

# General Terms of Purchase for Products ("GTP") Europe ENERCON Group

## 1. APPLICATION AND BASIS OF CONTRACT

- 1.1 *Applicability:* The Contract between Buyer and Seller is based on these "General Terms of Purchase for Products" (hereinafter "GTP"). In the absence of an express agreement in writing to the contrary, these GTP shall also apply to all of Buyer's future purchases from Seller; however, this Clause 1.1 shall not be interpreted that Seller and Buyer are obliged to enter into further agreements with one another. In case of future purchases, Buyer shall not be obliged to enclose or attach further electronic copies or print copies of these GTP.
- 1.2 *Divergent conditions:* Terms & conditions other than these GTP shall become part of the Contract only if and to the extent expressly approved in writing by Buyer. Seller's terms & conditions shall not become part of the Contract even if:
- they have been supplied together with the Order Confirmation or the Products (e.g. printed on consignment notes or other documents); or
  - Buyer has expressly or tacitly approved any document to which Seller's terms & conditions were enclosed.
- 1.3 *Modifications:* Individual agreements with Seller which contain divergent or additional provisions to these GTP shall only become effective if and to the extent made in writing and shall then take precedence over the respective Clauses of these GTP. Unless otherwise expressly agreed in writing, all modifications to these GTP shall only be valid for the associated (single) Purchase Order or Contract and shall not apply to future business transactions between the Parties.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1 "*Buyer*" means the person or entity named as Buyer in the Purchase Order or issuing the Purchase Order.
- 2.2 "*Contract*" means an agreement based on these GTP and made between Seller and Buyer in respect of the delivery of the Products.
- 2.3 "*Contract Price*" means the total price payable by Buyer to Seller under the Contract for the delivery of the Products.
- 2.4 "*Force Majeure*" means an exceptional event or circumstance (i) which is beyond a Party's control, (ii) which such Party could not reasonably have provided against before entering into the Contract, (iii) which, having arisen, such Party could not reasonably have avoided or overcome and (iv) which is not substantially attributable to the other Party.
- 2.5 *Incoterms:* If reference is made to the Incoterms<sup>®</sup>, the version referred to in the Contract shall apply, or – in the absence of a specific reference – the version valid at the date of conclusion of the Contract. For the avoidance of doubt, any provision of the Contract which may conflict with the regulations of a term of the Incoterms<sup>®</sup> shall prevail over the Incoterms<sup>®</sup>.
- 2.6 "*Order Confirmation*" means Seller's written acceptance of the Purchase Order.
- 2.7 "*Party*" means either Seller or Buyer, and "*Parties*" means both of them.
- 2.8 "*Procurement Software*" means any software tool, application or platform which the Parties agreed to use for the purpose of preparing, concluding and executing the Contract.
- 2.9 "*Product*" means all goods, commodities, machinery, hardware (including any embedded software) and Product Documentation set out in the Purchase Order. All Products shall also include any design, auxiliary workmanship, documentation and any other associated tasks to be performed by Seller in connection with the design, manufacture and delivery of the Products and the remedying of any defects.
- 2.10 "*Product Documentation*" means any documentation, information and data which Seller shall deliver under or in connection with the Contract, including but not limited to installation manuals, operating instructions, technical specifications, health & safety instructions, reports, certificates and licences to use.
- 2.11 "*Purchase Order*" means the written order issued by Buyer to Seller for the purchase of the Products.
- 2.12 "*Seller*" means the person or entity to whom the Purchase Order is addressed and who shall deliver the Products.
- 2.13 *Time data:* "day" means a calendar day and "year" means a period of 365 consecutive days.
- 2.14 *Units:* Unless otherwise agreed in writing, any weights, units and measures in the Contract and in the Parties' documentation shall be based on the International System of Units (SI).
- 2.15 "*Written*" or "*in writing*" means communication in text form, i.e. communication by registered letter, simple letter, facsimile, email and any communication exchanged via Procurement Software.

