

GENERAL TERMS AND CONDITIONS OF SALE

**1. APPLICABILITY OF GENERAL TERMS AND CONDITIONS**

- 1.1** These General Terms and Conditions of Sale apply to all price lists, quotations, order acknowledgements, offers, invoices, agreements and any other engagements of sale between Mitsubishi Turbocharger & Engine Europe B.V., hereinafter referred to as "**Seller**", and a buyer (hereinafter referred to as "**Buyer**"), except in so far as expressly provided otherwise in writing.
- 1.2** This GT&C apply in relation to the Agreement(s) to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The applicability of any general terms and conditions of Buyer is expressly rejected.
- 1.3** Seller and/or Buyer are also hereinafter referred to as the "**Party**" and/or "**Parties**". The General Terms and Conditions are hereinafter referred to as "**GT&C**". The good(s) to be supplied under these GT&C is (are) hereinafter referred to as the "**Product(s)**" and the services to be rendered under these GT&C are hereinafter referred to as the "**Services**".

**2. AGREEMENT**

- 2.1** The offers made by Seller are non-binding unless explicitly specified otherwise in writing. A non-binding offer can be withdrawn up to five (5) business days after receipt of its acceptance.
- 2.2** An agreement (an "**Agreement**") will only be formed when Seller has accepted Buyer's order in writing (including email) or has started performance of the agreement.
- 2.3** No order shall be binding upon Seller unless accepted in writing. Seller may refuse to accept an order for any reason in its sole discretion and shall have no liability of any nature due to such refusal.
- 2.4** Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of Buyer that is inconsistent with these GT&C.

**3. PRICES AND TAXES**

- 3.1** The prices advised by Seller exclude all levies, imports, duties, charges (including costs and charges of packaging), insurance and transport of the Products any delivery charges, fees, sales, value-added, use, excise or other such taxes ("**Taxes**") which Seller may be required to pay in connection with fulfilling any order of Buyer. Any Taxes that fall due in relation to the sale of the Products shall be solely for the account of Buyer.
- 3.2** Seller reserves the right to change its prices whenever it deems necessary. A new price listing in any written form will supersede the preceding one with regard to all orders placed after the issue date of the new price listing.
- 3.3** Products are packed by Seller in its own packaging. Packaging costs shall be borne by Buyer.

**4. PRODUCTS, DRAWINGS AND DESCRIPTION**

- 4.1** The Product information is contained in general product documentation and price lists, whether in electronic or any other form and can be amended by Seller at any time. All references by Seller to product specifications correspond to the most recent product specifications as published by Seller.
- 4.2** Seller may, at any time, make changes (whether in design, materials, the addition of improvements, or otherwise) in any Product, and may discontinue the manufacture of any Product (in each case in its sole discretion) without incurring any obligations or liabilities of any kind as a result thereof.
- 4.3** All drawings and technical documents relating to the Product or its manufacture submitted by one Party to the other, prior or subsequent to the formation of the Agreement, shall remain the property of the submitting Party.
- 4.4** Drawings, technical documents or other technical information received by one Party shall not, without the consent of the other Party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting Party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

**5. DELIVERY AND DELIVERY CHARGES**

- 5.1** Products shall be delivered EXW Place of load, ex Incoterms (latest applicable version) unless agreed upon otherwise in writing. Partial delivery shall be permitted unless otherwise stated by Seller in writing.
- 5.2** Delivery periods indicated in price lists, quotations, order acknowledgements, agreements or any other contractual documents are only intended to be indicative and are not of the essence and are therefore not binding. Delivery of the Products after the indicative delivery period provided by Seller shall in no event entitle Buyer to any damages, rights of recession or termination of the Agreement or suspension of any obligation arising from the Agreement, obligation and/or arrangement of any kind with Seller.
- 5.3** Delivery of Products pursuant to an order accepted by Seller shall be subject to Buyer's financial condition being satisfactory to Seller at the time of delivery. Whether or not credit terms are specified elsewhere, Seller may, at its sole discretion, make delivery under any order accepted by Seller conditional upon receipt of satisfactory security or cash from Buyer before delivery.
- 5.4** In the event of a shortage of any of the Products for whatever reason, Seller may allocate its available supply as it sees fit, irrespective of when an order was accepted or the number of orders on hand.
- 5.5** If Buyer fails to take delivery or requests a later delivery date of the Products within five (5) business days of Seller notifying Buyer that the goods are ready, then, except where such failure or delay is caused by Force Majeure or Seller's failure to comply with its obligations under these GT&C:

