

# CESPIRA EQUIPMENT AND MACHINERY TERMS AND CONDITIONS

## 1. DEFINITIONS

Unless otherwise defined, when used in the Contract the terms listed below have the following meanings.

**“Affiliate”** means, with respect to any Person, (i) any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person; a Person shall be deemed to “control” another Person if such Person owns such Person, directly, or indirectly, with more than 50 % of the share capital and/or controls, directly or indirectly, more than 50 % of the votes in such Person; and the term “controlled” shall have a similar meaning; and (ii) any and all joint ventures as agreed from time to time between the Parties;

**“Business Day”** means any day other than a Saturday or a Sunday or a day which is a statutory holiday in the jurisdiction of the Buyer;

**“Buyer”** means the Cespira entity identified as the Buyer in the Purchase Order;

**“Buyer’s Specifications”** means the specifications provided by Buyer to Seller relating to (i) the manufacturing process, relevant timing and performances of the Equipment and/or Machinery, and (ii) the finished goods to be manufactured through the use of the Equipment and/or Machinery, including, without limitation, requirements, parameters, technical features and safety requirements;

**“Contract”** means the entire agreement between the Parties with respect to the supply of the Equipment and associated services, if any, as constituted by the documents referenced in Section 2(b) of these General Terms and Conditions;

**“Delivery”** means the arrival of the Equipment and/or Machinery at the delivery point specified in the Purchase Order, and completion of any associated services, if applicable, and the acceptance by Buyer in full (without identifying any defects, deficiencies or rejections) of the applicable Delivery; “Deliver” or “Delivered” shall have the same meaning;

**“DDP”** means “Delivery Duty Paid” as defined under Incoterms 2020 published by the International Chamber of Commerce;

**“Equipment and/or Machinery”** means the equipment and/or machinery or tooling to be purchased by Buyer as described in the Contract, and any associated services, if applicable;

**“Governmental Authority”** means any government, administration or regulatory authority, agency, board, body, commission, court or tribunal thereof, having, or purporting to have, jurisdiction in relation to the Contract or any Equipment and/or Machinery or associated services;

“Intellectual Property Rights” means any right or protection existing from time to time in a specific jurisdiction, whether registered or not, under any patent law or other invention or discovery law, copyright law, performance or moral rights law, trade-secret law, confidential information law (including breach of confidence), trade-mark law, trade-name law, passing off, unfair competition law or other similar laws and includes legislation by competent Governmental Authorities and judicial decisions under common law or equity, and for greater certainty includes the right to file any applications, and the right to claim for the same the priority rights derived from any applications filed under any treaty, convention, or any domestic laws of a country in which a prior application is filed;

“Losses” means any actions, injury, claims, liabilities, loss, damages, demands, penalties, fines, expenses (including actual legal expenses), costs, obligations and causes of action of every kind and nature whatsoever;

“Order Date” means the date of the Purchase Order;

“Parties” means Buyer and Seller;

“Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization and a Governmental Authority;

“Purchase Order” means a written Purchase Order delivered by Buyer to Seller for the purpose of purchasing Equipment and/or Machinery and associated services;

“Seller” means the Person identified as the Seller in the Purchase Order;

“Taxes” means all corporate, capital, value added, excise, products, sales, use, services, personal, employment and income taxes, government pension, social security, employment insurance contributions, duties (customs or otherwise) and other taxes, withholdings, penalties, interest and additions thereto; and

“Value-Added Taxes” means any value added, products, services or sales taxes or other Taxes which are assessed to Buyer and required by law to be collected by Seller on a supply of Equipment and/or Machinery, and associated services where applicable, , and which in the normal course of Seller’s business are not included and are not required by law to be included in the price for the Equipment and/or Machinery and associated services where applicable and, for greater certainty, includes any Taxes collected by a Governmental Authority.

## **2. NATURE OF AGREEMENT**

(a) The Contract constitutes the entire agreement between the Parties with respect to the subject matter thereof and supersedes any previous agreement, understanding or communications between the Parties related thereto, excepting thereout any agreements executed between Buyer and Seller specifically dealing with restrictions on confidentiality and disclosure and use of confidential information and in which case those agreements shall continue in full force and effect and shall be interpreted as being complementary to the Contract. No representation, inducement, promise, or agreement not specifically set out in the Contract shall be of any force or effect.

- (i) The Contract consists of the following documents:
- (ii) The Purchase Order;
- (iii) Any document which is attached to, or incorporated by reference in, the Purchase Order, including, without limitation, Buyer's Specifications; and
- (iv) These General Terms and Conditions.

(b) If there is any conflict or inconsistency between the documents constituting the Contract, then unless otherwise expressly provided, the documents will rank in the order of precedence in accordance with the order in which they are listed in Section 2(b), provided, however, that, as a general principle of interpretation, any subsequent agreement and understanding shall prevail over any precedent agreement and understanding;

(c) The Contract shall be interpreted as a whole. The documents comprising the Contract are complementary and what is called for in any one shall be binding as if called for by all of them.

(d) The Contract shall not include any terms or conditions that are referred to, submitted by or otherwise used by Seller (including as part of the submission of any proposal, quotation, invoice or bill of lading) and such terms and conditions are not expressly approved by Buyer. Notwithstanding the foregoing, in the event that Buyer issues a Purchase Order to Seller in response to a proposal or quotation provided by Seller, any terms and conditions contained in Seller's documentation that describe the specifications of the Equipment and/or Machinery and any associated services shall form a part of the Contract. In the event of any conflict between such descriptions of the Equipment and/or Machinery and any associated services in Seller's proposal or quotation and any other documents forming the Contract, the other documents shall prevail.

