet or operating instructions, the Purchaser may only use the software on one of these devices at the same time (single licence), unless a multiple licence has been granted. If there are several workstations for one device where the software can be used independently, then the single licence only covers one workstation.
- 32.4 The licensing of the software is effected solely in machine-readable format (object code).
- 32.5 The Purchaser may make a single copy of the software which can be used for backup purposes only (backup copy). Apart from that, the Purchaser may only copy the software if a multiple licence has been granted.
- 32.6 The Purchaser is not entitled to change, reverse engineer, or translate the software, or remove parts thereof. The Purchaser may not remove alphanumeric and other identifications from the data carriers. They are to be transferred unmodified to every backup copy.
- 32.7 If there is good cause, the Vendor grants the Purchaser the revocable right to transfer the right of use to the software to third parties. A transfer to a third party may only be effected together with the Goods that the Purchaser purchased in connection with the software. In the case of a transfer of the right of use to third parties, the Purchaser must ensure that no further rights of use to the software are granted to the third party other than the Purchaser is entitled to according to these supplementary software conditions and those in the respective datasheet or the operating instructions, and that the third party will be obliged to comply with at least the same obligations as are imposed herein with regard to the software. In the case of a transfer, the Purchaser may not retain any copies of the software.
- 32.8 The Purchaser is not entitled to grant sublicences.
- 32.9 If the Purchaser transfers the software to a third party, then the Purchaser is responsible for compliance with any export requirements and must indemnify the Vendor against any and all failures to do so.
- 32.10 Provided that the Vendor grants a licence for software to the Purchaser, for which the Vendor only have a derived right of use (third-party software), the terms of use agreed between the Vendor and the licensor will apply in addition to the provisions of this clause and also take precedence. If and to the extent that the Vendor licences the Purchaser open-source software, the terms of use governing the open-source software will apply in addition to the provisions of this clause and also take precedence. The Vendor may refer to the existence and terms of use of licensed third-party and open-source software in the datasheet or the operating instructions, as well as give the Purchaser access to the terms of use upon request. In the case of a breach of these terms of use, as well as ourselves, the Vendor's licensor is also entitled to assert any and all claims and rights in their own name.
- 32.11 For using the software on several devices or simultaneously at several workstations, the Purchaser requires a right of use to be agreed separately. The same will apply to the use of the software in networks, even if the software is not copied. In those multiple licence cases, the following provisions will apply in addition to the other provisions in this clause and also take precedence:
- a) A prerequisite for a multiple licence is express written confirmation from the Vendor about the number of permissible copies which the Purchaser may create of the software, and about the number of devices or workstations on which the software may be used. For multiple licences clause 32.7 applies, however, on condition that the multiple licences may only be transferred by the Purchaser to third parties if they are transferred together and with all devices on which the software may be used.
 - b) The Purchaser must observe the instructions on copying provided by the Vendor together with the multiple licence. The Purchaser must keep logs of the locations of all copies and present these to the Vendor on request.

33. TRANSFER OF RISK

When software is licensed using electronic communication media, for example via the Internet, the danger of accidental loss and accidental deterioration of the software will pass to the Purchaser at the time of download.

34. OBLIGATIONS TO COOPERATE AND LIABILITY

- 34.1 The Purchaser must take all necessary and reasonable measures to prevent or restrict damage by the software. In particular, the Purchaser must ensure the regular backup of programs and data.
- 34.2 If the Purchaser breaches this obligation, the Vendor will not be liable for the consequences, particularly not for the replacement of lost or damaged data or programs.

35. MATERIAL DEFECTS

- 35.1 The parties agree that software generally cannot be created without errors; this also applies to the software covered by these terms and conditions.
- 35.2 Material defect claims related to the software become time-barred within 12 months of the transfer of risk.
- 35.3 Software is considered to have a material defect only if the Purchaser can prove that there are reproducible deviations from the specification in the datasheet or the operating instructions. A material defect does not exist if it does not appear in the version of the software last transferred to the Purchaser and its use is deemed reasonable for the Purchaser.
- 35.4 Material defect claims do not exist:
- a) for damage arising as a result of incorrect or negligent use of the software;
 - b) for damage arising from special external factors that are not preconditions in accordance with the contract;
 - c) for modifications made by the Purchaser or third parties and the consequences;
 - d) for software expanded by the Purchaser or a third party beyond an interface envisaged by the Vendor for this purpose; or
 - e) in a situation where the software is not compatible with the data processing environment used by the Purchaser.
- 35.5 The claim for the Vendor to remedy a material defect claim is fulfilled as follows in the case of software:
- a) The Vendor provides the Purchaser with a new edition (Update) or
 - b) a new version (Upgrade) of the software,
 - c) provided the Vendor has such or it can be procured by the Vendor at a reasonable cost.

36. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHTS – DEFECTS OF TITLE

- 36.1 If a third party lodges claims on the grounds of a violation of intellectual property in relation to the software, the Vendor shall be liable according to Clause 16. within the period defined in Clause 35.2.

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