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## EHP GENERAL CONDITIONS OF SALE

### 1. DEFINITIONS

- 1.1. In these General Terms of Sale ("General Terms") and in the associated Proposal hereto the following definitions shall apply (where the context permits the singular shall include the plural and vice versa):
- 1.2. "Affiliate" shall mean any entity controlling, controlled by or under common control with a Party, where "control" means an entity's (a) ownership, directly or indirectly, of equity securities entitling it to exercise in the aggregate at least 50% of the voting power of the entity in question; or (b) possession directly or indirectly, of the power to direct or cause the direction of the management and policies of or with respect to the entity in question, whether through ownership of securities, by contract, or otherwise.
- 1.3. "EHP" refers to "Euro Heat Pipes SA".
- 1.4. "CFI" or "Customer-Furnished Items" shall mean all necessary information, facilities, rights and permits, assistance, equipment and services that EHP may reasonably require from the Customer so as to permit EHP to fulfil without interruption the obligations undertaken in the Contract.
- 1.5. "Contract" shall mean the agreement between EHP and the Customer for the purchase and sale of the Works pursuant to Clause 4, comprising: (i) EHP's Proposal, including documents, if any, incorporated by express references and the acceptance thereof by the Customer in accordance with Clause 4.1; or (ii) the order by the Customer and EHP's acceptance thereof in accordance with Clause 4.2; and (iii) these general conditions of sale.
- 1.6. "Customer" shall mean the company, public authority or organization to which the Proposal is addressed or with whom the Contract is concluded.
- 1.7. "Day" shall mean calendar day.
- 1.8. "Deliverables" shall mean all goods, materials, supplies, equipment, products, hardware or data system software (if not declared as Services).
- 1.9. "DRB" shall mean Delivery Review Board.
- 1.10. "Intellectual Property Rights" or "IPR" shall mean patents, trademarks, service marks, logos, trade names, copyrights (including rights in computer software in object and source code), rights in designs, utility models, rights in know-how and any other intellectual property rights, in each case whether registered or unregistered.
- 1.11. "Party" or "Parties" shall mean Customer and/or EHP as the context may require.

- 1.12.** “Proposal” shall mean the written offer by EHP to the Customer that (i) is either marked as binding or non-binding; (ii) includes all documents incorporated by express reference or subject to the EHP general conditions of sale, and (iii) details the price, scope, quantities, specifications and delivery period of the Works and other relevant information.
- 1.13.** “Public official” means an elected or appointed official, employee or agent of any national, regional or local government/state or department, agency or instrumentality of any such government/state or any enterprise in which such a government/state owns, directly or indirectly, a majority or controlling interest; an official of a political party; a candidate for public office; any official, employee or agent of any public international organization; and any spouse or close family member related thereto.
- 1.14.** “Services” shall mean all training, maintenance, integrated logistic support, program management, engineering, installation, commissioning and other services.
- 1.15.** “Works” shall include without limitation all Deliverables and/or Services (whether or not ancillary to the sales of goods) that are offered by EHP in the Proposal and furnished to the Customer in performance of and pursuant to the ensuing Contract.
- 1.16.** “Sanctions and Export Control Laws” means any laws or regulations which impose economic, trade or other restrictive measures or, export, re-export licenses or other authorizations in each case issued and enforced by a Sanctions Authority.
- 1.17.** “Sanctioned Person” means: a. any natural or legal person in any list of sanctioned persons of any Sanctions Authority (including the List of Specially Designated Nationals (SDN) and Sectorial or Sanctions Identifications (SSI) List); or b. any natural or legal person directly or indirectly owned or Controlled by any one or several person(s) designated under (a) above.

## **2. SCOPE OF ACCEPTABILITY AND GENERAL OBLIGATIONS OF EACH PARTY**

- 2.1.** These General Terms form an integral part of the Proposal and apply to any delivery or performance of Works by EHP, unless otherwise agreed by EHP in writing.
- 2.2.** In case of a Contract formation pursuant to Clause 4, EHP agrees to supply and/or render and the Customer agrees to pay for the Works in accordance with the terms and conditions set forth herein.
- 2.3.** It is expressly understood and agreed that EHP may use subcontractors and/or suppliers for the performance of its obligations under the Contract at its own discretion.