(e) Buyer shall not be liable for any claims or liabilities suffered or incurred by Seller as a result of Seller's reliance in any way upon any information given to it by Buyer, unless contained in the Contract.

(f) Unless otherwise provided, the Contract does not create an exclusive relationship between the Parties in respect of the Equipment and/or Machinery or associated services or any aspect of thereof.

### **3. ACCEPTANCE**

A Contract is not binding until accepted by Seller. The acceptance date of a Contract or a Purchase Order will be the earlier of: (i) the date Seller confirms acceptance in writing; (ii) the date Seller Delivers the ordered Equipment and/or Machinery, even in the event of partial delivery, provided that in such event the whole order will be deemed as accepted; (iii) five (5) Business Days after the Order Date unless Seller first rejects the

Purchase Order in writing. Acceptance of the Purchase Order confirms Seller's agreement to the terms and conditions of the Contract.

#### **4. SUPPLY OF EQUIPMENT, MACHINERY, SERVICES AND REPLACEMENT PARTS**

(a) Seller shall furnish all skills, labour, supervision, equipment, materials, supplies or facilities required to supply the Equipment and/or Machinery and associated services in accordance with the Contract, as well as obtain and maintain all permits, licenses and/or regulatory requirements which may be required to authorize it to deliver the Equipment and/or Machinery and associated services or otherwise satisfy its obligations pursuant to the Contract.

(b) In performing its obligations under the Contract, Seller shall comply with our Code of Conduct, a copy of which can be accessed through our web site.

And, to the extent applicable, with all access, safety and other policies in effect at the site or sites where associated services, if any, are to be provided.

(c) For a period of three (3) years following the successful completion of acceptance testing of the Equipment and/or Machinery, Seller will sell to Buyer the necessary replacement or spare parts (or subcomponents thereof) required in order to maintain, service and operate the Equipment and/or Machinery at Seller's then current price(s). For the following seven (7) years period, Seller will continue to sell goods (or subcomponents thereof) to Buyer to fulfil Buyer's service and replacement requirements at price(s) that are reasonably agreed to by the parties but, in no event, higher than the price offered by Seller to third parties for similar goods (or subcomponents thereof). If requested by Buyer, Seller will also make service literature and other materials available at no additional charge to support Buyer's service activities.

#### **5. INSTALLATION AND TRAINING**

(a) Unless otherwise agreed in writing by Buyer, Seller agrees that without further charge it shall be in charge of the installation of the Equipment and/or Machinery sold under the Contract and Buyer shall cooperate in good faith with Seller in connection with such installation. Buyer and Seller shall agree in writing on the schedule for such installation and the role of each party in the installation process.

(b) If training is required for the Equipment and/or Machinery to be properly used then Seller shall provide such training for a reasonable number of Buyer's employees. Unless agreed otherwise in writing by Buyer, all costs associated with training, including but not limited to travel, lodging, meals, manuals, schematics and instructors' time shall be totally borne by Seller.

#### **6. PRICE**

The Seller agrees that the prices stipulated in the Contract are binding and cannot be changed without written agreement between the Seller and the Buyer. Increases in the

cost of raw materials, freight, exchange, transport, labour, taxes, duties and any variations will not be taken into consideration.

## **7. EXTRA CHARGES**

No extra charges of any kind, including charges for packing or cartage, will be allowed unless specifically agreed to by Buyer in advance.

## **8. DELIVERY, TITLE AND RISK OF LOSS, LIQUIDATED DAMAGES**

(a) Unless otherwise specifically provided in the Contract, all shipments of Equipment and/or Machinery shall be DDP at Buyer's designated facility, and transfer of title to, and risk of loss in respect of, Equipment and/or Machinery shall be passed to Buyer upon Delivery. If either Party causes loss or damage to the Equipment and/or Machinery during delivery or receipt, the Party causing the loss or damage shall pay for such loss or damage to the Equipment and/or Machinery regardless of whether or not title to or risk of loss in respect thereof resides with such Party. With respect to Delivery, the Seller understands and agrees:

(1) The terms for Delivery contained within the Contract are essential and time is of the essence. In the event of delay, even for only part of the Purchase Order, the Buyer reserves the right to cancel the Purchase Order and terminate the Contract, as applicable, in whole or in part, subject in any case to Buyer's right to claim compensation for any damages which may suffer;

(2) Buyer further reserves the right to acquire the Equipment and/or Machinery and associated services, if any, which were ordered and not delivered on time from other suppliers. In this case, any differences in the price shall be borne by the Seller, notwithstanding and without prejudice, in any case, to the right of the Buyer to claim further compensation for the damage suffered.

(b) Given that actual damages may be difficult to calculate in the event that Seller fails to deliver the Equipment or complete services on the date required under the Contract, Seller agrees to pay Buyer liquidated damages equal to two-tenths of a percent (0.2%) of the price of the Equipment and/or Machinery under the Contract (but not more than ten percent (10%) in total) for each Business Day that Delivery or completion of services is late, provided that Buyer reserves the right, at its option, to terminate the Contract and seek any additional actual damages (*maggior danno*) if Delivery or completion of services has not occurred within ten (10) Business Days of the required date.

(c) Seller bears the risk of loss of all Equipment and/or Machinery delivered in advance of the Delivery date specified in Buyer's Delivery schedules. If the requirements of Buyer's customers or market, economic or other conditions require changes in Delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation.

## 9. PACKING AND SHIPMENT

(a) Seller will: (i) properly pack and ship the Equipment and/or Machinery in accordance with any applicable laws or regulations and good commercial practice, and, if so provided by Buyer, according to Buyer's instructions, and; (ii) route shipments as Buyer instructs; (iii) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in this Contract; (iv) provide packing slips with each shipment that identify Buyer's contract and release number and the date of the shipment; and (vi) promptly forward the original bill of lading or other shipping receipt with respect to each shipment as Buyer instructs. Seller will include on bills of lading or other shipping receipts the correct classification identification of the Equipment and/or Machinery shipped as Buyer or the carrier requires.

