



**1. INTERPRETATION**

For the purposes of these Terms and Conditions for the sale and supply of Products and Services ("*Conditions*"):

- "*Buyer*" the person, firm or company, which places an order for purchase of Products and/or Services as identified in any such order or Quotation as the case may be.
- "*Conditions*" these terms and conditions of sale and supply as from time to time varied by Supplier.
- "*Contract*" the agreement between Supplier and Buyer arising as a result of Supplier's Quotation provided to Buyer, Buyer's submission of an order for Supplier's Products/Services and Supplier's acceptance (e.g., by means of an order confirmation) as well as any mutual agreement on Supplier providing Products/Services referring to these Conditions. Such Contract shall be deemed to incorporate and be governed by these Conditions.
- "*Products*" goods as agreed to be supplied by Supplier to Buyer under any Contract including, Software if any.
- "*Quotation*" a document provided by Supplier describing Products and/or Services offered to Buyer, subject to these Conditions.
- "*Services*" means any services, which Supplier has agreed to provide using reasonable care and skill under any Quotation or Contract, as applicable.
- "*Supplier*" VI-grade Ltd, having its registered address at: 5<sup>th</sup> Floor Melbourne House 44-46 Aldwych London, WC2B 4LL, United Kingdom, and/or any other related entity specifically named in the Quotation.

**2. BASIS OF SALE**

THESE CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS, WHICH APPEAR IN BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER'S ORDER.

- 2.1 No term or condition of Buyer's order additional to or different from these Conditions shall become part of any Contract unless explicitly agreed to in writing by Supplier. Retention by Buyer of any Products delivered by Supplier, receipt by Buyer of any Services performed by Supplier or payment by Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Conditions nor as an acceptance of any such provision.
- 2.2 Any customization of Products, where Supplier's commercially available off-the-shelf products are modified in any way at Buyer's request or instruction, shall be provided pursuant to a rate schedule to be agreed upon by the parties and may be subject to additional terms.

**3. QUOTATIONS**

Prices and specifications referenced in Supplier's Quotations are for information only and shall not be binding on Supplier until all technical requirements have been agreed and Supplier has accepted Buyer's order. Delivery dates are governed by Section 6.3. Quotations terminate if Buyer does not place an order with Supplier within any express period indicated by Supplier on the Quotation.

**4. ORDERS**

By submitting an order to Supplier, Buyer agrees to be subject to these Conditions in their entirety. No order, whether or not submitted in response to a quotation by Supplier, shall be binding upon Supplier until accepted by Supplier, e.g. by means of an order confirmation.

**5. PRICES AND TAXES**

- 5.1 The prices for Products and Services will be as set out in the Quotation or as otherwise agreed between the parties in writing. As and when applicable to the Products sold and/or Services supplied under any Contract, prices do not include taxes, transport charges, insurance and export and/or import charges or duties, including without limitation sales taxes, value added tax, use or excise taxes, which taxes and other charges may, in Supplier's discretion, be added by Supplier to the price or billed separately and which taxes and other charges shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate. Buyer shall pay for taxes, transport charges, insurance, export/import charges and duties unless agreed otherwise in writing.
- 5.2 If, after the conclusion of a Contract, the Supplier provides services at the request of the Buyer, which are not covered by the Contract (for example, without limitation, to forward additional documents or

certificates, to defer a shipment, to suspend Services, etc.), the Supplier may charge the Buyer for all external costs and internal expenses arising therefrom.

- 5.3 The parties can agree to invoice a Contract in Sterling, Euro or in US Dollar. If the Supplier's local currency is other than Sterling, Euro or US Dollar, invoicing in the Supplier's local currency may be agreed upon between the parties, but can be rejected by the Supplier if the price of the Contract, i.e. the total amount payable by Buyer to the Supplier as price, as described in Section 5.1., for Products and/or Services under that Contract, is higher than one million Euro (€1.000.000,00) after currency exchange, or the Contract has a term longer than twelve (12) months. Invoicing in other currencies may be agreed upon in writing by the Parties, with the Supplier having always the right to reject it, regardless of the price and/or term of the Contract. Where the Contract is invoiced in any currency other than Sterling, Euro or US Dollar, the Supplier has the right to adjust the Contract price according to the most recent applicable rate of currency exchange.
- 5.4 Payment shall be effected by bank transfer except as provided differently in the Quotation, whereby cash payments cannot be agreed or accepted under any circumstances.

