

# General Terms and Conditions

## HOERBIGER Service Inc.

### Product Deliveries and Services

#### 1. GENERAL

These General Terms and Conditions apply to all purchases of Products from the Contractor and to any Services performed by the Contractor. They shall form an integral part of the Agreement entered into with the Principal. All quotations and order acknowledgments made by the Contractor shall be deemed to incorporate these General Terms and Conditions by reference. All orders shall be deemed to be an offer by the Principal to purchase the Products and/or the Services pursuant to these General Terms and Conditions. Acceptance of the Products delivered and/or Services performed shall be deemed conclusive evidence of the Principal's acceptance of these General Terms and Conditions.

These General Terms and Conditions, as amended or supplemented from time to time, shall also apply to any product supplied in the frame of the Services and to any subsequent services regardless of any agreement or explicit provision with respect to their applicability to such subsequent services. References by the Principal to terms and conditions of the Principal shall be deemed not made. Such references shall not have any effect on the applicability of these General Terms and Conditions. Provisions in the terms and conditions of the Principal that conflict with provisions contained in these General Terms and Conditions shall only be applicable if agreed between the Principal and the Contractor in writing.

#### 2. DEFINITIONS

**Contractor:** HOERBIGER SERVICE INC., designated in the Agreement as the contracting party supplying Products and/or performing Services under these General Terms and Conditions.

**Principal:** The company (designated in the Agreement) for whom the Contractor supplies Products and/or perform Services.

**Agreement:** Mutual agreement between the Contractor and the Principal in any written form on which the deliveries of Products/Services of the Contractor are based. Unless expressly otherwise provided herein, in the case of contradiction between the Agreement and these General Terms and Conditions, the Agreement shall prevail.

**Product:** The object(s) to be supplied by the Contractor under these General Terms and Conditions.

**Services:** The services to be performed by the Contractor under these General Terms and Conditions.

**Place of Manufacture:** The place where the final assembly is made before the Product is delivered to the Principal.

**Acceptance Test:** Tests which are carried out before delivery in order to ensure that the Product is in compliance with the Agreement or with any requirements agreed in writing by the Contractor and the Principal.

**Equipment:** Such plant, machinery or part of plant or machinery which or with respect to which the used and/or the Contractor shall perform the Services.

**Location:** Such place at which the Equipment of the Principal (as stated in the Agreement) is located and where the Product shall be used and/or the Services shall be performed.

## **PROVISIONS FOR PRODUCT DELIVERIES**

### **3. PRODUCT INFORMATION**

All information and data contained in general Product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Agreement.

The Contractor reserves the right, at its sole discretion, to use new, used or refurbished parts in the assembly of its Products.

### **4. DRAWINGS AND DESCRIPTIONS**

1. All drawings and technical documents relating to the Products or manufacture of the Products that are submitted by the Contractor to the Principal, prior or subsequent to the formation of the Agreement, shall remain the property of the Contractor and shall be promptly returned to the Contractor at the Contractor's request. Information regarding the Contractor's Products, Services, Equipment, goods, materials, drawings, technical documents or other technical information received by the Principal shall not, without the written consent of the Contractor, (i) be used for any other purpose than that for which they were provided, or (ii) otherwise be used or copied, reproduced, transmitted or communicated to a third party. Such information shall be subject to the confidentiality obligations set forth in Section 19.
2. In support of installation, operation and maintenance of the Products, the Contractor, at its sole discretion, may provide the Principal with information and drawings free of charge.
3. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Contractor shall not be obliged to provide manufacturing drawings for the Products or for spare parts.

### **5. ACCEPTANCE TESTS**

1. Acceptance tests will be carried out only if and to the extent explicitly agreed in the Agreement.
2. Acceptance tests provided for in the Agreement shall, unless otherwise agreed, be carried out in conformity with the norms of the Contractor, at the Place of Manufacture and during normal working hours. If the Agreement provides for the quality specifications of the Principal to be applicable, the Acceptance Test shall be done in conformity with the regulations set forth in the Agreement; or where applicable or agreed, in conformity with the norms of qualified suppliers in the industry, and in the absence of such norms, in accordance with applicable international norms which reflect the recognized international state of the art technology.
3. The Contractor may notify the Principal in writing of the Acceptance Tests in due time to permit the Principal or its representative to be present. If the Principal is not present or represented, the test report and documented evidence of conformity for the Contractor may be sent by the Contractor to the Principal.
4. If the Acceptance Tests show a Product not to be in accordance with the Agreement, the Contractor shall promptly remedy any deficiencies in order to ensure that the Product complies with the Agreement. New Acceptance Tests shall then be carried out at Principal's request with regard to such Product, unless the deficiency was insignificant in which case the remedied Product shall be deemed to be in accordance with the Agreement.