- (a) delivery of the Products shall be deemed to have been completed at 9:00 am on the fifth business day after the day on which Seller notified Buyer that the Products were ready;

- (b) Seller shall store the Products until delivery takes place, and charge Buyer for all related costs and expenses (including insurance, modification, transportation and handling charges); and
- (c) Seller may require immediate payment for the Products in full, and/or assess additional charges for storage and other expenses arising from or related to such delay.

**6. SERVICES**

- 6.1** Unless expressly agreed otherwise in writing, assembly, installation, dismantling, repair and any other kind of Services shall be undertaken by Buyer, along with all associated costs arising from the same, which shall be borne by Buyer.
- 6.2** Buyer shall perform the Services with reasonable skill and care in accordance with recognized standards and codes of practice.
- 6.3** In cases where Services are to be carried out by Seller, performance will take place under the following conditions:
- (a) Buyer shall cooperate with Seller in all matters relating to the Services and shall render such assistance as Seller reasonably requires, in particular:
- (i) Buyer shall make available to Seller's mechanic or mechanics free of charge and to the extent required auxiliary labour as well as scaffolding, gantries, lifting tackle and conveying machines, ladders and similar equipment;
- (ii) Unless the Products are intended for outdoor use, Buyer shall ensure that all assembly or installation work can be carried out in an area that is sufficiently protected against adverse weather conditions and which is adequately lit. It shall be possible to properly close and lock such area.
- (b) The costs of all related activities and materials required shall be borne by Buyer and shall include (but not be limited to):
- (i) Transportation of the Products from the place of delivery to the foundation on the installation site;
- (ii) Fuels and lubricants;
- (iii) Activities carried out by other workmen, including all materials required, therefore, when these materials and activities have not been specifically described in writing in the offer or order confirmation.
- (c) Buyer shall also be solely responsible for all additional costs and expenses, including but not limited to:
- (i) Travel and accommodation expenses incurred by the mechanic(s);
- (ii) All costs arising from or incurred due to circumstances preventing assembly work from being carried out during regular (daytime) working hours, which are between 9.00 and 17.00 unless otherwise agreed between the parties in writing.
- (d) Should Seller's mechanic(s) be unable, due to circumstances beyond the control of Seller, to begin and/or to continue in a regular manner the assembly or installation, all ensuing costs shall be borne by Buyer.

- 6.4** Buyer shall sign the time-sheets completed by the mechanic(s).
- 6.5** Without due authorization by Seller, the mechanic(s) shall not be required to work longer hours than allowed by law or by a collective agreement that is valid for the branch of industry in question.
- 6.6** After the mechanic finishes his work and the Products supplied have been put into operation, the assembly shall be considered completed. If Buyer wishes to retain the services of the mechanic after the termination of his work or if at a later date he requires the presence of a mechanic in order to inspect the Products supplied, the wages, travelling and accommodation expenses of the mechanic shall be borne by Buyer.
- 6.7** Where Seller is not required to carry out the installation and Seller requests permission to check the installation of the Products supplied by it prior to the commencement of operation, such request shall be granted.
- 6.8** If, for any reason other than a fault in the Products attributable to Seller, the Products delivered do not function according to Seller's specifications as provided to Buyer following receipt or installation, all costs of modification and rectification shall be borne by Buyer.
- 6.9** During both assembly and repairs, Buyer shall be fully liable for all tools and other property of Seller and in case of theft or loss Buyer shall be liable for the replacement value and other related costs arising.
- 6.10** Buyer shall obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start and shall at all times comply with all applicable laws, including health and safety laws.

**7. INSPECTION AND TRIALS**

- 7.1** Buyer shall have the opportunity to inspect the Products at the factory before delivery.
- 7.2** All costs of such inspection shall be borne by Buyer.
- 7.3** If, after assembly Buyer requires a formal acceptance trial, such trial shall be completed not later than two months after the completion of the assembly. This trial shall be subject to the usual industrial tolerances.
- 7.4** Seller shall be entitled prior to the formal acceptance trial to carry out a provisional trial in order to check the Products supplied by it and make any necessary adjustments.
- 7.5** All costs connected with this trial shall be borne by Buyer.