### 3. SCOPE OF WORK

- 3.1. The scope, quantities, specifications and delivery period of the Works are set forth in EHP's Proposal or Proposal confirmation. Any change thereto is subject to EHP's written consent and may in particular have an impact on prices and delivery schedule. In the absence of any specific requirement, the Works shall adhere to the specifications generally applicable to similar goods or services provided by EHP following standard product assurance plan QUA-EHP-PAPL-001.
- 3.2. Any documentation including marketing material provided by EHP to the Customer prior to the conclusion of the Contract, including but not limited to drawings, sketches, brochures, indications of weight or measurements, calculations, etc. are not deemed part of the Contract, unless specifically referenced to in the Contract.
- 3.3. Notwithstanding the aforesaid provisions, EHP shall be entitled to make minor modifications to the Works or provide new versions or models of individual Works provided that such modifications and/or new versions meet the requirements of the Contract.

### 4. FORMATION OF CONTRACT

- 4.1. In case of a Proposal explicitly marked by EHP as binding, the Contract shall come into force upon receipt by EHP of the Customer's written acceptance of the binding Proposal, and, if agreed, the receipt by EHP of the respective advance payment in accordance with Clause 5.6 below. Under no circumstances shall any conflicting or additional, disclaiming terms in Customer's purchase order or similar document (e.g. Customer General Terms and conditions) be binding on EHP.
- 4.2. An order placed by the Customer based on a non-binding Proposal ("for information only" or "ROM") or an order placed by the Customer which is deviating from the binding Proposal proposed by EHP shall constitute a binding offer, which EHP is free to accept within 6 (six) weeks of receipt thereof, by way of written confirmation. No such order shall be deemed accepted unless and until confirmed in writing by EHP. If accepted by EHP, the Contract shall come into force, and, if agreed, the receipt of the respective advance payment, in accordance with Clause 5.6 below.
- 4.3. Any change to the Contract shall not become effective, unless agreed by both Parties in writing.
- 4.4. In the event of any inconsistencies or conflicts between these General Terms and other documents forming part of the Contract, the following order of precedence shall apply: (a) Any written agreement between the Parties where the Parties explicitly agree that any of the provisions of these General Terms and/or the Proposal should be superseded; (b) the Proposal; (c) the Non-Disclosure Agreement; (d) the General Terms of Sale of EHP; (e) the order by the Customer.

- 4.5. No Proposal acceptance or order by the Customer which has been accepted by EHP in accordance with this Clause 4 shall be cancelled, varied or suspended by the Customer except with the agreement in writing of EHP and on terms that the Customer shall indemnify EHP in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by EHP as a result of such cancellation, variation or suspension.

## 5. PRICING AND PAYMENT

- 5.1. All prices are expressed and all payments for the Works shall be made in Euros (EUR) unless otherwise specified in the corresponding EHP proposal.
- 5.2. According to Ex Works Incoterms, prices are exclusive of any import/export value-added-taxes and custom duties, stamp duties, levies, fees or equivalent taxes levied on account of sales in or upon importation into the Customer Country and the country where they will be used. In order to ensure the application of tax exemptions the Customer shall be obliged to provide EHP with any necessary information and documents.
- 5.3. Any and all income tax, withholding tax, and any other fiscal taxes whatever their nature (direct/indirect) potentially due in the country of delivery or performance, the country of the Customer or end-customer are under the sole responsibility of the Customer.
- 5.4. In the event that EHP is required to pay any such taxes or duties, as stipulated in Clauses 5.2 and 5.3 above, these taxes and duties shall be invoiced and paid in addition to the agreed net prices. In the event that the Customer has to self-assess any such taxes, the Customer shall remit these tax amounts to the fiscal authorities without reduction of the agreed net prices.
- 5.5. Unless agreed otherwise, payment for the Works is due after signature of the Contract according to payment terms defined in Clause 5.6.
- 5.6. All payments shall be made via bank transfer and shall be made within thirty (30) days net following the invoice date.
- 5.7. In the event of any delay in payments, the Customer shall pay interest on the amount delayed at the rate of the lesser of either (a) Euribor (3 months) + ten percent (10%) per annum for each day elapsed from the due date to the date of actual payment, calculated on the basis of a 360-day year, or (b) the maximum rate allowed by applicable law. Any partial payments received shall first be applied to cover accrued interest, if any, and thereafter credited to cover the principal amount outstanding.