(b) An itemized packaging sheet, which will include the date, identification code, description, quantity, and/or Purchase Order number and any other information required pursuant to the Contract, must accompany each shipment. No partial or complete Delivery shall be made hereunder prior to the date or dates specified in the Contract unless Buyer has given prior written consent.

(c) If Seller fails to have Equipment and/or Machinery ready for shipment in time to meet Buyer's Delivery schedules using the method of transportation originally specified by Buyer and, as a result, Buyer requires Seller to ship the Equipment and/or Machinery using a premium (more expeditious) method of transportation, Seller will ship the Equipment and/or Machinery as expeditiously as possible. Seller will pay, and be responsible for, the entire cost of such premium shipment, unless Buyer's actions caused Seller to fail to meet Buyer's Delivery schedules, in which case Buyer will pay any costs for premium shipment.

## 10. IMPORTATION, EXPORTATION, CUSTOMS AND DUTIES

(a) For the purposes of any export out of or import into the jurisdiction of Buyer prior to Delivery, Seller shall be owner of the Equipment and/or Machinery, and the exporter and importer of record, as applicable. As such, Seller assumes full responsibility for the contents of any and all declarations, filings or other representations made to any Governmental Authority of any country in relation to the shipment of Equipment and/or Machinery.

(b) To the extent that Buyer is required to make any declaration, filing or other representation to any Governmental Authority of any country for the purpose of enabling the shipment of any Equipment and/or Machinery pursuant to the Contract, Buyer shall do so only at Seller's request and pursuant to the instructions provided by Seller, and any such declaration, filing or representation made by Buyer shall be deemed to have been done at the request and instruction of Seller. Seller shall be responsible for providing any and all such information to Buyer as may be required to ensure that Equipment and/or Machinery can be shipped to the applicable destinations.

(c) Unless explicitly indicated in the Contract, Seller shall be responsible to account for and pay any tariffs and other duties and fees relating to the exportation of the Equipment and/or Machinery out of any country, province or state.

(d) Seller shall advise Buyer of the country of origin and manufacture of all components included or to be included in the Equipment and/or Machinery, including all information related to conflicts minerals and raw materials used to manufacture the Equipment and/or Machinery, all information requested by and any other information required by any Governmental Authority and, in respect of such Equipment and/or Machinery, shall advise Buyer which Equipment and/or Machinery may be exported or imported on a duty-free basis as a result of valid certificates of origin or permissible proofs of origin, and shall make any customs filing and/or to otherwise cooperate with Buyer in the supply of documentation required by Buyer to qualify for reduced customs and duty rates.

(e) Seller shall diligently pursue any duty drawback, refund of duties, duty deferral or remissions, to which Buyer or Seller may be entitled, and, to the extent that any rebates or benefits received in connection therewith relate to shipping or customs and duty costs paid by Buyer hereunder, whether directly or indirectly, Seller shall provide Buyer with a credit for any recovered amounts.

## 11. INVOICING AND PAYMENT

(a) Seller will: (i) accept payment based upon issuance and delivery of the relevant invoice; and (ii) accept payment by electronic funds transfer. Payment terms are established by the Contract and are measured from the Delivery date or, if Seller is responsible for any installation or testing services or any other service specified in Contract, the date of the successful completion of acceptance testing of the Equipment and/or Machinery, provided, however, that Buyer may, in all cases, withhold a percentage, as may be agreed among the Parties, until the Equipment and/or Machinery have successfully completed acceptance testing at Buyer's facility. Unless otherwise agreed in writing by Buyer, Seller will initiate acceptance testing within two (2) weeks after delivery of the Equipment and/or Machinery to Buyer's facility or designated alternate delivery location as stipulated in the Contract. Buyer may also withhold payment for any Equipment and/or Machinery until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances and claims on such Equipment and/or Machinery.

(b) Each invoice issued pursuant to the Contract shall set forth the contract number or Purchase Order number under which it is issued. Unless otherwise stated in the Contract, invoices shall be due ninety (90) days, end of the month, following receipt thereof by Buyer. Unless otherwise provided in the Contract, payment made by Buyer shall be made in the currency of the jurisdiction where the Seller is located via electronic funds transfer to an account provided by Seller. If the payment due date falls on a day that is not a Business Day, the invoice will be payable on the next Business Day.

(c) Seller shall separately state or re-phrase invoice items in order to reduce



transaction taxes if requested by Buyer and as permitted by applicable laws. Seller must not invoice Buyer for transaction taxes, and such amounts should not be included in the invoiced amount, to the extent Buyer advises Seller in writing (by exemption certificate or otherwise) that it will self-assess and remit those taxes.

(d) Buyer shall have the right to withhold disputed amounts, without incurring interest or penalty thereon. Buyer shall have the right to set off from any payment due to Seller, any other amount owed by Seller to Buyer, whether under the Contract or otherwise.

(e) No certificate given, payment made or inspection, approval or use of the Equipment and/or Machinery and associated services, if applicable, or any part thereof by Buyer will:

- (i) prejudice the right of Buyer to dispute whether the paid amount is the amount properly due and payable;
- (ii) be evidence of the value of the Equipment and/or Machinery or associated services, if applicable;
- (iii) be an admission of liability on the part of Buyer;
- (iv) be construed as evidence of satisfactory performance of the Contract, in whole or in part; or
- (v) be construed as acceptance of defective Equipment and/or Machinery associated services or as relieving Seller from any of its obligations or liabilities under the Contract.