**8. PAYMENT**

- 8.1** Full payment for the Products must be received by Seller in advance before the delivery unless otherwise agreed in writing between the Parties. Payments shall be effected within thirty (30) calendar days of the date of the invoice. Whatever the means of payment used, payment shall not be deemed to have been made before Seller's account has been fully and irrevocably credited.

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- 8.2** In case of late payment, Buyer will be automatically (without the provision of any formal notice to Buyer) be deemed to be in default. Seller shall be entitled to an interest at the rate of three (3) percent a month or the rate of the main refinancing facility of the European Central Bank in force at the relevant time, whichever is the higher, on the outstanding amount as from the date of default. Seller may, after having notified Buyer in writing, suspend performance of the Agreement until it receives payment.
- 8.3** When payment in instalments is agreed upon, in case of late payment of an instalment, the remaining amount will become due immediately, without notice of default. The provisions of Article 8.2 shall apply accordingly.
- 8.4** If Buyer is liquidated, declared bankrupt or granted a suspension of payments, Buyer's payment obligations will become due immediately and Seller will be entitled to suspend further performance under the Agreement and/or to cancel the Agreement in part or in full, all of this without prejudice to Seller's right to claim damages.
- 8.5** Unless expressly authorized by Seller in writing, Buyer pay all amounts due under the Agreement in full without any set-off, netting, offset, recoupment, counterclaim, deduction or withholding (except for any deduction or withholding required by law), with respect to the payment of the purchase price or any other payments to be made by Buyer pursuant to this Agreement or any other document or instrument delivered by Buyer in connection herewith
- 9. COLLECTION COSTS**
- If Buyer fails to perform one or more of its obligations, all the costs of obtaining payment in and out of court will be for Buyer's account.
- 10. TITLE, RISK OF LOSS AND DAMAGE, INSURANCE**
- 10.1** The Products are sold by Seller to Buyer subject to a retention of title and subject to a retained right of pledge. The retention of title over the Products remains in effect until full payment has been made by Buyer to Seller for all current, past and future liabilities and/or obligations arising from the sale of Products and/or the failure of Buyer to perform its obligations towards Seller. As long as the title remains with Seller, Buyer is not allowed to alienate or encumber the Products in any manner. Buyer is, however, authorized to sell and deliver the Products in the ordinary course of its business, provided that either Buyer receives payment of such ordinary course of business sale in cash when the Products are sold and delivered to Buyer's customer or that, in the case of an ordinary course of business sale on credit, Buyer shall stipulate retention of title in the manner as provided in this Paragraph.
- 10.2** As long as Buyer has not met its payment obligations as defined above, Seller shall be irrevocably authorized by Buyer to enter the latter's premises without prior notification and to undertake all that is necessary to remove and re-possess the Products.
- 10.3** Risk of loss and damage to the Products Seller sells to Buyer shall pass to Buyer or Buyer's agent, or user upon delivery according to the applicable Incoterms, at the points designated in price lists, quotations, parts' price lists issued by Seller to Buyer or any other applicable document issued by Seller except as Seller and Buyer have previously otherwise specifically agreed, either in writing executed by both Parties, or by the exchange of letters, e-mail or other similar printed communications.
- 10.4** Until title to the Products has passed to Buyer, Buyer shall:
- (a) not pledge or in any way charge or otherwise encumber by way of security for any indebtedness of any of such Products;