- 5.8.** Without prejudice to Clause 5.7, a delay or failure to pay shall also entitle EHP, all rights and actions reserved, to defer any supply of Works in progress until payment is completed.
- 5.9.** All payments to EHP shall be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, duties, charges or fees.
- 5.10.** The quoted prices are based upon the scope, specification and quantity of the Works referred to in the Proposal and are not divisible. In the event of any variation requested by the Customer from the Proposal in, inter alia, the scope, specification, delivery dates or quantity of the Works ordered, EHP reserves the right to vary the quoted prices.
- 5.11.** In the event of any newly enacted or change in any existing applicable laws (including but not limited to tax laws), statutes, decrees, ordinances, regulations or rules in the Customer's or end-customer's country after EHP's submission of the Proposal that leads to an increase of the prices and/or costs of EHP; the prices in the Proposal or agreed in the ensuing Contract shall be adjusted accordingly.

## **6. DELIVERY TERMS, RISK AND TITLE**

- 6.1.** Unless agreed otherwise, all supply of Deliverables shall by default be effected Ex-Works (EXW) in accordance with Incoterms® 2020. Risk of loss and damage in the Deliverables shall pass to the Customer in accordance with the stated Incoterm.
- 6.2.** If , at the Customer's request, Deliverables are to be shipped by EHP, any freight or packaging and insurance costs shall be charged to the Customer separately. Any transport damages shall be notified by the Customer to EHP and the shipment company in writing immediately upon receipt of delivery at the agreed place.
- 6.3.** If upon request by the Customer the delivery is postponed beyond the agreed delivery date EHP shall charge the Customer the actual additional costs beginning with the agreed delivery date or, in the event of storage in the EHP factory, an amount equal to 0,2 % of the Deliverables concerned for each additional week commenced for such storage.
- 6.4.** Subject to the exception stated in Clause 17 below, the title in the Deliverables shall pass to the Customer upon full payment of the Contract price. The Customer is not entitled to lien the Deliverables or transfer title therein for purposes of security. If a third party nevertheless acquires any rights into the Deliverables, the Customer is obligated to immediately notify EHP.

## 7. DELIVERY SCHEDULE AND DELAY

- 7.1. The Parties shall agree on the overall delivery schedule in the Contract, indicating the relevant time periods and dates for the delivery, installation, testing, commissioning and rendering of the Works.

## 8. ACCEPTANCE AND INSPECTION

- 8.1. Where Deliverables are supplied to the Customer: (a) The Customer is obliged to inspect the Deliverables and shall notify EHP within 14 (fourteen) days after receipt of the Deliverables if there are any defects to it. Such notification of defects shall be accompanied with relevant supporting evidence. (b) If the Customer (i) fails to notify EHP of the defects within 14 (fourteen) days after receipt of the Deliverables; or (ii) the Deliverables are used by the Customer for commercial or other purposes other than testing, the Deliverables shall be deemed to be accepted by the Customer. (c) Prior to contract signature, the Parties shall agree on specific acceptance criteria and testing procedures for the Deliverables which shall serve as the basis for the acceptance.
- 8.2. The Customer shall not be entitled to withhold acceptance for (a) minor deviations or deficiencies which do not materially affect the functioning of the Deliverables; or (b) defective installation or erection not carried out by EHP and/or its subcontractors; or (c) reasons that are not within the reasonable control of EHP. In case of not passing an acceptance test, only the failed test cases will be repeated.
- 8.3. Any costs and expenses related to the inspection and/or acceptance of the Deliverables shall be borne by the Customer.