**6. SHIPMENT AND DELIVERY**

- 6.1 Unless otherwise agreed by both parties in writing, packaging, shipment and delivery shall be carriage and insurance paid to the place of destination as specified within the Contract (CIP in the meaning of the Incoterms 2020) whereby Supplier, in its sole discretion, may arrange for the delivery of Products and may invoice any costs related to export clearance, packaging, transport insurance and carriage thereof to the Buyer.
- 6.2 If Buyer is in default of receipt, if Buyer fails to timely provide agreed or otherwise necessary contributions for delivery (including without limitation information) or if such are wrong (including without limitation provision of an incorrect address by Buyer), or if delivery is delayed for other reasons for which Buyer is responsible (including without limitation where the site designated for delivery is closed during regular business hours), Supplier shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For such damage, a lump-sum compensation of 0.5% of the net order value per calendar week shall apply, beginning with the delivery date and up to a maximum of 10% of the net order value in the event of final non-delivery for above reasons. Supplier reserves the right to claim additional damages, if any; the lump sum is then to be credited against these damages. Buyer may prove that Supplier has incurred no damage at all or only significantly less damage than the aforementioned lump sum.
- 6.3 Any dates quoted or agreed for delivery of Products or provision of Services are approximate only and Supplier shall not be liable for any delay howsoever caused, including without limitation delays described in Section 6.4.
- 6.4 Supplier shall not be responsible for delays caused by reasons not attributable to the Supplier, including without limitation: (a) force majeure events according to Section 17; (b) delayed or denied export license as described in Section 21, provided Supplier took commercially reasonable efforts to obtain such licenses; (c) conflicting sanctions or embargos; (d) delayed customs clearance; (e) lack of delivery by Supplier's upstream suppliers or vendors, provided Supplier took commercially reasonable efforts to ensure being supplied; (f) failed delivery as described in Section 6.2; (g) any deficiencies in the provision of agreed or necessary access, support or other contributions on part of the Buyer. Supplier shall inform Buyer of such delays. If such delays last longer than ninety (90) days, the affected part of a Contract may be terminated by either party without additional cost, and without liability to the other party.
- 6.5 Supplier reserves the right to make delivery of Products and provision of Services by instalments and to issue a separate invoice in respect of each instalment. When delivery is to be by instalments or Supplier exercises its right to deliver by instalments or if there is delay in the delivery of any one or more instalments for whatever reason Buyer shall not be entitled to treat the Contract as a whole as repudiated.
- 6.6 Supplier further reserves the right to make delivery of Products in advance of any quoted or agreed delivery date subject to giving reasonable advance notice to Buyer.

**7. RISK AND PASSING OF TITLE**

Title to the Products shall pass to the Buyer only upon receipt of payment in full of all amounts due by the Buyer to the Supplier. Risk of loss and damage to the Products shall pass to Buyer on delivery in



accordance with Incoterm stated in Section 6.1 unless agreed otherwise by the parties in writing. Any claims for loss, damage or misdelivery shall be filed with the carrier and notified to Supplier immediately where the package is visibly damaged and within one working day of the date of delivery where internal damages are claimed. If installation is a requirement of the Contract, title to, and risk of loss and damage to the Products shall pass to Buyer upon acceptance or upon deemed acceptance in accordance with Section 12 below, whatever occurs earlier, unless agreed otherwise by the parties in writing.

## 8. SERVICES

- 8.1 Supplier shall provide Services in accordance with these Conditions and the terms of the relevant Contract.
- 8.2 Buyer shall, upon Supplier's reasonable request and otherwise as required, provide Supplier with all necessary information and materials to enable Supplier to provide Services in accordance with the terms of any relevant Contract. Buyer will be responsible for the completeness and accuracy of all such information and materials provided.