  - (b) not in any way deal with, use or dispose of any of such Products (with the exception that Buyer may sell and deliver such Products in the ordinary course of its business (but not otherwise) in accordance with the terms as set out in Article 10.1).
  - (c) store the Products separately from all other goods held by Buyer so that they remain readily identifiable as Seller's property;
  - (d) insure at its own cost with a reputable insurance company all stocks of the Products as are held by it against all risks to at least their full replacement value and which contains a loss payable clause in favour of Seller or its designated assignee. Upon the request of Seller, Buyer agrees to provide evidence of such insurance coverage and certificates evidencing such insurance;
  - (e) maintain the Products in satisfactory condition; and
  - (f) give Seller such information relating to the Products as it may require from time to time.
- 10.5** The retained right of pledge over the Products serves a security for any other payment obligations, other than those referred to in Article 10.1, which Buyer has towards Seller.
- 11. WARRANTIES**
- Products sold by Seller will be warranted by Seller in the manner and to the extent as set forth in the Warranty Agreement or as otherwise mutually agreed. The Warranty Agreement forms an integral part of these GT&C.
- 12. CLAIMS**
- 12.1** Claims for damages or losses covered by the Warranty Agreement shall be submitted by Buyer in a manner and within time periods stipulated in the Warranty Agreement.
- 12.2** Claims for shortages in the quantity of Products delivered to Buyer shall be made in writing to Seller within ten (10) calendar days after receipt of shipment. Seller's responsibility for shipments ceases upon delivery to a carrier or on such other date as Seller may advise Buyer, and any claims for shortages, delays or damage occurring thereafter shall be made by Buyer to the carrier.
- 12.3** To the extent not covered by the Warranty Agreement, claims with regard to visible defects must be submitted in writing forthwith after their encounter and in any case not later than ten (10) calendar days of the shipment of the Product to Buyer.
- 12.4** To the extent not covered by the Warranty Agreement, claims with regard to non-visible defects must be submitted in writing forthwith after their encounter, and in any case within thirty (30) calendar days after Buyer becomes aware, or should have become aware, of such claim.
- 12.5** If Buyer believes that it has any other claim against Seller with respect to transactions arising out of Agreement, Buyer shall present such claim to Seller in writing, within thirty (30) calendar days after Buyer becomes aware, or should have become aware, of such claim.
- 12.6** If Buyer fails to make any claim within the applicable time limits specified above, such claim shall be invalid.
- 13. LIABILITY**
- 13.1** Neither Seller nor its Affiliates shall be liable to Buyer for:
- (a) any loss of profits, revenue, goodwill, anticipated savings, labour costs, business interruption, loss of business or business reputation or cost of procurement of substitute products or services;
  - (b) any loss alleged to have arisen out of the lawful termination of this Agreement or a decision not to renew it; or
  - (c) any indirect, special, incidental, punitive or consequential damages arising out of or resulting from this Agreement, regardless of whether:
    - (i) Seller was made aware of the possibility of such damages;
    - (ii) Seller was negligent or otherwise at fault; and/or
    - (iii) such liability is based on contract, negligence, tort, or any other theory of legal liability.
- 13.2** Notwithstanding anything to the contrary herein except as provided in Article 13.1 above, Seller's aggregate and cumulative liability arising out of or relating to this Agreement, including without limitation, for claims, actions, lawsuits, settlements, judgments, damages, fees and expenses, and all other losses of any and all types, alleged or incurred by Buyer, whether such liability arises from any claim based upon this Agreement, or any contract, warranty, tort or otherwise, shall in no event exceed the amount paid out by Seller's insurer in relation to the damage pursuant to Seller's policy. In the event that for any reason Seller's insurer does not pay out any amount in relation to the damage, the liability of Seller shall be limited to the Price of the respective Products supplied under the Agreement.