## 9. WARRANTY

- 9.1. EHP warrants that it will perform the Services with reasonable care and skill and that the Deliverables shall correspond to their contractually agreed specification at the time of delivery and will be free from defects in material and workmanship under normal use and service for a period of 24 (twenty-four) months ("Warranty Period") from the date of delivery of the Deliverables .
- 9.2. Any Deliverables being replaced or repaired under warranty shall not result in an extension of the Warranty Period.
- 9.3. Any warranty obligation of EHP shall lapse in case: (a) of any defect in the Deliverables arising from any drawing, design or specification supplied by the Customer; or (b) of use of the Deliverables by the Customer before acceptance; or (c) of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow EHP's instructions , misuse or alteration or repair

of the Deliverables without EHP's approval or improper or inadequate maintenance by the Customer; or (d) of minor deviations from the drawings, design or specifications supplied by EHP, insignificant deviations from the agreed quality or minor impairment of usability which do not materially affect the use of the Deliverables (which shall not be considered to be a defect); or (e) the Deliverables have been used in a manner or under a circumstance or for a purpose not reasonably to be inferred by EHP or disclosed to EHP prior to entering into the Contract; or (f) where the Deliverables consist of software: for non-reproducible software errors or minor bugs not affecting the functionalities.

- 9.4.** Save for the warranty obligations specified in Clause 9.1 above, all other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. EHP specifically disclaims any implied warranties of merchantability and fitness for a particular purpose.
- 9.5.** EHP's sole liability with regard to defects in the Deliverables during the Warranty Period shall be to either repair or replace the defected Deliverables (or the relevant parts thereof) at EHP's sole discretion free of charge, or to refund to the Customer the price of the defective Deliverables.
- 9.6.** Clause 9 sets out the sole and exclusive remedy of the Customer for all warranty claims during the Warranty Period.

## **10. CUSTOMER FURNISHED ITEMS**

- 10.1.** In order to fulfil its obligations under the Contract, EHP and the Customer are required to closely cooperate. The Customer shall provide EHP with all CFI in a timely manner and at no extra charge to EHP.
- 10.2.** The Proposal or the ensuing Contract shall, if possible, contain a list detailing the CFI, its required specifications and delivery time. Notwithstanding the above and not limiting the general obligation as stated in Clause 10.1, the Customer shall provide EHP in due time with such labor, information, facilities, documents, equipment and other material and auxiliary services which EHP requires for the delivery/provision of the Works, in particular (i) such assistance or documents as may be required for obtaining all necessary export licenses (i.e. provision of end-user certificates) and customs clearance for the Works to be provided/delivered (if the latter is not under the responsibility of the Customer in accordance with the applicable Incoterm); (ii) assistance for EHP's or its subcontractors personnel for obtaining visas, work and residential permits to the extent required for performing the Works; (iii) all necessary documentation/information of existing systems required to interface with the Works. Where in relation to the delivery/provision of the Works, works need to be performed by EHP at a Customer site, the Customer shall at its own costs and expense take all necessary measures to prepare the site and ensure that the site is suitable and ready for the commencement of the Works, including provision of all utilities, such as energy,



water, telecommunication services. All official permits, licenses or authorizations that are required for the local use and/or installation of the Deliverables by the Customer as well as any necessary import authorizations into Customer territory are to be obtained by the Customer. EHP shall, upon request, provide the Customer with all information reasonably required to obtain such official permits or authorizations. The Customer shall grant access to EHP to all of its business premises during the normal business hours if needed to fulfil its obligations undertaken in the Contract.

- 10.3.** In the event that the provision of CFI are either delayed, incomplete or in a condition not suitable for its intended use, EHP shall not be liable for any non-performance of its contractual obligations that is caused by such CFI; in particular, for any delays in the contractually agreed delivery due dates. Consequently, (i) the obligation of EHP to supply the Works by the contractually agreed delivery due dates shall be suspended until the Customer has properly delivered respective CFI, and (ii) the following delivery due dates shall be adjusted accordingly. The Customer shall reimburse EHP for any damages, costs or expenses that EHP incurred due to the provision of delayed, incomplete or unsuitable CFI.
- 10.4.** In the event that CFI is received by EHP in a condition not suitable for its intended use, EHP shall immediately notify the Customer. The Customer shall immediately after receipt of such notice replace, re-issue, authorize repair or otherwise issue instructions for the disposal of CFI found to be unsuitable.
- 10.5.** A delay in the provision of CFI shall not prevent the acceptance of any Works under the Contract and any associated payments. After conformity verification by EHP, the CFI shall be handed over to EHP who shall then be responsible for handling such items with due care and custody. Ownership of the CFI shall remain with the Customer.