## 9. TERMS OF PAYMENT

- 9.1 Each shipment of Products may, in Supplier's reasonable discretion, be treated as a separate transaction and Buyer may be invoiced on shipment thereof. For Products being stand-alone software, the Buyer may be invoiced upon conclusion of the Contract. Notwithstanding the foregoing, if the Products are to be accepted and/or installed by Supplier or a third party acting on its behalf, Buyer may (at Supplier's discretion) be invoiced in accordance with the following payment schedule, unless otherwise set out in the Quotation:
- 40% of the price upon Buyer's receipt of Supplier's order confirmation;
  - 40% of the price upon delivery of the Products in accordance with Section 6. hereof;
  - 10% of the price after installation of the Products in accordance with Section 11. hereof;
  - 10% of the price after acceptance of the Products in accordance with Section 12. hereof.
- 9.2 In the event of a delay in the delivery or acceptance that is not attributable to Supplier, payment shall not be affected and Buyer shall pay the full amount or the instalments, if any, based upon the initially agreed upon delivery or acceptance date.
- 9.3 For Services, Supplier shall be entitled to invoice Buyer on the effective date of the respective Contract, unless stated differently in the Quotation. Terms of payment shall be net thirty (30) days from date of invoice for Products and Services unless agreed otherwise.
- 9.4 Without the Supplier's express written and prior consent, the Supplier shall not be obliged to provide any bonds, bank guarantee, letters of credit, collaterals or other securities to the Buyer. In any case, Supplier may invoice any costs incurred with contracting, maintaining or otherwise related to such securities to the Buyer.
- 9.5 All amounts due under a Contract shall be paid in full by Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law; payments shall be directly from Buyer, and not from any third parties, without the express written consent of the Supplier.
- 9.6 Supplier may, in its sole discretion, determine at any time that Buyer's financial condition requires full or partial payment in advance or the provision of security for payment by Buyer in a form satisfactory to Supplier.
- 9.7 If Buyer fails to make any payment when due then, without prejudice to any other rights and remedies available to Supplier, Supplier shall (at its option) be entitled: (i) to treat the Contract as repudiated by Buyer, to suspend or cancel further delivery of Products and/or the provision of Services or any part thereof under that Contract or any other Contract between them and claim damages and/or receive reasonable cancellation fees; (ii) to affirm the Contract and claim damages from Buyer; (iii) to withhold replacements pursuant to the standard product warranty policy and (iv) to recover, in addition to the payment, interest on the unpaid amount (both before and after judgement) of 1.5 % per month, or the highest rate permitted by law, whichever is lower, until payment in full is made. Such interest shall be calculated daily.
- 9.8 Buyer agrees and acknowledges that, should Buyer fail to pay any sum due and payable to Supplier, Supplier may take all legally required and equitable efforts to collect such debt including but not limited to employing lawyers and/or third-party collections agents. Any fees or costs of these collection efforts shall be chargeable to Buyer.

## 10. PRODUCTS

- 10.1 Supplier may modify specifications of Products (including without limitation parts, components and material used) provided the modifications do not adversely affect performance of the Products.
- 10.2 All descriptions, illustrations and any other information relating to the Products contained in Supplier's catalogues, brochures, price lists, advertising material and any sales or other particulars or literature are made by way of general description, are approximate only and for the general guidance and information of Buyer. They shall not constitute warranties or representations by Supplier, nor shall they form agreed part of any Contract.

## 11. INSTALLATION AND MAINTENANCE OF THE PRODUCTS

- 11.1 If installation of the Products or the provision of maintenance is a requirement of the Contract, the following provisions shall apply and Supplier's price and provision of installation or maintenance are subject to the following provisions at the expense and responsibility of Buyer: (i) safe and secure climate controlled on-site storage so that Products and Supplier's tools (as applicable) are protected against theft and any damage or deterioration; any item lost or damaged during the storage period shall be repaired or replaced at Buyer's sole expense; (ii) the timely and sufficient execution and completion of the preparatory works in accordance with all applicable safety, electrical and building codes as well as with Supplier's requirements; (iii) the availability of Buyer's site to Supplier without obstacles in due time to enable Supplier to start installation or maintenance at the scheduled date, whereby in case Supplier's personnel involved in such work should be required by Buyer to undergo specific training or certification or Buyer having to pay an access fee of any kind prior to entering Buyer's site, Supplier may invoice any costs related thereto to the Buyer; (iv) Buyer taking all necessary and beneficial measures to protect Supplier's personnel and property when entering Buyer's site and guarantee that conditions in this site are in conformance with Supplier's health, environment and safety standards as set forth in Supplier's respective policy which will be provided to the Buyer upon request; (v) the availability of the manpower and equipment necessary to place the Products in their final location or to provide the scheduled maintenance; (vi) the acquisition of all permits, licenses, rights of way, etc. of the pertinent authorities required for or in connection with installation or maintenance to be performed; and (vii) the availability of all visas or any other permits necessary for Supplier's personnel and for the import and export of tools, equipment, and materials necessary for installation or maintenance to be performed.
- 11.2 If any of the above provisions are not, not properly or not timely complied with, or Supplier has to interrupt or delay its installation or maintenance works, subsequent testing for reasons not attributable to Supplier, the period of completion shall be extended accordingly and any and all additional costs resulting therefrom shall be for Buyer's account.
- 11.3 Supplier assumes no liability and offers no warranty for the fitness or adequacy of the premises or the utilities available at the premises, in which the Products are to be installed, used or stored.