## 12. QUALITY AND INSPECTION

(a) Under no circumstances will Buyer be deemed to have accepted the Equipment and/or Machinery, and Buyer will continue to have the right to reject the Equipment and/or Machinery, until such time as Buyer has notified Seller in writing that the Equipment and/or Machinery have successfully completed the final acceptance test to be run at Buyer's facility or designated alternate delivery location as stipulated in the Contract. For purposes of this Contract, acceptance shall be defined as receipt by Seller of written acknowledgement from Buyer's authorized representative of compliance of the Equipment and/or Machinery with Buyer's Specifications. If requested by Buyer, Seller shall provide a pre-acceptance run-off to Buyer at Seller's facility or designated alternate delivery location as stipulated in the Contract, at no cost to Buyer.

Seller will permit Buyer and its representatives and consultants to enter Seller's facilities at reasonable times to inspect the Equipment and/or Machinery (or portions thereof) and other items and processes related to Seller's performance of this Contract. No such inspection by Buyer will constitute acceptance by Buyer.

(b) If Buyer rejects any Equipment and/or Machinery as non-conforming, Buyer may, at its option: (a) require Seller to replace the non-conforming Equipment and/or Machinery; and/or (b) exercise any other applicable rights or remedies. Seller will bear all risk of loss



with respect to all non-conforming Equipment and/or Machinery and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any non-conforming Equipment and/or Machinery. Buyer's payment for any non-conforming Equipment and/or Machinery will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming Equipment and/or Machinery.

### **13. SPECIFICATION, DESIGN AND SCOPE CHANGES**

Buyer may at any time request Seller to implement changes to the Buyer's Specifications or to the scope of any services or work covered by the Contract. Seller and Buyer will agree upon any adjustment in price or Delivery schedules resulting from such changes, which agreement will not be unreasonably withheld or delayed. In order to assist in the determination of any equitable adjustment in price or Delivery schedules, Seller will, as requested, provide information to Buyer, including documentation of changes in Seller's cost of production and the time to implement such changes. In the event of any disagreement arising out of such changes, Buyer and Seller will work to resolve the disagreement in good faith; provided, however, that Seller will continue performing under this Contract, including the manufacture and Delivery of Equipment and/or Machinery and prompt implementation of changes required by Buyer, while Buyer and Seller resolve any disagreement arising out of such changes.

### **14. WARRANTIES**

(a) Seller warrants that the Equipment and/or Machinery and associated services to be provided hereunder will: (i) be in full compliance with Buyer's Specifications; (ii) be designed, engineered, manufactured, fabricated, assembled, delivered and sold, as applicable, in accordance with the highest industry standards; (iii) be free from any defect in material or workmanship; (iv) be fit for the use intended by Buyer; (v) be free from any infringement of Intellectual Property Rights of any third party; and (vi) be in compliance with all applicable laws, ordinances, regulations (including, without limitation, any applicable environmental, labour, health and safety legislation, customs and export controls, and all applicable laws in relation to the corruption or bribery of public officials and conflict minerals), permits and any by-laws, code of ethics, rules or regulations established from time to time by Seller, any regulatory body governing Seller or regulating the manufacturing and supply of the Equipment and /or Machinery and performance of associated services or any relevant professional body. Seller further warrants title to the Equipment and/or Machinery, free and clear of all third party claims of any nature, including, without limitation, liens, encumbrances and security interests.

(b) Seller warrants and represents that it has complied with and will continue, during the performance of its obligations under the Contract, to comply with, all applicable laws, ordinances, regulations, permits and any by-laws, code of ethics, established from time to time by any regulatory body governing Seller or regulating the delivery of Equipment and/or Machinery similar to the Equipment and/or Machinery or any relevant

professional body, including those laws and regulations applicable at the point of manufacture concerning the packaging, storage, shipment and exportation of all or any part thereof, the protection of the environment, workplace safety, conditions and standards. Seller hereby agrees to grant access to Buyer or its designated agent to inspect Seller's manufacturing facilities during normal business hours and upon reasonable notice, to verify compliance with local laws and regulations. The right to such inspections will not relieve Seller of sole responsibility for ensuring compliance with all local laws and regulations. When the laws or regulations of more than one jurisdiction apply, Seller shall act in conformity with the laws or regulations that are more stringent with respect to the matter concerned.

(c) Seller shall assign to Buyer its rights under any third party warranty in respect of any Equipment and/or Machinery or associated services Delivered in accordance with the Contract, the assignment of which does not relieve Seller of any obligation to provide a warranty in accordance with the Contract. If Seller is unable to obtain for Buyer the full benefit of a third party warranty, Buyer will have the right to enforce the warranty for its own benefit (in the name of Seller if necessary) and in case of a warranty that has not been assigned to Buyer, Buyer will have the right to subrogate to all Seller's rights with respect thereto. Seller will not take any action that will void or impair any third party warranty unless authorized by Buyer.

(d) Seller agrees that the warranties contained in the Contract shall: (i) be in addition to any warranties either express or implied in law or expressly made by Seller other than hereunder (collectively, the "Warranty"); and (ii) survive Delivery by Seller and inspection, acceptance and payment by Buyer.

(e) Unless a different time period is specified in the Contract, the Warranty shall be in effect for a time period of twenty-four (24) months commencing from the successful completion of acceptance testing of the Equipment and/or Machinery. In the case of correction of defective or non-conforming Equipment and/or Machinery, the foregoing warranties will continue for twenty-four (24) months commencing from the relevant correction.