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## 3. COMMUNICATION

In order to avoid delays and/or misunderstandings, all of Seller's correspondence and any invoice shall expressly refer to the Purchase Order number, the Product designation, Product number (if indicated in the Purchase Order) and the person which is Seller's point of contact within Buyer's purchasing department. Any communication (and emails in particular) of Seller shall have a clear title allowing Buyer to understand from the subject matter the urgency and/or consequences of the email. Buyer shall likewise include all necessary information in Buyer's communication as may be reasonably requested by Seller.

## 4. QUOTATIONS, ORDERS AND CONCLUSION OF CONTRACT

- 4.1 *Free quotation:* Unless expressly stated in Buyer's initial request for proposal or Purchase Order, Buyer shall not be obliged to reimburse Seller any cost related to the preparation and submission of any of Seller's initial or final quotations to Buyer or related to the conclusion of the Contract.
- 4.2 *Written form:* Any Purchase Order and Order Confirmation shall be made in writing, e.g. by email or via Procurement Software. Any orders, requests and confirmations that have been made verbally or via telephone shall only be valid and binding if they are confirmed by Buyer in writing no later than seven days after the verbal communication. Likewise, any subsequent modification to the Contract or to any Products shall be agreed in writing.
- 4.3 *Order Confirmation:* Upon receipt of the Purchase Order, Seller shall in writing, e.g. by email or via Procurement Software, and within such time as defined in the Purchase Order or, if nothing is stated in the Purchase Order, within seven days after receipt of the Purchase Order, either issue to Buyer an Order Confirmation or reject the Purchase Order. If Seller fails to issue the Order Confirmation in time, rejects the Purchase Order or issues an Order Confirmation which includes reservations, objections or deviations to the terms and conditions of the Purchase Order, Seller has rejected the Purchase Order and Buyer shall no longer be bound by the Purchase Order. If Seller has nevertheless delivered the Products, Buyer may, at Buyer's free discretion, accept the delivered Products in which case the Contract has been concluded upon such acceptance based on these GTP and the Purchase Order.

## 5. THE PRODUCTS

5.1 *Quality:* All Products shall:

- a) be of new and suitable quality, meet all specifications and requirements set out in the Contract and shall be fit and useable in all aspects for the purposes as defined in the Contract or, if nothing has been defined in the Contract, shall be fit and useable for the intended purposes as included in Buyer's communication to Seller prior to the conclusion of the Contract or, in the absence of specific requirements communicated by Buyer, shall be fit and useable for the purpose for which such Products would normally be used;
- b) be free from any defects and from any rights, liens, pledges or encumbrances of third parties and shall not infringe any patent, registered design, trademark or name, copyright or other protected right including third party property rights;
- c) comply with the applicable laws, regulations, industry norms and standards;
- d) have successfully passed all tests as stipulated in the Contract (if any);
- e) be properly packed and transported according to the regulations of the Contract, the applicable laws, industry norms and standards and with environmentally-friendly materials;
- f) be sufficiently insured against any damage in transit (at their reinstatement value); while doing so, Seller shall observe all relevant shipping and insurance regulations; and
- g) be subject to product liability insurance taken out by Seller with a minimum sum of five million Euros per loss event and ten million euros per year of loss for personal injury, property damage and financial losses.

Seller shall provide Buyer with proof of fulfilment of the obligations under Clause 5.1 a) to e) as stipulated in the Contract or, if nothing has been stipulated in the Contract, in accordance with the applicable laws, regulations, industry norms and standards. Upon request, Seller shall provide Buyer with proof of fulfilment of the insurance obligations under Clause 5.1 f) and g) by submitting an insurance certificate addressed to Buyer by Seller's insurance company.

- 5.2 *Technical changes:* Seller shall not be entitled to modify the Products (including but not limited to aspects like specifications, design, quality, type of materials used, quantities or any other detail of the Contract (including but not limited to time and place of delivery or means of transport) without the prior written consent of Buyer. Buyer shall be entitled to request reasonable variation(s) to Products also after conclusion of the Contract. Upon Buyer's request for variation(s), Seller shall prepare a quotation detailing the necessary adjustments to the Products and the Contract, and the Parties shall agree in writing on the details of such variation in a reasonable manner, particularly with regard to additional or reduced cost and adjusted delivery dates. The variation shall become a binding part of the Contract upon final written confirmation by Buyer.