## 12. INSPECTION AND ACCEPTANCE

- 12.1 Where neither installation nor acceptance is a requirement of the Contract, Buyer shall inspect the Products without undue delay after delivery using an inspection method at least equivalent to the then latest version of ISO 9001 and notify the Supplier of any discovered defects within one working day after such inspection is completed.
- 12.2 Where installation is not a requirement of the Contract, but acceptance is, Buyer shall carry out the agreed acceptance tests (or, in the absence of such agreement, the tests Buyer may reasonably consider necessary) and notify the Supplier of any discovered defects without undue delay after such test is completed. If no such notification is received by Supplier within ten (10) working days after delivery, the Products shall be deemed accepted. If Supplier receives a notification which Supplier, in its reasonable opinion, considers unjustified, Supplier shall inform Buyer thereof and the Products shall be deemed accepted upon sending out this information to Buyer. If Supplier receives a justified notification, Supplier shall as a sole remedy correct the shortcomings as soon as reasonably possible, and the relevant parts of the acceptance test shall be repeated within a reasonable period of time in conformity with the procedures outlined above.
- 12.3 Where both installation of the Products and acceptance thereof are requirements of the Contract, Supplier shall notify Buyer when the installed Products are ready for acceptance testing, inviting Buyer within a reasonable time to attend the agreed acceptance test (or, in the absence of such agreement, Supplier's standard tests to