## **11. FORCE MAJEURE**

- 11.1.** EHP shall not be liable to the Customer or deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Works, if the delay or failure was due to force majeure. For the purposes of this Clause, force majeure shall mean any unforeseen event beyond the reasonable control of EHP, its subcontractors or suppliers, such as, but not limited to, any act of God, hostilities between nations, war, riot, civil commotions, insurrection, blockades, embargoes, national emergency, epidemics, pandemics, earthquake, fire, flooding, or other exceptional weather conditions or natural disaster, acts of (cyber)terrorism, accidents, sabotages, strikes, shortages in material and supply.
- 11.2.** Where there is a force majeure event, EHP shall be entitled to an extension of the contractually agreed delivery dates by such further periods as may reasonably reflect the delay caused by such force majeure event.



**11.3.** Without prejudice to the other provisions of the General Terms, where the force majeure continues for more than 180 (one hundred and eighty) days, either party shall have the right to terminate the Contract. In such a case, EHP shall be reimbursed by the Customer for Works already performed/delivered in accordance with the agreed Contract prices, cost of other materials or goods reasonably ordered, any other expenditure reasonably incurred in the expectation of completing the Works as well as the reasonable costs for removal of EHP's equipment and demobilization of personnel.

## **12. LIABILITY**

**12.1.** Notwithstanding anything to the contrary in the Contract and except to the extent required by law, the total liability of EHP, its personnel and Affiliates for any act or omission, whether in contract, tort (including negligence, strict liability or product liability), by way of indemnities or any other legal theory shall not exceed 10% (ten percent) of the total Contract price. In case of Works where the Contract price is calculated on an annual basis, the liability shall not exceed 10% (ten percent) of the Contract price for the preceding twelve calendar months calculated from the date of the breach.

**12.2.** EHP, including its personnel and Affiliates, shall not be liable for any loss of profit (actual or anticipated), loss of use, loss of production, loss of contracts, loss of opportunities, loss of revenue, cost of capital, cost of replacement, loss of reputation, loss of information or data, loss from any third party contract, loss due to business interruption or any indirect, incidental, special or consequential losses or damage arising from or in connection with its performance or non-performance under the Contract and whether based upon contract, tort or any other legal theory. To the extent permitted by law, any extra-contractual liability claim pursuant to a breach of contract by any auxiliary to the Contract is excluded, whether or not in tort.

## **13. EXPORTS CONTROLS**

**13.1.** In case DAP option is chosen by the Customer, an act of Government or any public authority which causes that the Works may not be supplied, e.g. non-issuance, restriction and/or revocation of export, import or other required licenses, permits, or authorizations, export or import regulations or embargoes, shall be deemed to be a condition subsequent to the Contract and EHP shall not be liable in this regard to the Customer or deemed to be in breach of Contract. Where there is such an act causing a delay in delivery, EHP shall be entitled to a reasonable extension of the contractually agreed delivery dates. Without prejudice to the other provisions of the General Terms, where such an act continues for more than 180 (one hundred eighty) Days, EHP shall have the right to terminate the Contract. In such a case, EHP shall be reimbursed by the Customer for Works already performed/delivered in accordance with the agreed Contract prices, cost of other materials or goods reasonably ordered, any other

expenditure reasonably incurred in the expectation of completing the Works as well as the reasonable costs for removal of EHP's equipment and demobilization of personnel.

- 13.2.** The Customer agrees not to export or re-export, as the case may be, any Works (including any hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision and including any kind of technical support) to any other country without obtaining the necessary licenses and permits that may be required under any applicable legislation. EHP shall be entitled to terminate the Contract if the Customer is in violation of applicable rules and regulations.