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- 5.3 *Quality assurance:* If a Contract stipulates that the Seller shall perform one or more quality assurance tests for the Products prior to or upon their delivery, Seller shall perform all such tests according to the agreed specifications. If nothing is specified in the Contract, Seller shall perform all quality assurance tests as required by the applicable laws, regulations and industry norms and standards. Seller shall duly document all results of the tests and shall make them available to Buyer without request and within the time stipulated in the Contract or, if nothing has been stipulated in the Contract, within reasonable time prior to the delivery. Unless otherwise stipulated in the Contract, the costs incurred by Seller for the conducting of these tests are included in the Contract Price. Even after conclusion of the Contract, Buyer may also reasonably require Seller to conduct further tests; in this case, the additional cost incurred and time needed by Seller due to such demand shall be agreed by the Parties in writing. For the avoidance of doubt, the delivery of Products under the Contract shall not be considered complete prior to the performance and documentation of all required quality assurance tests by Seller.
- 5.4 *Product Documentation:* Seller shall provide all Product Documentation in the form, detail, quantities and language as defined in the Contract. If nothing is specified in the Contract, Seller shall submit all Product Documentation as required by the applicable laws, regulations and industry norms and standards (including but not limited to the EC Machinery Directive) or as reasonably requested by Buyer. For the avoidance of doubt, the delivery of Products under the Contract shall not be considered complete before submission of all Product Documentation by Seller.
- 5.5 *Witnessing by Buyer:* Without prejudice to Seller's liabilities, Buyer shall, upon prior written notice to Seller, be entitled to attend tests and inspections of Products at their production facilities.

### 6. ITEMS MADE AVAILABLE BY BUYER

- 6.1 *Ownership:* If Buyer makes available to Seller any raw or pre-fabricated materials, tools, equipment or any other items, Buyer shall retain the right of ownership to all such items. Seller shall ensure that all such items are stored separately and clearly marked as property of Buyer. Upon Buyer's request, Seller shall return all such items within the time reasonably requested by Buyer. Seller shall have no right of retention regarding any of such items. Seller shall ensure that all finished Products for which Buyer's materials have been used are stored separately and clearly marked as property of Buyer.
- 6.2 *Use and handling:* Any items provided by Buyer to Seller shall be used by Seller exclusively for the manufacture and/or transport of Products. Seller shall undertake to carry out any required maintenance and inspection works on Buyer's items at Seller's own cost. Seller shall notify Buyer immediately of any defects.
- 6.3 *Insurance:* Seller shall undertake at Seller's cost to sufficiently insure all Buyer's items against loss and damage at their reinstatement value. Seller shall submit to Buyer a copy of the relevant insurance certificate. Seller herewith assigns to Buyer all future claims for compensation arising from this insurance and Buyer herewith accepts such assignment.

### 7. DELIVERY

- 7.1 *Place of delivery:* Delivery of Products shall be made at the specific address or place as stated in the Contract. If no specific address is stated in the Contract, Seller shall query Buyer before commencing with any delivery. Unless otherwise specified in the Contract, Products shall be delivered DAP place of delivery (Incoterms® 2020) including unloading.
- 7.2 *Changes:* Buyer shall be entitled to request reasonable variation(s) to the place of delivery or means of transport also after conclusion of the Contract. The Parties shall agree in writing on the necessary details of such variation in a reasonable manner. The variation shall become a binding part of the Contract upon final written confirmation by Buyer.
- 7.3 *Import/Customs:* If Products are dispatched from a country that is not a Member State of the European Union and if Buyer has expressly agreed in writing to import such Products to the place of delivery in Buyer's name, Seller shall provide all documents and information reasonably required for proper customs clearance and importation to the place of delivery.
- 7.4 *Export control:* Seller shall meet all requirements under applicable domestic and international customs and foreign trade laws ('Foreign Trade Law'). Fulfilment of the Contract by Buyer shall be subject to the condition that there are no impediments to such fulfilment due to Foreign Trade Law, embargoes and/or other sanctions. Seller shall provide Buyer in writing with any information and data Buyer requires to comply with Foreign Trade Law in exporting, importing and re-exporting Products not later than two weeks after conclusion of the Contract and in the event of subsequent changes not later than two weeks after such changes, particularly:
- a) any applicable export list number, including the Export Control Classification Number as per the U.S. Commerce Control List (ECCN),
  - b) the statistical commodity code as per the current commodity classification in foreign trade statistics and the HS (Harmonized System) Code, and
  - c) the country of origin (non-preferential origin) and, if requested by Buyer, supplier declarations on preferential origin (for European suppliers) or preference certificates (for non-European suppliers).