- demonstrate relevant compliance of the Products and of the installation with the agreed specifications). Buyer's attendance at the acceptance test shall be at Buyer's sole expense. If Buyer fails to attend acceptance testing on the date notified, Supplier will commence with the tests according to Supplier's standard test procedures whereby these tests shall be considered performed in the presence of Buyer. By passing the relevant acceptance test, the Products concerned are accepted. If acceptance testing on the date notified is prevented due to reasons within Buyer's sphere (including non-granting of access) without good cause claimed by the Buyer and which the Supplier, in its reasonable opinion, considers justified, acceptance is deemed to have taken place with the notification of readiness for acceptance testing. If the acceptance test is justifiably, reasonably and in good faith not (deemed) passed, Supplier shall as a sole remedy correct the shortcomings as soon as reasonably possible, and the relevant parts of the acceptance test shall be repeated within a reasonable period of time in conformity with the procedures outlined above.
- 12.4 Minor defects or deviations not affecting the operational use of the Products installed shall not entitle the Buyer to reject acceptance and shall not obstruct or suspend acceptance testing. Supplier undertakes to remedy such defects as soon as reasonably possible.
- 12.5 During the warranty period set forth in Section 13, Buyer shall notify Supplier of any hidden or latent defect immediately after its discovery.
- 13. WARRANTIES**
- 13.1 Buyer's warranty rights (warranty claims) shall require that the Buyer fulfils its duties as per Section 12.
- 13.2 Supplier warrants that all Products classified as or related to simulators, Hardware-in-the-Loop test benches and all related hardware, all system upgrades, repairs, and spare parts shall be free from defects in material and workmanship, under normal use, for twelve (12) months upon delivery or, where acceptance of the Product is a requirement of the Contract, upon acceptance.
- 13.3 Supplier warrants that all other Products (with the exception of Software, as defined in Section 15) shall be free from defects in material and workmanship, under normal use, for twenty-four (24) months upon delivery or, where acceptance of the Product is a requirement of the Contract, upon acceptance.
- 13.4 Supplier shall provide a limited warranty for Software which is described in the Supplier's general End User License Agreement (EULA) or, where applicable, a special license agreement which is agreed separately or upon download, installation and/or run of such Software. Supplier does not warrant that operation of the Software will be uninterrupted or error free or that all program errors will be corrected. This warranty does not include any consumables, which fail as a result of normal usage. Buyer shall be responsible for determining that the Product is suitable for Buyer's use and that such use complies with any applicable law.
- 13.5 Supplier shall, at its option, repair or replace the Products, shipment to Buyer prepaid, provided that: (i) Buyer notifies Supplier of any claimed defect in accordance with Section 12; and (ii) any such Product is returned at Buyer's risk to Supplier, transportation charges prepaid, within the warranty period established in Sections 13.2 and 13.3; and (iii) upon examination, Supplier determines to its satisfaction, after a reasonable period to inspect such Product, that such Product is defective in material or workmanship. Any costs and expenses for the provision of warranty to Products being increased due to a Product being transported to a location other than the agreed delivery location shall be borne by the Buyer.
- 13.6 Supplier shall have a reasonable time to make such repairs or to replace such Product. Any repair or replacement of Products shall not extend the period of warranty. The warranty is limited to the period established in Sections 13.2 and 13.3, without regard to whether any claimed defects were discoverable or latent on delivery.
- 13.7 If, during the warranty period as established in Sections 13.2 and 13.3, a Product is held in construction or design directly to infringe a patent, copyright or other intellectual property right of any third party granted by the competent intellectual property office(s) in the country of delivery such that the Buyer is prevented from using such Product, or in case any Product may, in the opinion of Supplier, be held to infringe, Supplier may, at its expense and option, do one or more of the following: (i) procure for the Buyer the right to continue using said Product, (ii) replace said Product with a suitable non-infringing product, (iii) suitably modify said Product, or (iv) refund the purchase price of said Product.
- 13.8 Supplier shall not be liable for any breach of the warranty or payment of damages in respect of Products supplied if: (i) Buyer makes further use of such Products after giving the notice required in Section 13.5; (ii) the defect or failure arises from the fault of Buyer; (iii) the defect arises from any drawing, design or specification supplied by Buyer or from other materials or other property supplied by Buyer or from any parts or items that have not been completely manufactured by Supplier; (iv) the defect arises other than out of manufacture, including without limitation improper installation, misuse by Buyer or a third party, neglect or accident; (v) the defect arises out of the use of the Products in conjunction with products or materials not reasonably contemplated by Supplier; (vi) the defect results from Buyer's unauthorized addition to or modification of, or failure to comply with Supplier's written instructions relating to, the Products or Services; and/or (vii) the defect arises out of any breach by Buyer of its obligations to provide information to Supplier under these Conditions or Contract.
- 13.9 If Buyer wrongly complains about defects of the Products, Supplier is entitled to charge Buyer any reasonable costs and expenses incurred for identification and/or rectification of the alleged defect.
- 13.10 If Buyer fails to pay when due any portion of any payment due from Buyer to Supplier under a Contract or otherwise, all warranties and remedies granted under this Section may, at Supplier's option, be terminated.
- 13.11 Section 6.4 shall apply mutatis mutandis for Supplier's warranty performances and time shall not be of the essence in this regard.
- 13.12 Supplier warrants to the Buyer that Services will be provided using reasonable skill and care. Repair Services which do not substantially conform with the Contract and which are notified to the Supplier within ten days of the Buyer becoming aware of the same, and in any event no later than three months after the date on which the Repair Services were performed, shall, if the Supplier agrees they were non-conforming, be re-performed as soon as reasonably practicable after the Supplier's receipt of notice of the non-conforming Repair Services. If the Supplier fails to rectify any deficient performance of the Repair Services, the Buyer's sole remedy shall be reimbursement of that portion of the fees attributable to the Repair Services concerned.
- 13.13 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND EXCLUDE ALL OTHER WARRANTIES, TERMS AND CONDITIONS, EXPRESS OR IMPLIED BY STATUTE OR OTHERWISE, TO THE EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THE WARRANTIES IN THIS SECTION 13 SHALL BE AS SET FORTH IN SECTIONS 13.6 AND 13.7.
- 14. LIABILITY**
- 14.1 Nothing in these Conditions or Contract shall exclude or limit Supplier's liability for fraud or death or personal injury caused by its negligence or any other liability to the extent that the same may not be excluded or limited as a matter of law.
- 14.2 For Products (and subject to Section 14.1), Supplier's maximum aggregate liability under or arising out of any Contract, whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed 100% of the total amount payable by Buyer in respect of Products under that Contract.
- 14.3 For Services (and subject to Section 14.1), Supplier's maximum aggregate liability under or in connection with the supply, non-supply or purported supply of Services under any Contract, whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed 100% of the total amount payable by Buyer in respect of Services under that Contract and in respect of Services continuing beyond one year, shall in no event exceed in any year 100% of the total amount paid by Buyer in the previous calendar year.
- 14.4 Subject to Section 14.1, Supplier shall not be liable to Buyer for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of data, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case, howsoever arising, whether such loss or damage was foreseeable whether arising in tort (including negligence), contract or otherwise.
- 14.5 Any claim arising out of or in connection with a Contract must be commenced against Supplier within one (1) year from the date, upon which Buyer became aware of or should have become aware of Supplier's violation of Buyer's rights, unless otherwise specified under applicable law. Notwithstanding the above, Supplier shall not be liable for any claim brought by Buyer for any reason later than two (2) years after delivery of the Product giving rise to the claim.



## 15. SOFTWARE

Supplier shall at all times have and retain all rights, title and ownership of all software, firmware, programming routines, and documentation relating to such software supplied by Supplier for use with the Products or as Products of their own (stand-alone Products), and of all copies thereof made by Buyer or the end user of the Products (collectively "Software"). Use of any Software shall be governed by the terms of the Supplier's general End User License Agreement (EULA), unless a special license agreement is agreed separately, or upon download, installation and/or run of such Software.