## 14. SANCTIONS

- 14.1.** Each Party represents to the other as at the date hereof that neither it nor any of its Affiliates is a Sanctioned Person and undertakes at all times to conduct its business in compliance with all applicable Sanction and Export Control Laws.
- 14.2.** If, at any time following the signature of the Contract , (i) a Party or any of its Affiliates becomes a Sanctioned Person or (ii) the performance of a Party's obligations under the Contract would constitute a breach of Sanctions and Export Control Laws (each a "Sanctions Event"), then the affected Party shall promptly notify the other Party and the Parties shall, to the extent permitted by applicable Sanctions and Export Control Laws, consult with each other with a view to mitigating the effects of such Sanctions Event. During such consultation: - in the case of paragraph (i) above, the Party that has not become a Sanctioned Person; and - in the case of paragraph (ii) above, the Party whose performance under the Contract would constitute a breach of Sanctions and Export Control laws, - shall, in each case, have the right to suspend the performance of its obligations under the Contract at any time following the occurrence of a Sanctions Event. In any event, the breaching Party shall safeguard and hold harmless the other Party from any claims, actions and compensation by third parties deriving from any such breach.
- 14.3.** If performance of the obligations of the Parties cannot be lawfully resumed within a period of twelve(12) months after the occurrence of a Sanctions Event, which is continuing, then such Party may terminate the Contract at any time without any liability towards the other Party, upon notice to the other Party.
- 14.4.** Both Parties undertake to use each Deliverable in compliance with Sanctions and Export Control Laws and that, unless authorized under Sanctions and Export Control Laws, they will not directly or indirectly sell, import, export, re-export, lease, sublease or use the Deliverable to or in (a) any country which is the subject of commercial, economic or financial restrictions pursuant to any applicable Sanctions and Export Control Laws and/or (b) to any Sanctioned Person.

## 15. ANTI-CORRUPTION

- 15.1.** The Parties, their executives, employees, agents and any individuals or companies that may be involved in the execution and/or the performance of the agreement shall comply with all governmental statutes, laws, rules and regulations, including but not limited to all local and international anti-corruption laws applicable to the performance of its obligations and activities under this agreement.
- 15.2.** Accordingly, in the performance of the agreement, the Parties shall refrain from: - Offering, promising, arranging for or paying, either directly or indirectly, anything of value (including but not limited to monies, gifts and entertainment and special favors) to any individuals, including Public Officials, for the purpose of improperly inducing that individual to perform or fail to perform his/her official duties, or to assist any Party to this agreement in obtaining business, retaining business or securing any improper advantage; - Offering or paying unofficial payments to Public Officials to speed up or obtain routine governmental actions (including but not limited to obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or transit of goods across country); - Seeking, accepting, or paying for any confidential, non-public information regarding competitors, tenders and technical specifications, bids and bid prices.
- 15.3.** The Parties shall immediately report to the other Parties to this agreement any violation of applicable laws and regulations with respect to the execution and/or the performance of the agreement by itself or its affiliates, subsidiaries, executives, employees, agents or any individuals or companies that may be involved in the execution and/or the performance of the agreement.
- 15.4.** The Parties to this agreement shall immediately give notice to all other Parties to this agreement of any investigation or legal proceeding initiated by any public authority relating to an alleged violation of applicable laws and regulations with respect to the execution and/or the performance of the agreement by a Party to the agreement or its affiliates, subsidiaries, executives, employees, agents or any individuals or companies that may be involved in the performance of the agreement.
- 15.5.** The Parties to this agreement must have their employees/subcontractors abiding by the same obligations as regard to anti-corruption.
- 15.6.** If a Party does not comply with its obligations under this clause, the other Party reserves the right to terminate the agreement pursuant to Clause 19.

## 16. CONFIDENTIALITY

- 16.1.** Each Party shall keep in confidence all material and information received from the other Party, and marked as confidential or which should be understood to be

confidential, and shall not disclose it to third parties or use it for any other purposes than those set out in the Proposal or the ensuing Contract, without the prior written permission of the disclosing Party. Each Party will use the confidential information at its own risk.