If Seller is in breach of its obligations under this Clause 7.4, Seller shall bear any expense and loss incurred by Buyer in consequence of such breach unless Seller is not responsible for said breach.

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- 7.5 *Transfer of risk:* Transfer of risk in respect of the Products shall occur upon handing over of such Products to Buyer at the place of delivery specified in the Contract. If Buyer is in default of timely acceptance of duly produced and delivered Products, the risk to such Products shall transfer to Buyer upon completed delivery of the Products and Seller's written notification to Buyer thereof.
- 7.6 *Incoming goods inspections:* Buyer shall inspect the Products for deviations in quality and quantity within reasonable time after handing over. If Seller had to perform quality assurance tests according to Clause 5.4, Buyer shall be entitled to rely on the results of Seller's tests and to limit its own incoming goods inspections under this Clause 7.6 to the following activities:
- Damage in transit: Buyer will examine the Products for visible defects and transport damage. The inspection for detecting such visible defects and transport damage is limited to such Products where a damage or breakage of the exterior packing indicates that the content of such packing might be damaged.
  - Identity verification: Buyer will check whether the quantity and type of the Products conform to the information displayed on Seller's transport documentation / packing list. If the Products are packed in several smaller sub-units, Buyer shall only be required to check the information displayed on Seller's transport documentation / packing list. All sub-units have to be marked with a label containing the necessary information as to content, quantity and order number.
- 7.7 *Acceptance:* Unconditional or tacit acceptance of any delayed or incomplete Products shall not constitute a waiver by Buyer of any claim for penalties, compensation or other rights and remedies.

### 8. TIME FOR DELIVERY

- 8.1 *Time for delivery:* The time for delivery as stated in the Contract shall be binding. Seller shall undertake to notify Buyer immediately in writing if circumstances arise or become known to Seller which may prevent Seller from meeting the agreed time. Seller shall also notify Buyer of the reasons and the anticipated duration of the delay. Under no circumstances the fulfilment of the aforesaid notification obligations shall relieve the Seller of his liability for a late delivery.
- 8.2 *Changes:* Buyer shall be entitled to request reasonable variation(s) to the time for delivery also after conclusion of the Contract. The Parties shall agree in writing on the necessary details of such variation in a reasonable manner. The variation shall become a binding part of the Contract upon final written confirmation by Buyer.
- 8.3 *Damages for delay:* In case of Seller being in delay, Buyer shall be entitled to claim liquidated damages for late delivery in the amount of 0.15% of the (gross) Contract Price for each commenced day of delay, however not exceeding 5% of the (gross) Contract Price. If Buyer demanded payment of such liquidated damages, the amount paid by Seller shall not be in addition to, but shall be credited against, any further compensation claim made by Buyer due to Seller's default.
- 8.4 *Force Majeure:* A Party shall be entitled to request relief for a failure of complying with its obligations under the Contract if the failure is due to an event of Force Majeure. If time is of the essence, Buyer shall be entitled to terminate the Contract if it is clear that Seller will not be able to deliver the Products by the agreed date or within the agreed period of time due to Force Majeure; in such case, no compensation shall be due from Buyer to Seller or from Seller to Buyer.