- 13.3** If Seller, without being assigned to carry out the assembly and/or installation, provides assistance and help of whatever kind in the course of the assembly and/or installation, this will be done at Buyer's own risk.
- 13.4** Buyer shall indemnify Seller against any claims, actions and rights of third parties, including any claims based on product liability, that are in any way related to the Products delivered by Seller to Buyer and/or Buyer's use of the Products delivered by Seller.
- 13.5** Buyer shall be responsible to mitigate any and all damages, losses and costs irrespective of whether they are attributable to Buyer, Seller or any third party.
- 13.6** The limitations of liability do not apply for damages arising from wilful misconduct or gross negligence.
- 14. USE OF TRADEMARKS, LOGOS AND SIGNS**
- 14.1** Except as expressly authorized in writing by Seller, Buyer may not use trademarks, logos and signs that are used by Seller to distinguish Buyer's products from those of other legal entities/ companies. An exception applies to the trade in products in the original packaging of Seller and the use of the Products, in both cases with the trademarks, logos and signs placed on them by Seller.
- 14.2** All intellectual property rights (including but not limited to copyrights, trademarks, logos, patents, breeder's rights, trade names, brands, confidential know-how) worldwide with regard to the Products and other products of Seller, shall remain the property of the Seller or the relevant affiliate in Seller's group.
- 15. COMPLIANCE WITH LAWS AND REGULATIONS**
- 15.1** Buyer represents and warrants that it and any party acting on its behalf (including any officers, employees, representatives or agents of Buyer ("**Associated Parties**") will comply with all applicable laws and regulations under or in relation to this GT&C and the Agreement, including, without limitation any laws and regulations relating to export and trade controls, sanctions, taxation, anti-corruption and anti-bribery, anti-trust and competition, anti-money laundering or any other law, rule or regulation. Buyer shall notify the Seller immediately in case of any breach of this Article 15.
- 15.2** Without limiting the generality of the foregoing Article 15.1, Buyer agrees that the Products, comprising technology, software, or technical data related to the Products which Buyer shall be purchasing pursuant to this GT&C, together with any logistical and/or financial transactions as well as parties related thereto are subject to the European Export and Economic Sanctions and Regulations ("**EESR**"). Buyer also understands that, based upon the origin of the Products and nationality of the parties involved, additional international trade and financial restrictions may apply, including restrictions relating to their transfer, sale and re-sale imposed by the United States of America, China, Japan and other applicable trade laws, sanctions regulations and export administration regulations and any other regulations (collectively, including the EESR, the "**Trade Laws**"). Buyer understands and agrees that it shall only acquire, use, sell, transfer, export, re-export, ship, release, distribute or otherwise dispose of the Products in accordance with the terms of this GT&C and all applicable laws (including the Trade Laws).
- 15.3** Buyer shall be responsible for obtaining any import licenses or permits necessary for the entry of the Products into the respective territory, or their delivery to Buyer. Buyer shall be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products.
- 15.4** Buyer represents and warrants that neither it nor any of its Associated Parties, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this GT&C which:
- (a) would violate any applicable anti-corruption and anti-bribery laws or regulations (including, without limitation, the US Foreign Corrupt Practices Act, any English anti-corruption laws and regulations including the Bribery Act 2010),