## 16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Notwithstanding delivery of and the passing of title in any Products and subject to Section 15 and 16.3, nothing in these Conditions or any Contract shall have the effect of granting or transferring to, or vesting in, Buyer any intellectual property rights in or to any Products and/or Services.
- 16.2 Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, source code, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of Supplier and Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions or in the relevant Contract.
- 16.3 The Supplier grants to the Buyer a non-exclusive, non-transferable and non-sublicensable licence to use such of the Works as are necessary, and to the extent necessary, for the end user to obtain and utilize the intended benefit of the Products and/or Services. Source code will not be provided or escrowed unless specifically agreed upon between the parties; Supplier may invoice any costs related to escrow to the Buyer.
- 16.4 If any claim is made against Buyer that the Products or Services infringe the patent, copyright or other intellectual property rights of any third party granted by the competent intellectual property office(s) in the country of delivery, Supplier shall indemnify Buyer against all losses, damages, costs and expenses finally awarded against, or incurred by, Buyer in connection with the claim or paid, or agreed to be paid, by Buyer in settlement of the claim provided that: (i) Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) Buyer shall not make any admission of liability and shall give Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Supplier; (iv) Buyer shall do nothing, which would or might vitiate any insurance policy or cover, which Buyer may have in relation to such infringement and shall use its best efforts to recover any sums due thereunder and this indemnity shall not apply to the extent that Buyer recovers any sums under any such policy or cover; (v) Supplier shall be entitled to the benefit of, and Buyer shall accordingly account to Supplier for, all damages and costs (if any) awarded in favour of Buyer, which are payable by, or agreed with the consent of Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and (vi) without prejudice to any duty of Buyer, Supplier shall be entitled to require Buyer to take such steps as Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for, which Supplier is liable to indemnify Buyer under this Section 16.4, which steps may include (at Supplier's option) terminating use of the Product or Service, accepting from Supplier non-infringing, modified or replacement Products or Services.
- 16.5 Supplier shall have no obligation or liability under Section 16.4 insofar as the infringement arises from: (i) any additions or modifications made to the Products and/or Services in question without Supplier's prior written consent; (ii) any information provided by Buyer to Supplier including without limitation any specification; (iii) performance by Supplier of any work required to any Products, or performance of any Services, in compliance with Buyer's requirements or specification; (iv) a combination with or an addition to equipment not manufactured or developed by Supplier; or (v) the use of Products beyond that scope established by Supplier or approved in writing by Supplier.
- 16.6 Without prejudice to Section 14.1, this Section 16 states the entire liability of Supplier and the exclusive remedy of Buyer with respect to any alleged infringement of intellectual property rights belonging to a

third party arising out of or in connection with the performance of any Contract. This Section 16 shall be subject to the limitations of liability as set forth in Section 14.

- 16.7 Any use of Supplier's intellectual property objects by the Buyer or third parties as the input data for the Artificial Intelligence (AI) chatbots, any other AI-generating software or tools, as well as for any programmable content-generating algorithms is not allowed without prior written permission of the Supplier.

## 17. FORCE MAJEURE

Notwithstanding anything to the contrary in these Conditions, Supplier shall be excused from, and shall not be liable for, failure of performance to the extent due to causes beyond Supplier's control and without Supplier's fault or negligence, including, but not limited to, war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization, civil war, acts of terrorism, acts of sabotage, acts of piracy, acts of god including natural disasters (including unusually severe weather and floods), epidemics and pandemics (including without limitation those caused by the SARS-CoV-2 virus and its future variants) as well as related lockdown measures, acts of government in either sovereign or contractual capacity, explosion, fire, destruction of equipment, prolonged breakdown of transport, telecommunication, information system or energy, general labour disturbance such as boycott, strike and lock-out. In order to be excused from performance Supplier shall use commercially reasonable efforts to promptly submit written notice thereof stating an estimate of the probable period of delay. Supplier shall use all commercially reasonable efforts to overcome the force majeure and to limit its impact as much as possible. Any date/period for delivery of Products and provision of Services is automatically extended for as long as the force majeure event continues. If the delay lasts longer than ninety (90) days, the affected part of a Contract may be terminated by either party without additional cost and without liability to the other party. If due to such circumstances or events Supplier has insufficient stocks to meet all its commitments Supplier may apportion available stocks between its customers at its sole discretion.

## 18. CONFIDENTIAL INFORMATION

- 18.1 The parties shall follow the provisions of any existing Non-Disclosure Agreements and adhere to all applicable trade secret protection laws, statutes and regulations.
- 18.2 The parties shall treat all information received through any audit performed under these Conditions or any Contract, including the EULA, as confidential information and covered under their Non-Disclosure Agreement. If there is no Non-Disclosure Agreement in place between the parties, the parties agree to negotiate in good faith an appropriate non-disclosure agreement prior to exchanging any information under an audit.
- 18.3 Buyer shall notify Supplier without undue delay after becoming aware of any suspected or actual data breach or other cyber security incident involving Supplier's data by contacting Supplier at [hbkkitsecurity@hbkworld.com](mailto:hbkkitsecurity@hbkworld.com).