### 9. WARRANTY FOR DEFECTS

- 9.1 *Responsibility:* Within the scope of Seller's defects warranty obligations, Seller shall be responsible for any fault, failure, deficiency, malfunction, damage or deterioration (excluding, however, fair wear and tear) which is attributable to:
- design defects, manufacturing defects, defects in material or defects in workmanship,
  - improper use, handling, operation or maintenance as a consequence of Seller having provided incorrect or incomplete Product Documentation, or
  - failure by Seller to comply with the quality regulations according to Clause 5.4 or with any other material obligation under the Contract.
- 9.2 *Defects notification period:* The applicable defects notification period shall be:
- 36 months in respect of Products which consist in the delivery of movables, e.g. hardware, tools and commodities, and
  - 60 months in respect of Products which shall form part of or be used for the construction of civil works, electrical works or buildings (such as but not limited to chemical products, pre-processed or raw materials, construction materials or mounting parts).
- 9.3 *Interruption:* Each defects notification period shall commence on the date of transfer of risk according to Clause 7.5. The defects notification period of a Product shall be interrupted during the time that the Product cannot be used for its intended purposes by reason of a defect according to Clause 9.1. After rectification of a defect a new defects notification period shall commence according to Clause 9.2.

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- 9.4 *Rectification:* Any defect according to Clause 9.1 or any damage resulting therefrom shall be rectified by Seller provided that Buyer notified Seller of such defect and/or damage within the applicable defects notification period. If Buyer wishes to receive a replacement rather than repair of a defective Product, Seller may only refuse such request if it would be disproportionate under the relevant circumstances, i.e. considering the nature of the defect, the value of the Product and the cost for replacement and repairs. Upon receipt of Buyer's notification of a defect and/or damage, Seller shall submit to Buyer a plan of action outlining the estimated scope of repairs/replacements required to remedy the defect and any damage resulting therefrom, including details of the technical solution envisaged by Seller and a time schedule for the execution of the repairs/replacements. Seller shall perform all repairs/replacements necessary for the rectification of the defect and/or damage within the deadline set by Buyer or, if no specific deadline is set, within reasonable time after receipt of Buyer's notification. If the Contract foresees specific reaction and/or repair times, Seller shall comply with such obligations.
- 9.5 *Cost:* All activities to remedy a defect according to Clause 9.1 or any damage resulting therefrom shall be at Seller's cost (including cost for transportation and logistics, dismantling, assembly and the cost for inspections, tests and analysis reasonably necessary to identify the type and extensiveness of the defect/damage and the required tasks for rectification).
- 9.6 *Substitute performance:* Other than in case of urgency, Buyer shall not remedy a defect and/or damage or undertake any shortfall purchase without having given Seller the opportunity to do so. For example a case of urgency shall exist if immediate activities are required in order to save a Product (or an item containing such Product) from imminent danger or to avoid material damage to the Product or to its surroundings or if Seller would not have been able to provide for adequate relief within the required time. If Seller fails to comply with its defects warranty obligations under Clause 9.4, Buyer shall, in addition to Buyer's statutory remedies, be entitled to have the defect and/or damage repaired by another contractor at Seller's cost.
- 9.7 *Third party claims:* If Seller is responsible for a defect according to Clause 9.1 or any damage resulting therefrom, Seller shall hold Buyer harmless from and against any third-party claims if the cause of such defect and/or damage falls within Seller's domain and organisational area and if Seller is directly liable to third parties. Within the scope of such indemnification, Seller shall reimburse all cost and expenses incurred by Buyer due to the defect and/or damage, e.g. caused by recourse activities by third parties and product recalls made by Buyer.