**16.2.** The foregoing confidentiality obligations shall not apply to confidential information which: (i) is, or subsequently becomes, legally and publicly available without any breach by it of this Contract; or (ii) was rightfully in possession of, or known to, the receiving Party, which can be demonstrated by the receiving Party's internal documents; or (iii) is rightfully obtained by the receiving Party from a third party, without any obligation of confidentiality; or (iv) is independently developed by the receiving Party without access to or use of the confidential information; or (v) is disclosed by the receiving Party with the prior written approval of the disclosing Party; or (vi) is required to be disclosed pursuant to applicable law or the decision of a competent court or government agency, whereupon the receiving Party shall promptly inform the disclosing Party of this requirement in any case before any confidential information is disclosed, so that a protective order or other appropriate remedy may be sought. If the receiving Party is obliged to make a disclosure it shall only make a disclosure to the extent to which it is so obliged but not further or otherwise.

**16.3.** Each Party may disclose confidential information to its Affiliates engaged in the performance of the Contract but only to the extent that such Affiliate has a need to know for carrying out the Contract.

**16.4.** Each Party shall limit disclosure of confidential information to individuals within its own organization, including its Affiliates, to external counsels, service providers or to advisors on a "need to know" basis only and provided that such recipient has taken any necessary measures to ensure compliance with the undertakings of this Contract. Disclosure to external service providers shall be limited to the extent necessary to enable them to provide their services. The receiving Party shall in no event use a lower degree of care in safeguarding the disclosing Party's Information than it uses for its own information of like sensitivity and importance and in any case not less than reasonable care.

**16.5.** The obligations set forth in this Clause 16 shall bind the Parties as from the date of disclosure of confidential information and such obligations shall survive the termination or expiration of the Proposal or the ensuing Contract for a period of 5 years.

## **17. INTELLECTUAL PROPERTY RIGHTS**

**17.1.** Notwithstanding the Customer's rights under this Contract, all rights, titles and interests in and to all Intellectual Property Rights of whatever nature arising out of or related to any Works vest in, and shall be the sole and exclusive property of EHP or its third party licensors, whether or not specifically recognized, registered or finalized under the applicable law.

- 17.2.** EHP shall grant the Customer a limited, non-exclusive, non-transferable royalty-free right to use such Intellectual Property Rights as stipulated in Clause 17.1 to the extent required for complying with the purpose of the Contract. Unauthorized copying shall be strictly prohibited, however, subject to permission, reasonable back-up copies of each user-loadable program and any related update or revision in order to replace an authorized existing copy may be made. Any other copying, translation, modification, adaptation, decompilation, disassembly or reverse engineering of any Works shall be prohibited, unless otherwise ruled by the mandatory provisions of law.
- 17.3.** The obligation for indemnification shall not apply in cases where (and to the extent that) the claim for infringement is based on any unauthorized modification of the Works, combination of the Works with other equipment (whether hardware or software) not supplied by EHP, use of the Works for purposes other than that they were designed for or in conjunction with other equipment not supplied by EHP or if the infringement results from compliance by EHP with any part of the specification that is a mandatory requirement of the Customer and which is not commercially and/or technically reasonably capable of being complied with without infringement of the IPR on which the third party has based its claim. The same exception as stated in the preceding sentence shall apply in cases where the infringement claim is asserted by an Affiliate of the Customer.
- 17.4.** To the extent that a third party makes a claim of infringement against EHP based on the exceptions specified in the foregoing Clause 17.3, the Customer shall indemnify EHP in respect of any costs, losses or damages arising out of such action, subject to the same conditions (mutatis mutandis) as specified in subparagraph 15.3 above.
- 17.5.** EHP's total liability for infringement of any and all Intellectual property Rights in the Works shall be limited in accordance with the provisions of Clause 12 above.

## **18. ENVIRONMENT, HEALTH AND SAFETY**

- 18.1.** Customer assumes full responsibility and cost for a healthy and safe site, for the Works operations, including maintenance of equipment and sites, and for the proper removal, control, collection, recycling, and disposal according to sound environmental principles in accordance with the applicable laws.