(f) If any Equipment and/or Machinery or associated services Delivered hereunder are in breach of the Warranty, Buyer may, without prejudice to any other remedy set forth herein, at its option: (i) require Seller to correct at no cost to Buyer any defective or non-conforming Equipment and/or Machinery by repair, replacement or re-performance; or (ii) return defective or non-conforming Equipment and/or Machinery at Seller's expense and risk to Seller and recover from Seller the sale price thereof; or (iii) correct the defective or non-conforming Equipment and/or Machinery itself and charge Seller with the cost of such correction. The foregoing remedies are in addition to all other remedies at law or under the Contract, and shall not be deemed to be exclusive.

(g) Waiver by Buyer of Buyer's Specification requirement for one or more of the Equipment and/or Machinery shall not relieve Seller of the Warranty and shall not constitute a waiver of such requirements for the remaining Equipment and/or Machinery

to be Delivered hereunder unless so stated by Buyer in writing. The provisions of this clause shall not limit or affect the rights of Buyer under Section 12.

## 15. INDEMNIFICATION

(a) Seller shall hold harmless, indemnify and defend Buyer, its Affiliates, and its Affiliates' directors, officers, employees, secondees, representatives, agents and contractors and their respective representatives, agents and employees (together, the "Buyer Indemnified Parties"), from and against all Losses, that may be asserted or brought against, or suffered or incurred by, the Buyer Indemnified Parties for or in respect of, or arising in any way whatsoever, out of:

- (1) the fault, misconduct or negligence of, or the breach of the Contract by, Seller, its directors, officers, employees, secondees, representatives, agents, or subcontractors or their respective employees, agents, representatives or subcontractors;
- (2) any defect in design, manufacture material and workmanship (including for greater certainty, any resulting death, personal injury or damage to personal or real property), in any Equipment and/or Machinery or associated services supplied to Buyer by Seller under the Contract;
- (3) any damage to or destruction of the Equipment and/or Machinery during transportation where Seller bears the risk of loss and any action by any Governmental Authority with respect to the shipment of the Equipment and/or Machinery over any international boundary in connection with delivery of such Equipment and/or Machinery;
- (4) the claims and demands of all Persons arising out of, or in connection with, the delivery of any Equipment and/or Machinery or associated services, including taking all such actions as may be required to discharge any lien or encumbrance on the Equipment and/or Machinery ; and
- (5) any action or claim by any third party that the use, possession, sale or distribution of the Equipment and/or Machinery or deliverables hereunder, or any part of thereof, infringes any Intellectual Property Rights of the third party (an "IPR Claim");

except, in each case, to the extent such Losses are solely attributable to the breach of the Contract or misconduct by a Buyer Indemnified Party.

(b) In the event of any IPR Claim, without limiting, and in addition to, its indemnification obligations under this Section 15, Seller shall, at its own expense, use commercially reasonable efforts, after previous consultation with Buyer, to, as soon as practically possible:

- (1) procure Buyer Indemnified Parties with the right to continue to use the Equipment and/or Machinery or the

infringing part or parts thereof, as the case may be; or

(2) modify the Equipment and/or Machinery, or the infringing part or parts thereof, as the case may be, so that it is non-infringing without materially affecting its performance or functionality; or

(3) replace the Equipment and/or Machinery or the infringing part or parts thereof, as applicable, with a substitute that provides materially and substantially similar performance and functionality.

(c) Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with the performance of any service or work by Seller or its employees, agents, representatives and subcontractors ("Personnel") on Buyer's or Buyer's customer's premises or the use of the property of Buyer or any customer of Buyer, except to the extent such liability arises out of the negligence or willful misconduct of Buyer or Buyer's customer. Seller will assure that all Personnel who are performing Services on behalf of Seller are competent to perform the Services. Seller will require all Personnel who are performing any work on Buyer's premises to comply with all of Buyer's regulations and policies. Buyer, in its sole discretion, has the right to: (i) bar any of Personnel from Buyer's premises for failure to observe Buyer's regulations or policies; (ii) require that Seller promptly remove from Buyer's premises any Personnel who violate any of Buyer's regulations or policies; and (iii) require that Seller cease using any Personnel to perform the services who are reasonably unacceptable to Buyer. Buyer will confer with Seller to discuss Buyer's concerns prior to requiring removal of any Personnel. Seller will replace any barred or removed Personnel with Personnel reasonably acceptable to Buyer.

(d) Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with any claim and/or request made by the Seller's employees and/or third parties, including public authorities, social security and welfare institutions and trade unions, for any title, reason or ground (for example but not limited to: wages, salary differences, severance pay accruals, payment of social security and welfare contributions, withholding taxes on employees income from work due by any subcontractors in connection with the subcontracting services, amounts claimed as compensation of damages, and different qualification of the employment relationship). Any encumbrances, costs, expenses, disbursements and / or damages, either direct or indirect, for any reason whatsoever occurred by Buyer (including those arising from court orders of any kind and / or in or out of court settlements) shall therefore be entirely borne by the Seller.

(e) Seller will defend, hold harmless, and indemnify Buyer from and against any liability and

expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any third party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of the Equipment and/or Machinery or services supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories).

## **16. INSURANCE**

Seller, at its sole cost, will maintain insurance coverage as required by applicable law or as reasonably requested by Buyer with carriers reasonably acceptable to Buyer, including product liability coverage. The amount of coverage shall be a minimum of USD \$10,000,000 combined single limit coverage for each occurrence for bodily injury or for property damage. With respect to any such insurance coverage, Seller will furnish to Buyer either a certificate evidencing satisfaction of the above-mentioned insurance requirements under this Contract or certified copies of all insurance policies within ten (10) days after Buyer requests. Seller will not begin work in respect of any Equipment and/or Machinery or associated services until all required insurance has been obtained. The certificate must provide that Buyer will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The furnishing of certificates of insurance and purchase of insurance will not limit or release Seller from Seller's obligations or liabilities under this Contract.