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- (b) is intended to, or does, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept,
- (c) is made to or for a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business, or
- (d) a reasonable person would otherwise consider to be unethical, illegal or improper ("**Corrupt Act**").
- 15.5** Buyer further agrees and undertakes:
- (a) not to seek, directly or indirectly, improperly or corruptly to influence or attempt to influence a public official, or an Associated Party of a customer or a potential customer to act to the advantage of either of Seller and Buyer or otherwise to perform their duties improperly; and
- (b) not to use any payments made under this GT&C, directly or indirectly, for this purpose or otherwise for the purpose of or in connection with any Corrupt Act; and
- (c) to notify Seller immediately if, at any time, it becomes aware that the representations set out in the Articles 15.4 and 15.5 are no longer correct.
- 15.6** Buyer warrants to Seller that it has informed Seller of all laws and regulations affecting the manufacture, sale, distribution, packaging and labelling of Products which are in force within the applicable territory or any part of it ("**Local Regulations**") at the date of the Agreement. Buyer shall give Seller as much advance notice as reasonably possible of any prospective changes in the Local Regulations.
- 15.7** Each Party shall comply fully with its obligations under the provisions of the relevant and applicable data protection laws, including to the extent applicable the General Data Protection Regulation 2016/679 and related national laws of relevant EU member states, ("**Data Protection Laws**") when processing personal data entrusted to it by the other Party ("**Protected Data**") in connection with the fulfilment of its obligations under this GT&C and the Agreement. Each Party acknowledges that it shall be treated as a controller under Data Protection Laws in respect of its processing of Protected Data. In this Article 15, the terms "controller", "data subject" "personal data", "personal data breach", "process", "processor" and "supervisory authority" shall have the meanings given to them under Data Protection Laws.
- 15.8** Without prejudice to the generality of Article 15.7, in particular, each Party shall:
- (a) ensure that any of its staff who will have access to Protected Data will respect and maintain the confidentiality and security of such Protected Data;
- (b) take all appropriate technical and organizational measures (having regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the risks and freedoms of data subjects) to protect Protected Data against unauthorized or unlawful processing, and against accidental loss, destruction or damage and against all other unlawful forms of processing of personal data, to ensure a level of security appropriate to the risk;
- (c) not transfer any Protected Data outside the European Economic Area ("EEA") without a legal basis and an approved transfer mechanism in strict accordance with Data Protection Laws. Where Buyer is established in a country outside the EEA which, as on the effective date of the Agreement, is not considered to offer adequate protection for the purposes of Data Protection Laws, then the Parties agree that:
- (i) on the effective date of the Agreement, they shall complete all relevant details in, and enter into, the Commission Decision C(2004)5721 SET II Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers) appended hereto as Exhibit A ("**Personal Data Transfer Agreement**");
- (ii) in the case of any inconsistency or conflict between the terms of this GT&C and of the Personal Data Transfer Agreement, the provisions of the Personal Data Transfer Agreement shall prevail to the extent of the inconsistency or conflict; and
- (iii) if at any time during the term of the Agreement the Personal Data Transfer Agreement is amended, replaced or repealed, or for any other reason cease to provide a lawful means for Seller to transfer personal data to Buyer outside the EEA, then the Parties undertake to take such steps as are necessary to ensure that any transfers of personal data outside the EEA, and the ongoing processing of such personal data by Buyer, continue to be lawful under Data Protection Laws; and
- (d) immediately notify the other Party if it receives any legally binding request for disclosure of Protected Data by a law enforcement authority, supervisory authority, court or other competent authority (unless otherwise prohibited by Data Protection Laws or other applicable laws) or any complaint, notice or communication which relates directly or indirectly to the processing of Protected Data under this GT&C and provide full co-operation and assistance in relation to any such disclosure request, complaint, notice or communication.
- 15.9** Buyer shall cooperate and provide Seller with such reasonable and timely assistance as Seller requires in relation to any complaints or requests made by data subjects or investigations or enquiries made by any supervisory authority or other competent authority relating to Seller's or Buyer's obligations under Data Protection Laws.
- 15.10** Seller may from time to time serve on Buyer an information notice requiring Buyer, within such time and in such form as is specified in the information notice, to give to Seller such information as Seller may reasonably require relating to compliance by Buyer with its obligations to (a) Seller under this GT&C in connection with the processing of Protected Data; and (b) data subjects in relation to their rights under Data Protection Laws, including rights to access, erasure and portability; and (c) adequately secure the Protected Data by implementing technical and organizational means in accordance with Article 15.8 (b) and monitoring compliance.
- 15.11** Buyer shall provide to Seller on request a copy of all Protected Data held by it pursuant to this GT&C, in the format and on the media reasonably specified by Seller.
- 15.12** Each Party shall indemnify the other Party for any breach of its obligations under Article 15 or Data Protection Laws which renders the other Party liable for any costs, claims, compensation, damages, expenses, administrative fines, penalties, sanctions, or other liabilities under or in connection with, or in consequence of, Data Protection Laws.