### 10. PRICES AND PAYMENT

- 10.1 *Prices and rates:* All prices and rates for the Products shall be the amounts, and shall be paid in the currencies, as stated in the Contract. With the exception of value added tax ("VAT"), all prices and rates shall include any sales, use, consumption, multi-staged, personal property, customs, excise, stamp, import, transfer or similar taxes, duties, levies or charges including, without limitation, those levied in connection with the delivery of Products to their agreed place of delivery. VAT shall be payable in addition, where applicable.
- 10.2 *All inclusive:* Unless expressly stated otherwise in the Contract, prices and rates shall be fixed and not subject to any price adjustment and shall be deemed to be inclusive of all costs and expenses related to the fulfilment of the Contract, including but not limited to cost of design, planning, preparation, materials and tools, transport, storage, packaging, wages, ancillary wages and salaries, documentation and reasonable overhead and profit. Seller shall only be entitled to an adjustment of prices and rates if and to the extent expressly stated in the Contract.
- 10.3 *Invoicing:* Seller's invoices shall be provided as single copies and must contain all information required in the Contract. Invoices shall be submitted separately from a consignment. If an invoice is incorrect or does not comply with the invoicing requirements Buyer may reject the invoice and request a credit note and a new invoice and Seller's claim for payment shall not become due until and unless such failure has been corrected. If Seller's failure to comply with the invoicing requirements could have been reasonably avoided by Seller, Buyer shall be entitled to charge a handling fee in the equivalent of EUR 50 for each incorrect and contested invoice.
- 10.4 *Advance payment:* If the Parties agreed that Buyer shall make a down payment to Seller prior to delivery, Buyer shall only be obliged to effect such payment against receipt of an advance payment bank guarantee in the same amount.
- 10.5 *Payment term:* Unless otherwise agreed in writing, the payment term shall be 30 days. The payment term shall start as soon as the Products have been delivered, all contractually agreed documentation has been submitted by Seller and Buyer has received a correct invoice. Payment shall be considered punctual if Buyer has irrevocably instructed its bank to perform the transfer on or before the last day of the payment term.
- 10.6 *No acceptance:* Any payment by Buyer shall be on account only and shall not constitute acknowledgement that Products have been completed or delivered on time or are otherwise in accordance with the Contract.
- 10.7 *Payment delay:* Buyer shall be in default of payment upon receiving a written reminder by Seller. In case of default, Buyer shall pay late payment interest at the rate of four (4) percentage points above the main refinancing operations minimum bid rate of the European Central Bank (to be found at <http://www.ecb.int/home/html/index.en.html>) per annum.
- 10.8 *Set-off and counterclaims:* Seller shall only be entitled to assert retention rights and to offset claims against counterclaims if these rights or claims are expressly acknowledged by Buyer or have become res judicata.

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10.9 *Assignment and transfer:* The assignment by Seller of any right, title or interest under the Contract or the transfer of any or all of Seller's duties to any third party shall be subject to the prior written consent of Buyer.

10.10 *Subcontracting:* Seller shall be entitled to engage suitable subcontractors for the manufacture and delivery of the Products; however, Seller shall not be entitled to subcontract all of Seller's obligations under the Contract without Buyer's prior written consent. Any consent by Buyer shall not release Seller from any of Seller's responsibilities under the Contract. Seller shall not be entitled to excuse lack of performance under the Contract by claiming to have carefully selected a subcontractor.

### 11. COMPLIANCE AND LABOUR STANDARDS

11.1 *Compliance:* When executing any matter related to the Contract, the Parties undertake to comply with and ensure that their respective subcontractors comply with all applicable laws and regulations on compliance, anti-bribery, anti-corruption, transparency, integrity and good business practice and to respect the Ten Principles of the United Nations Global Compact.

11.2 *Labour standards:* Seller declares to comply and cause any of its subcontractors to comply with the core labour standards of the International Labour Organisation (ILO) and observe the compliance with collective agreements and the related minimum pay for employees.

### 12. CONFIDENTIALITY, INTELLECTUAL PROPERTY AND DATA PROTECTION

12.1 *Confidentiality and permitted use:* Each Party shall undertake to keep strictly confidential all technical, scientific, commercial, administrative, business, financial or property rights data and information received from the other Party or any of its affiliates under or in connection with the Parties' business relationship provided that such data or information is either labelled as confidential or of a type normally considered confidential. Disclosure shall only be allowed with the disclosing Party's written consent. However:

- a) Buyer shall be entitled to pass on any Product Documentation to any affiliate, subcontractor or end user or in case of a legal obligation, and
- b) Seller shall, upon giving written notice to Buyer, be entitled to pass on to authorised subcontractors such information contained in Buyer's technical specifications which is necessary to enable these subcontractors to perform their tasks in relation to the design, manufacture and/or transportation of Products according to the Contract.