## **17. NON-PUBLICITY**

Without the prior written consent of Buyer, Seller shall neither: (a) make any news release, public announcement, denial or confirmation of the Contract or its subject matter; nor (b) in any manner advertise or publish the fact that Buyer has placed any order for Equipment and/or Machinery.

## **18. BUYERS PROPERTY AND LIENS**

Unless otherwise agreed to in writing, all tooling, equipment or material of every description furnished to Seller by Buyer or its Affiliates ("Buyer's Property"), if any, or specifically paid for by Buyer or its Affiliates and any replacement thereof, shall (i) remain the property of Buyer or its Affiliates, (ii) under no circumstance be used for any purpose other than for the performance of the Contract, including, without limitation, for the manufacture of any equipment or machinery for a third party, and (iii) be returned to Buyer upon its request, unless such return would prevent Seller from duly performing the Contract.

Seller shall keep Buyer's Property free and shall Deliver the Equipment and/or Machinery free of all liens arising through Seller for any reason (including from any failure of Seller or any of its permitted subcontractors to pay its accounts when due), and if any such lien is filed, Seller, on notice from Buyer, shall procure promptly a release thereof. If Seller fails or refuses to procure such a release within ten (10) days after notice from Buyer, then

Buyer may pay such amounts or take such other actions (including posting security or making payment into court) as may be necessary to procure such release and shall be entitled to recover from Seller all costs of doing so, regardless of whether or not Seller disputes the lien. Seller shall, whenever Buyer requests, furnish Buyer with proof satisfactory to Buyer that all such liens have been satisfied and released.

## **19. TITLE TO INTELLECTUAL PROPERTY**

Seller hereby grants to Buyer a non-exclusive, non-assignable, royalty-free, irrevocable, perpetual, worldwide license to use, sell, license and in any other way exploit the Equipment and/or Machinery and any associated Intellectual Property Rights, including any pre-existing Intellectual Property Rights owned by any third party, provided, for greater certainty, that such license is only granted for the limited purpose of enabling Buyer to make use of the Equipment and/or Machinery as contemplated herein. Buyer hereby grants to Seller a non-exclusive, non-assignable, limited, royalty-free license to any Intellectual Property Rights provided by the Buyer for the duration of the Contract, provided, for greater certainty, that such license is only granted for the limited purpose of Seller performing its obligations under the Contract, which license shall be limited to such Seller facilities as approved by Buyer.

Nothing in the Contract shall be construed as granting Seller any license or other right to use any Intellectual Property Rights or other property that Buyer may now or hereafter own, possess or in which it may hold licensing rights. Seller shall not use or display Buyer's name, trademarks, logos or any other of Buyer's proprietary marks or designations for any purpose or in any medium (including the internet or other means of electronic or wireless communications) without Buyer's prior written consent.

Seller shall promptly notify Buyer of improvements, developments or modifications, which are made, discovered, conceived, reduced to practice, or otherwise invented or improved in connection with, during the course of, in connection with, or as a result of, the Contract, all of which shall constitute Confidential Information and shall be deemed to be Intellectual Property Rights belonging to Buyer. Seller hereby: (i) assigns and transfers to Buyer all legal right, title and interest to any such Intellectual Property Rights; (ii) waives any and all moral rights that may exist in any of the foregoing; and (iii) agrees to execute, deliver and file any and all agreements, documents or instruments as may be required to give effect to the foregoing.

## **20. TECHNICAL INFORMATION**

(a) Seller will create, maintain, update and provide to Buyer, in compliance with Buyer's standards and specifications, all technical information about the Equipment and/or Machinery and their manufacture which is reasonably necessary or requested by Buyer in connection with its use of the Equipment and/or Machinery, including, without limitation, and other applications and compliance with any legal or regulatory



requirements. Such technical information will not be subject to any use or disclosure restrictions imposed by the Seller.

(b) Seller agrees not to assert any claim against Buyer, Buyer's customers or their respective suppliers with respect to the technical information that Seller shall have disclosed, or may hereafter disclose, pursuant to Section 20(a) in connection with the Equipment and/or Machinery or services covered by this Contract (except in the event of infringement by Buyer of patents owned by the Seller).

(c) Seller authorizes Buyer, its affiliates, agents and subcontractors, and Buyer's customers and their subcontractors to repair, reconstruct or rebuild the Equipment and/or Machinery delivered under this Contract without payment of any royalty or other compensation to Seller; provided this right does not authorize Buyer to manufacture Seller's Equipment and/or Machinery for sale to a third party.

(d) Seller grants to Buyer a permanent, paid-up, non-exclusive license to use any software incorporated in the Equipment and/or Machinery, in object code only, only with the Equipment and/or Machinery and only for the purpose of repairing, maintaining and operating the Equipment and/or Machinery. Buyer may not modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based upon such software, except and only to the extent that such activity is expressly agreed to by Seller or permitted by applicable law. Buyer shall acquire no rights of ownership in the software.

## **21. CONFIDENTIALITY; DATA PROTECTION**

For the purposes of this Section, the term "Affiliates" shall include certain confidential third party business partners of Buyers and/or its Affiliates.