- 15.13** Buyer shall make all necessary personal data available to Seller after termination of the Agreement in order for Seller to fulfil its obligations under this GT&C. Following termination of the Agreement, Buyer will no longer use Protected Data for its own purposes and, at Seller's written request (which may include by email for this purpose), will ensure that all copies of Protected Data (including copies stored with third parties) will either be permanently and securely deleted or destroyed or securely returned to Seller in such form as Seller reasonably requests provided always that if Buyer is required by applicable laws to retain copies of any Protected Data following termination then Buyer shall promptly inform Seller of any such requirement and shall only retain such Protected Data for the minimum period required by applicable laws (and in compliance with its ongoing obligations under this Article 15 during such period) following which it shall securely delete or destroy such Protected Data and immediately confirm the same to Seller in writing.
- 15.14** Buyer shall, as soon as possible, but in any event within 48 hours of becoming aware, promptly notify Seller in writing of any actual or suspected unauthorized access or processing of Protected Data, of any Protected Data becoming damaged, corrupted or unusable, or of any other personal data breach, and such notice shall include such reasonable details as Seller may request.
- 15.15** Buyer hereby grants Seller the right, and warrants that it has all rights, permissions and consents required under Data Protection Laws to grant Seller the right, to
- a) transfer Protected Data (whether obtained by Seller from Buyer, Buyer's Representative(s), Customers or otherwise) to Seller's Affiliates and to data processors engaged by Seller; and
- b) publish (and for Seller's Affiliates to publish) Protected Data, including names and contact details of key Buyer employee(s) whom Buyer has previously designated as key Buyer contact(s), on websites, mailing lists, and other forms for the purposes of marketing and advertising the Products to (potential) Users of the Products,
- in each case whether such processing takes place within or outside of the EEA provided always that Seller and Buyer shall ensure that all transfers of Protected Data outside the EEA are compliant with applicable Data Protection Laws and that the Personal Data Transfer Agreement or another approved transfer mechanism is used where required.
- 15.16** Buyer warrants to Seller that its disclosure of personal data to Seller is in compliance with Data Protection Laws and, in particular, that it has sufficiently informed the key Buyer employee(s) of the disclosure to Seller of their personal data. Buyer shall immediately inform Seller in case of any change in designation of key Buyer employees.
- 15.17** Where, under any laws and regulations, which are directly applicable to and mandatory for Seller, it would be illegal for Seller to perform its obligations under the GT&C, the Seller shall not be obliged to perform any of its obligations under the GT&C. Seller is then entitled to give notice in writing to Buyer to terminate the Agreement with immediate effect without becoming liable for damages against Buyer as a result thereof.
- 15.18** Buyer agrees that Seller may inspect Buyer's books and records and audit to the necessary extent where Seller has reasonable grounds to believe that any laws or regulations, which are directly applicable to and mandatory for Seller might have been violated by Buyer. Buyer will then also be obliged to provide Seller with all information necessary for Seller to determine whether an actual violation of these laws and regulations has taken place.
- 16. FORCE MAJEURE**
- 16.1** Either party shall be entitled to suspend performance of his obligations under the Agreement to the extent that such performance is impeded or made unreasonably onerous or impracticable by a Force Majeure Event.
- 16.2** "**Force Majeure Event**" shall mean any event beyond the reasonable control of Seller or Buyer, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:
- (a) war, threat of or preparation for war, hostilities or warlike operations (whether a state of war be declared or not), invasion, armed conflict, imposition of sanctions, act of foreign enemy, civil war; or breaking off of diplomatic relations;
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, terrorist acts; or of terrorism;
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
- (d) strike, sabotage, lock-out, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics (including SARS, swine flu and bird flu), quarantine, plague;
- (e) acts of God, drought, earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, sandstorm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
- (f) nuclear, chemical or biological contamination or sonic boom;
- (g) collapse of buildings, breakdown of plant or machinery, explosion or accident;
- (h) shortage of labour, (including due to trade disputes, difficulty or increased expense in obtaining workers and industrial action), materials or utilities were caused by circumstances that are themselves Force Majeure Events; and/or
- (i) any order or recommendation from the government in question that the nationals should avoid travel to the country of the site or that the nationals should be repatriated from the country of the site.
- 16.3** Provided it has complied with its obligations pursuant to Article 16.4 below, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of these GT&C and the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under these GT&C and the Agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four months, the Party not affected by the Force Majeure Event may terminate the Agreement by giving two weeks' written notice to the Affected Party.

17. **ANTICIPATED NON-PERFORMANCE**

Notwithstanding other provisions in these GT&C regarding suspension, each party shall be entitled to suspend the performance of its obligations under the Agreement, where it is clear from the circumstances that the other party will not be able to perform its obligations. A party suspending its performance of the Agreement shall notify the other party thereof immediately.

18. **DISPUTES AND APPLICABLE LAW**

18.1 All disputes arising out of or in connection with the GT&C, including the Warranty Agreement, and Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or three arbitrators appointed in accordance with the said rules. The place of arbitration shall be the Netherlands.

18.2 The GT&C, including the Warranty Agreement, and Agreement shall be governed by the substantive law of the Netherlands. The United Nations Convention on the International Sale of Product (the Vienna Sales Convention) and Title 1 of Book 7 of Dutch Civil Code shall be explicitly excluded.



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