12.2 *Protection:* A receiving Party shall protect confidential information by using the same degree of care as the receiving Party uses to protect its own confidential information of a similar nature, but no less than a reasonable degree of care.

12.3 *Continuing obligations:* The aforementioned obligations shall remain in full force and effect for a period of five (5) years from the termination and/or expiry of the Contract. Even following expiry of the above deadline, any disclosure of confidential information shall be prohibited if such confidential information constitutes a business secret within the meaning of the laws applicable to the Parties (e.g. European Directive 2016/943 on protection of business secrets).

12.4 *Data protection:* Each Party shall comply with the applicable laws on the protection of personal and business data.

12.5 *Buyer's know-how:* Seller shall use Buyer's know-how and any confidential information received by Buyer only for the purposes of fulfilling the Contract. Buyer does not grant to Seller any licences, rights of use or industrial property rights by disclosing any of Buyer's know-how or information to Seller and Seller shall not be entitled to register any rights whatsoever in respect of Buyer's know-how.

12.6 *Licence:* By executing the Contract, Seller grants to Buyer a non-exclusive, irrevocable, transferable and royalty-free licence to use the Products, the Product Documentation and Seller's copyright and other intellectual property rights contained therein for the purposes of operating, processing, installing, repairing, replacing, maintaining, adjusting or dismantling the Products or any part thereof, and to distribute the Products and the Product Documentation to any third party in accordance with the applicable laws, including the right to copy and to incorporate the Product Documentation into operating manuals and data sheets.

### 13. MISCELLANEOUS

13.1 *Entire agreement and written form:* No further implicit, written or any verbal agreements have been made. Conclusion of as well as any amendments and supplements to the Contract must be in writing. This shall also apply to any rescission or waiver of this written form requirement.

13.2 *Severability:* If any provision of the Contract is held to be invalid, illegal or non-enforceable, such invalidity shall not impair the validity, legality or enforceability of the remaining provisions. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify the Contract so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the terms of the Contract remain as originally contemplated to the fullest extent possible.

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13.3 *Relationship of the Parties:* The relationship of the Parties is that of independent parties dealing at arm's length and nothing in the Contract may be construed to constitute Seller as an agent, representative or employee of Buyer or so as to have any kind of partnership with Buyer, and Seller must not represent itself as or act on behalf of Buyer. The Contract does not imply any employment relationship between Buyer and Seller or between Buyer and Seller's employees assigned to the execution of the Contract. Buyer remains free of any responsibility or liability for labour, social security or taxes with respect to Seller and its employees and Seller's permitted subcontractors assigned to the execution of the Contract.

### 14. GOVERNING LAW AND RESOLUTION OF DISPUTES

14.1 *Governing law:* The Contract shall be governed and interpreted in accordance with the laws of Germany without giving effect to any choice of law rules thereof that may direct the application of the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

14.2 *Proceedings:* Any dispute, controversy or claim arising out of or in connection with the Contract or the alleged breach, termination or invalidity thereof, shall be settled before the Civil Division and Commercial Division at the Regional Court of Hamburg (*Landgericht Hamburg*), Germany. Buyer shall also have the right to file suit against Seller at Seller's principal place of business. Proceedings shall be held before one of the English-speaking divisions at the court.

14.3 *Legal expenses:* According to the applicable legislation, the Party prevailing in such proceeding shall be entitled to have all reasonable legal cost and expenses reimbursed by the other Party (e.g. court fees and attorneys' fees).

14.4 *Execution of the Contract:* In the course of any proceeding, this Contract shall be executed continuously by the Parties except for those issues which are subject to the proceeding.

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