## 19. TERMINATION IN CASE OF DEFAULT

**19.1.** In the event that a Party is in default of a material obligation under the Contract (apart from delay in delivery) and fails to remedy (or, as applicable, to take sufficient action to remedy) such default within a reasonable time fixed by the non-defaulting Party (which period shall not be less than 60 Days) in a written notice drawing the attention of the defaulting Party to the default and requiring the same to be remedied, then the non-defaulting Party shall have the right to terminate the respective Contract within 60 (sixty) Days of the expiry of the period stipulated, provided that the period during which the defaulting Party shall have the right to cure such a default shall be extended as long as the defaulting Party is diligently and promptly taking actions to cure such a default. In the event of bankruptcy, receivership or comparable procedure under applicable law of a Party hereto or in case the default is not capable of being remedied, then the non-defaulting Party may terminate the Contract forthwith. Termination shall apply to such part of the Contract which remains unperformed, unless it would be manifestly unreasonable to require the terminating Party to retain the part performed by the defaulting Party.

## 20. APPLICABLE LAW AND DISPUTE RESOLUTION

**20.1.** The Contract including this dispute resolution clause shall be governed by and construed in accordance with the laws of Belgium with the exception of its conflict of law provisions. The Parties expressly exclude the application of the International Sales of Goods Act (the "CISG").

**20.2.** Any dispute out of or in connection with the Contract (including its existence, validity, interpretation, performance, breach or termination) that the Parties cannot settle amicably within 60 (sixty) Days from the date of written notice of the dispute from either of them to the other shall be exclusively referred to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") in effect on the date of this Contract, by one (1) or more arbitrator(s) appointed in accordance with said Rules. Where the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court") determines that three arbitrators shall be appointed, the two party-appointed arbitrators shall jointly nominate a Chairman within 15 (fifteen) Days of their appointment by the ICC Court. All proceedings shall be conducted in the English language. The place of the arbitration shall be Brussels, Belgium, or such other location as the Parties may mutually agree. The award of the arbitral tribunal shall be final and binding on both Parties and both Parties waive the right to any appeal under any system of law, to the fullest extent possible. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. Notwithstanding the foregoing, either Party may seek and obtain temporary injunctive relief from any court of competent jurisdiction against any breach by the other Party of its obligations under the Contract.

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## 21. MISCELLANEOUS

- 21.1.** Any notice to be served by either Party upon the other shall be deemed to have been duly given 2 (two) Days after being sent to the intended recipient at its last known address by pre-paid first class post or its last known email address 2 (two) Days after being sent by email.
- 21.2.** If any provision in these terms shall be found or held to be void, the validity of the remaining provisions shall not be affected thereby. The replacing provision and any other required modification shall be subject to new negotiations between the Parties.
- 21.3.** Neither Party shall assign or transfer to any third party, without the prior written consent of the other Party the Contract or any part thereof. Notwithstanding the foregoing, EHP shall be entitled to transfer or assign this Contract in whole or in part to any of its Affiliates without the prior written consent of the Customer, or assign its receivables to a third party by notifying the Customer of the assignment in writing.
- 21.4.** The relationship between EHP and the Customer during the term hereof shall be solely that of vendor and vendee; the Customer, its agents, employees, representatives or affiliates shall under no circumstances be deemed agents or representatives of EHP, and the Customer and said agents, employees, representatives or affiliates shall have no right to enter into any contracts or commitments in the name of or on behalf of EHP or to bind EHP in any respect whatsoever.
- 21.5.** No waiver by EHP of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions. If EHP delays, targets or chooses not to enforce its rights under the Contract, it shall not affect its right to do so at a later stage.
- 21.6.** The Proposal and all documents related thereto have been made in the English language. All technical documentation or manuals that may, if explicitly ordered, be part of the Works shall be in the English language. In case of translation into any other language, the English version shall prevail.
- 21.7.** The Contract is the entire agreement between the Parties and may not be changed unless mutually agreed by the Parties in writing. The Contract shall supersede any other express or implied, written or oral terms, arrangements, customs or practices.