In the course of delivering the Equipment and/or Machinery and associated services, if applicable, and in the discussions leading up to the entering into of the Contract, Seller has obtained and will continue to access, obtain, generate or be made aware of information, in whatever form and whether or not marked as "confidential", that is of a proprietary and/or confidential nature with respect to Buyer and/or any of its Affiliates, and this information includes (but is not restricted to) the existence of the Contract and the relationship among the Parties, the identities of certain confidential third party business partners, business plans, customer lists, financial data, marketing data, technical data, engineering data, testing data, trade secrets and any other information in respect of Buyer or any of its Affiliates which is disclosed to Seller or which Seller becomes aware of in the delivery of the Equipment and/or Machinery or in connection with the Contract ("Confidential Information"). Seller agrees to use such Confidential Information only for the purpose of manufacturing and delivering the Equipment and/or Machinery and associated services, if applicable and not to use it for any other purpose, unless otherwise agreed to in advance and in writing by Buyer. Seller further agrees to maintain such Confidential Information in strict confidence and not to directly or indirectly disclose it to any other Person except to those of its directors, officers, employees, agents and



representatives who have a need to know such Confidential Information for purposes of the Contract and are bound by confidentiality obligations similar to the provisions of this Section 21. These obligations shall not apply to information that Seller can show to Buyer that at the time of its disclosure is in the public domain through no fault of Seller; was known to Seller prior to the disclosure by Buyer or its Affiliates; or is hereafter received by Seller in good faith from a third party having the lawful right to disclose the same. Upon delivery of the Equipment and/or Machinery and associated services, if applicable or the earlier termination of the Contract, Seller shall deliver to Buyer all property and any documents and computer files containing any Confidential Information or other Buyer information, including all copies thereof unless otherwise agreed in writing by Buyer.

Seller acknowledges and agrees that Buyer and its Affiliates will suffer irreparable harm in the event that any of the obligations contained in this Section are breached and that monetary damages will be inadequate to compensate Buyer and its Affiliates for the breach. Accordingly, Seller acknowledges and agrees that, in the event of a breach or threatened breach by Seller or any of its directors, officers or employees of any of the provisions of this Section, Buyer, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to an interim injunction, interlocutory injunction and permanent injunction in order to prevent or to restrain any such breach by Seller.

The obligations under this Section 21 shall survive the expiration or earlier termination of the Contract and shall remain in effect for a subsequent five (5) year period.

Seller undertakes to comply in all material respect with any applicable law governing privacy and data protection, including, where applicable, the General Data Protection Regulation (EU) 2016/679 and Italian Legislative Decree 196/2003.

## **22. TERMINATION**

Unless and to the extent as otherwise provided under the Contract, Buyer may terminate the supply of the Equipment and/or Machinery and any associated services in whole or in part for its convenience at any time by notice to Seller in writing. Seller will thereupon immediately stop all work under the Contract, or the terminated portion thereof, and notify its subcontractors to do likewise. Upon termination under this Section 22, Seller shall be entitled to be paid for Equipment and/or Machinery and applicable services, if any, delivered in accordance with the Contract up to and including the date of termination, plus all reasonable and necessary documented costs directly resulting from such termination, which Seller shall use all commercially reasonable efforts to minimize and mitigate. The total of all claims under this Section 22 shall not exceed the cancelled commitment value of the Contract or the cancellation costs listed in the Contract if any, whichever is less.

## 23. TERMINATION FOR DEFAULT

(a) Time is of the essence under the Contract. Without prejudice to the remedies provided under applicable law, Buyer may, by written notice, terminate the Contract in whole or in part if Seller fails: (i) to make Delivery of the Equipment and/or Machinery or to perform the associated services within the time specified therein; or (ii) to correct defective Equipment and/or Machinery or services in accordance with the provisions of those clauses hereof entitled ‘WARRANTIES’ and ‘INSPECTION’, or (iii) to perform any of the other provision of the Contract or so fails to make progress as to endanger performance in accordance with its terms.

(b) In the event of termination pursuant to paragraph (a), Buyer may procure from a third party, upon such terms and in such manner as Buyer may deem appropriate, Equipment and/or Machinery or services similar or substantially similar to those so terminated, and Seller shall be liable to Buyer for any excess costs incurred by the Buyer.

(c) In the event of termination of the Contract in part, Seller shall continue the performance of the Contract to the extent not terminated.

(d) If the Contract is terminated pursuant to paragraph (a), Buyer, in addition to any other rights provided herein, may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer: (i) any completed Equipment and/or Machinery and services; and (ii) such partially completed Equipment and/or Machinery and services as Seller has produced or acquired for the performance of the terminated part; and Seller shall, upon direction of Buyer, protect and preserve such property in the possession of Seller. Payment for completed Equipment and/or Machinery and services delivered to and accepted by Buyer shall be in an amount agreed upon by Seller and Buyer (not to exceed the contract price set out in the Contract). Seller’s obligations hereunder to carry out Buyer’s direction as to delivery, protection and preservation shall not be contingent upon prior agreement as to such amount.

(e) Failure of Buyer to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of Buyer under this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

## 24. INSOLVENCY OF SELLER; WINDING UP

(a) In any of the following, or any similar events, Buyer may immediately terminate this Contract without any liability to Seller or obligation to purchase raw materials, work-in-progress or finished goods:

(a) insolvency or financial difficulties of Seller; (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller; (e) execution of an assignment for the benefit of creditors by Seller; or (f) any accommodation by Buyer, financial or otherwise, not contemplated by this Contract, that are necessary for Seller to meet its obligations under this Contract. Seller will reimburse Buyer for all costs Buyer incurs in connection

with any of the foregoing whether or not this Contract is terminated, including, but not limited to, all attorney or other professional fees.

(b) In any of the event listed under paragraph (a) above, as well as in any event of liquidation, winding up, interruption of the activities by Seller, Seller shall use its best efforts to make available to Buyer all technical information (including those listed in Section 20), know-how relating to the Equipment and/or Machinery, as well as the relevant personnel, in order to entitle Buyer to continue to operate the Equipment and/or Machinery consistently with past practice.