## 19. CANCELLATION, RESCHEDULING AND TERMINATION

- 19.1 Contracts relating to the supply of Products may be cancelled, varied, amended or rescheduled by Buyer only with the written consent of Supplier (which consent Supplier may withhold for any reason) and Buyer shall indemnify Supplier against the cost of all labour and materials used in connection with the Contract so cancelled, varied, amended or rescheduled and against all loss, damage cost, charges and expenses suffered or incurred by Supplier as a result of that cancellation, variation, amendment or rescheduling; including, where the purchase of a certain amount of items within a certain period of time was a condition for a lower price per item being applicable, reimbursing the Supplier for the difference between the discounted price and the list price applicable at the time of delivery. Where the Contract is varied or amended by request of the Buyer accepted by the Supplier, the Supplier may adjust accordingly the total and/or per item price. Contracts for Services shall commence on the commencement date identified in the relevant Contract and, subject to earlier termination in accordance with Section 19, shall continue in force for the initial term as prescribed in such Contract and thereafter for any renewal period (if any) set out in the Contract and thereafter without limit of period unless or until terminated by either party in accordance with this section 19.
- 19.2 Either party may terminate part of a Contract relating to the provision of Services for convenience by giving sixty (60) days' notice to the other party. Where a longer term of a Contract relating to the provision



of Services is a condition for a lower price being applicable, the Supplier reserves the right to charge a penalty fee to the Buyer for the early termination for convenience, calculated based on the price that would have been applicable if the Contract had a term counted from the commencement date to the termination date.

- 19.3 Either party may terminate for cause parts of a Contract relating to the provision of Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services, which is incapable of remedy or which fails to be remedied.
- 19.4 Supplier may terminate parts of Contracts relating to delivery of Products and/or provision of Services immediately at any time by written notice to Buyer if (a) the Buyer violates Supplier's Code of Business Ethics available at: [Ethical business - Spectris](#), and/or (b) the Buyer or its controlling shareholders or its ultimate beneficiary owner(s) becomes subject of sanctions or embargos, and/or (c) is otherwise subjected to legal proceedings with a potentially adverse effect on Supplier's reputation.
- 19.5 Upon termination or expiry of any Contract for Services, each party shall, except to the extent permitted or required to exercise or perform its continuing rights, or obligations hereunder, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.
- 19.6 Termination of any Contract in accordance with these Conditions shall not affect the accrued rights or liabilities of the parties at the date of termination.

## 20. INSOLVENCY OF BUYER

If: (i) Buyer becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or carries out or undergoes any analogous act or proceedings under an applicable foreign law; or (ii) Buyer ceases, or threatens to cease to carry on business then, without prejudice to any other right or remedy available to Supplier, Supplier may treat any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 21. EXPORT CONTROL

- 21.1 Buyer understands that where Supplier's obligations under the Contract to supply any Products or Services are subject to governmental export control laws and regulations, the performance of this Contract and Buyer's use or export of any Products delivered by Supplier shall be conditional upon the grant of all necessary permits or licences. Buyer shall provide all information and documentation, including end user certification, not in Supplier's possession which may be used in the necessary applications for permits or licences concerning deliveries to Buyer. Supplier shall be relieved from its obligations to Buyer to supply any Products or Services to the extent that applications for permits or licenses for the same are refused by a relevant governmental authority or where sanctions are introduced. To the fullest extent permitted by law, Buyer shall have no right to claim compensation for damages, loss of business or otherwise arising from such a refusal or Contract termination.
- 21.2 Buyer shall not, directly or indirectly, sell, provide access to, export, re-export, transfer, divert, loan, lease, consign, tranship (including stop in port), transport, or otherwise dispose of any Supplier's Product, material, Software (including source code) or technology to, via, or for: (i) any entity known to be headquartered in, or owned or controlled by a national of, any country or region subject to relevant sanctions at any time; (ii) any other individual or entity identified on a denied or restricted party list; or (iii) any activity or end-use restricted by applicable laws without first obtaining all required government authorisations at Buyer's own expenses.
- 21.3 Supplier shall have the right, at its option, to suspend performance under or terminate any Contract if: (i) applicable sanctions are imposed; (ii) the Buyer is designated as or determined to be a denied or restricted party under applicable law; or (iii) where the Supplier's obligations under these Conditions or any Contract to supply items or Services are subject to governmental export control laws and regulations, the performance of any Contract and Buyer's use or export

of any item delivered by Supplier shall be conditional upon the grant of all necessary permits or licences.