## **25. FORCE MAJEURE**

(a) If a Party is prevented from performing any obligation under the Contract, in whole or in part, by an event or cause which is beyond the control of that Party, which is not able to be overcome by the exercise of reasonable care and proper precautions, and which could not have been reasonably foreseen, including, without limitation, an act of God or the public enemy; riot; civil commotion; armed aggression; terrorism; insurrection; war; flood; fire; explosion; serious accident; earthquake or other catastrophe; or epidemic or quarantine restriction; currency and trade restrictions, embargo, sanctions (an “Event of Force Majeure”), such obligation shall, to the extent that its performance is prevented by such Event of Force Majeure, be suspended as long as such Event of Force Majeure continues to prevent such performance, and the non-performance of such obligation to such extent during such period of suspension shall not constitute a breach or default hereunder. An Event of Force Majeure specifically does not include extreme or inclement weather which is not unusual at the place where the Contract is being performed, strikes, lockouts, slowdowns or other labour disruption of a Party, or the financial condition of a Party.

(b) If either Party relies on the occurrence of an Event of Force Majeure as a basis for being excused from performance of its obligations under the Contract, the Party relying on the event or condition shall:

- (i) provide notice to the other Party of the occurrence of the Event of Force Majeure giving an estimation of the expected duration of such event and the probable impact on the performance of its obligations under the Contract; (ii) exercise all reasonable efforts to continue to perform its obligations under the Contract; (iii) use all reasonable efforts to correct or cure the Event of Force Majeure; (iv) use all reasonable efforts to mitigate or limit damages; and (v) provide prompt notice to the other Party of the cessation of the Event of Force Majeure.

(c) If any Event of Force Majeure continues for a period exceeding three (3) months, Buyer shall have the right to terminate the Contract forthwith on written notice to the Seller.

## **26. BOOKS, RECORDS AND AUDIT**

Seller shall keep at its usual place of business, and, if applicable, cause its subcontractors to keep in their usual place of business, books, accounts, background invoices and other

relevant materials (“Records”) substantiating its performance of the Contract. Buyer may audit all such Records, and upon reasonable notice, may, at any time and from time to time, undertake an audit of all such Records and Seller’s third party invoices for the purpose of verifying the proper performance by Seller of its obligations. Seller shall respond to all audit enquiries by Buyer not later than twenty-one (21) Business Days from the date of any audit enquiry by Buyer. Seller shall keep such Records, and Buyer’s audit rights shall exist, at all times during the duration of the Contract and for thirty six (36) months from the the date of the successful completion of acceptance testing of the Equipment and/or Machinery.

## **27. ESG MATTERS**

Upon request of the Buyer, the Seller will provide information and data regarding developments or initiatives with respect to environmental, social (including health and safety, employees, human rights, consumer and community issues) and corporate governance matters such as labour force statistics, environmental initiatives and compliance, human rights, community relations and anti-corruption to support the Corporate Social Responsibility commitments and reporting of the Buyer.

## **28. GENERAL**

- (a) Waiver by a Party of any default by the other Party hereunder shall not be deemed a waiver by such Party of any other default.
- (b) Seller shall be entitled to subcontract or otherwise delegate any performance of any benefit or obligation arising under the Contract without Buyer's prior written consent, provided, however, that (i) Seller shall promptly inform Buyer of any information relating to the relevant sub-contractor and to the relevant activities, and (ii) Seller shall be responsible for all acts or omissions of its employees, agents, consultants, suppliers or subcontractors in relation to the performance of the Contract and any such acts or omissions shall be deemed to be those of Seller, and will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages or expenses (including reasonable attorney or other professional fees and disbursements) arising from or relating to any breach by its employees, agents, consultants, suppliers or subcontractors breach of any applicable laws and regulation.
- (c) Each Party is and will remain at all times independent of each other Party. The Parties are not and shall not be considered to be joint venturers, partners or agents of each other and none of them shall have the power to bind or obligate any other, except as expressly set forth in the Contract. Each Party covenants and agrees that it shall not in any way, incur any contractual or other obligation in the name of the other Party, nor shall it have liability for any debts incurred by the other Party. No representation will be made or acts taken by either Party which could establish any apparent relationship of agency, joint venture, partnership or employment.
- (d) The Contract shall be governed by, and construed in accordance with, the laws of the

jurisdiction where the Buyer has its registered office on the date when notice of a dispute is provided by the party raising the dispute without reference to its conflict of laws principles. The United Nations Convention of Contracts for International Sales of Goods shall not apply to the Contract. Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the ICC rules, which rules are deemed to be incorporated by reference into this Contract. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be the place where the Buyer has its registered office unless otherwise agreed by the Parties. The language to be used in the arbitral proceedings shall be English.

(e) The invalidity or unenforceability of any provision of the Contract shall not affect the validity or enforceability of any other provision of the Contract, all of which shall remain in full force and effect.

## **29. ASSIGNMENT**

(a) Seller shall not assign any rights or obligations under the Contract (including the right to receive monies due hereunder) without the prior written consent of Buyer, which consent may be withheld in Buyer's sole discretion. Any purported assignment without consent shall be void.

(b) Buyer may, without the prior consent of Seller, assign its rights and obligations under the Contract: (i) at any time if such assignment is considered necessary by Buyer in connection with a sale of Buyer's assets or a transfer of its obligations; and (ii) upon reasonable prior notice to Seller, to any Affiliate of Buyer or to any other assignee, provided that such assignee agrees in writing to be bound by the provisions of the Contract. Any such assignment by Buyer approved hereunder shall be effective as a release and novation of Buyer with respect to the duties and liabilities under the Contract so assigned and delegated.