- 21.4 Buyer shall not sell, export, or re-export (directly or indirectly) to the Russian Federation and/or to the Republic of Belarus, or for use in these countries, any Products supplied by the Supplier that fall under Article 12g of the Council Regulation (EU) No 833/2014 and shall undertake all efforts (including implementation of adequate monitoring mechanism) to ensure that third parties within Buyer's commercial chain comply with this clause. Buyer shall immediately inform Supplier of any issues in applying this clause and make available all relevant information on compliance with it. Violation of these obligations shall constitute a material breach of the Contract, and the Supplier shall be entitled to seek all appropriate remedies, including but not limited to immediate termination of the Contract.

## 22. DATA PROTECTION

- 22.1 The Buyer represents, warrants and undertakes that, to the extent required by applicable law, it has complied and shall continue to comply at all times with the EU General Data Protection Regulation 2016/679, the Regulation (the "GDPR"), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any applicable laws in any jurisdiction relating to the processing or protection of personal data and privacy, including where applicable the guidance and codes issued by any relevant supervisory authority from time to time.
- 22.2 The parties expect that under each Contract a processing of personal data is conducted solely on behalf of its own. In case that a party suspects that either its activities or the activities of the other party under a Contract create a data processing relationship in the sense of Art. 28 GDPR, or in case a supervisory authority or a court considers the Parties to be in such relationship, the parties will enter into a separate data processing agreement meeting the requirements of Art. 28 GDPR. In the absence of such separate data processing agreement, the provisions of the 'Annex No C (2021) 3701 to the Commission Implementing Decision on standard contractual clauses between controllers and processors under Article 28 (7) of Regulation (EU) 2016/679' shall govern such relationship.
- 22.3 The Buyer shall reimburse the Supplier for all losses, costs, claims, expenses or damages howsoever arising, which the Supplier may incur, or for which it may become liable as a result of or in connection with any breach or failure by the Buyer or its representatives to comply with this Section 22.

## 23. DISPOSAL

- 23.1 The Supplier or its authorized representative shall take reasonable efforts to create the possibility for the Buyer to dispose of the delivered Products in accordance with the statutory regulations after said Products are no longer in use.
- 23.2 The Buyer shall in no case transfer the delivered Products or parts of the delivered Products, which have been classified exclusively for commercial use in accordance with the applicable electrical and electronic equipment laws, to any private third parties.
- 23.3 The Buyer warrants that it will fully comply with its obligations under the applicable electrical and electronic equipment laws.

## 24. OWNERSHIP AND UTILIZATION OF MACHINE DATA

- 24.1 All process data that is automatically generated in the context of the manufacturing process of Products or provision of Services (e.g. process parameters, process programs, equipment configuration (including all changes), process results, condition of equipment, log files, failure messages etc.), (hereinafter referred to as "Machine Data") is owned by the Supplier. For the avoidance of doubt, the Machine Data shall not include information and data generated as the standard result of the intended use of the supplied Products or provided Services (output data received as the result of use).
- 24.2 Buyer may use the Machine Data only in the context of maintenance, monitoring, repair or failure analysis in connection with the supplied Products or provided Services, and without the right of its copying or reproduction, unless Supplier provides its prior written consent for this. For these limited purposes, the Machine Data shall be read by the Buyer on its own, without the support of the Supplier.
- 24.3 Utilization of the Machine Data by the Buyer beyond the abovementioned scope, especially use of the Machine Data for



development and realization of business models of the Buyer, passing of the Machine Data to a third party or any reverse engineering of Machine Data is not allowed.

**25. GENERAL**

- 25.1 These Conditions and any Contract shall be governed by the laws of the headquarters' location of the Supplier entity contracting with the Buyer hereunder ("*Jurisdiction*") without regard to its conflict of law principles and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The parties agree to settle any claims or disputes arising out of or in connection with these Conditions or any Contract by amicable negotiations. If no settlement can be reached through negotiations within sixty (60) days after either party has served written notice to the other requesting such negotiations, then the dispute shall be resolved by the courts of England.
- 25.2 Failure by Supplier to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right.
- 25.3 If any Conditions are found to be invalid, this shall not affect the rest of the Contract, which shall remain in full force and effect.
- 25.4 Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or obligations, in whole or in part without the written consent of Supplier.
- 25.5 These Conditions constitutes the entire agreement and supersedes any prior agreement, understanding, representations or arrangements between the parties with respect to its subject matter.
- 25.6 Changes and other modifications to any Contract must be in writing and signed by the parties; Section 5.2 remains unaffected.
- 25.7 All notices given under these Conditions shall be sent to the address of the other party set forth in the Quotation or in Contract. Notice will be deemed to be properly given if sent in writing. Notices shall be deemed to have been served (i) on the next working day from delivery if sent by email or fax, and (ii) on the day of receipt if sent by express courier or by registered mail.

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