5. Unless otherwise agreed in the Agreement, the Principal shall bear all costs for the initial and any subsequent Acceptance Tests. The Principal shall also bear all of its and its representative's traveling and living expenses to and at the location such acceptance tests are conducted.

## **6. DELIVERY, PASSING OF RISK**

1. Any agreed trade term shall be construed in accordance with the INCOTERMS 2010. If no trade term is specifically agreed, the title to, risk of loss and delivery will pass to the Principal under the INCOTERMS 2010 Ex Works Contractor's designated Place of Manufacture or other location designated by Contractor (EXW).  
Provided that the Principal has made all payments in a timely manner as described in Section 10, the Principal agrees that title to and risk of loss for Products will pass to and remain with the Principal, even if the Contractor agrees to store the Products or Services at the Place of Manufacture until the Principal requests delivery.
2. The Principal will pay or reimburse Contractor for all freight, preparation, and in-transit insurance costs from the time of delivery. Transport insurance coverage shall only be provided by the Contractor upon explicit request by the Principal and at the Principal's cost. The choice of the means and route of transport shall be made by the Contractor according to his best judgment.
3. Partial shipments shall be permitted unless otherwise agreed.

## **7. ORDERS**

1. An Order of Products or Services by the Principal shall not be binding until accepted in writing by the Contractor.
2. Once accepted by the Contractor, orders placed cannot be cancelled or modified by the Principal without the Contractor's written consent.

## **8. EXPORT CONTROL**

1. The Products may be subject to export and re-export restrictions some under countries' export control laws, orders and regulations, which may require the approval of the respective government or the relevant authorities for any export, re-export or re-transfer. Principal hereby acknowledges that the supply of Products and provision of Services may be subject to sanctions, meaning any applicable export controls, trade or economic sanctions, embargoes or similar laws, regulations, rules, licenses, orders or requirements including, without limitation, those of the UN, UK, U.S. and EU (hereinafter "Sanctions").
2. If the Principal transfers the Products (regardless of the mode of provision) to a third party, the Principal shall comply with all applicable national and international (re-)export control laws, orders and regulations, in particular (without limitation) with embargoes, and shall obtain and renew any necessary governmental export permits or similar authorizations which may be required. Principal is fully responsible for complying with, and shall not do anything which would cause Contractor to be in breach of, applicable Sanctions. In particular, Principal warrants and represents that it: (i) is not, and is not owned or controlled by, a "Sanctioned Party", which is defined as "any party or parties listed on any list of designated or other restricted parties maintained under Sanctions, including but not limited to the, the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the European Union, the Consolidated List of Financial Sanctions Targets in the UK maintained by HM Treasury and the Specially Designated Nationals and Blocked

Persons List maintained by the US Office of Foreign Assets Control; (ii) will not use, sell, resell, export, re-export, transfer, distribute, dispose of, disclose or otherwise deal with the Products and/or Services, directly or indirectly, to: (a) any territory to which the supply of the Products and/or Services would be restricted or prohibited under Sanctions (subject to the Principal obtaining any and all licenses and/or approvals required); including, but not limited to, under the scope of Art 12g of the EU Council Regulation 833/2014, as amended, as regards the re-export of prohibited goods and technology to Russia or for use in Russia; (b) any country, territory, or destination with which Supplier, as a matter of policy, does not conduct business (including but without limitation to Iran, Syria, Sudan, Cuba, Belarus, Russia, Crimea & Sevastopol, the republics of Donetsk and Luhansk, the territories of Kherson and Zaporizhzhia and North Korea, and any other territory subject to comprehensive Sanctions from time to time); (c) any Sanctioned Party (or any party owned or controlled by a Sanctioned Party); (iii) will obtain and maintain any required export license or other governmental approval and complete such formalities as may be required in order to use, sell, resell, export, re-export, transfer, distribute, dispose of, disclose or otherwise deal with the Products and/or Services; (iv) will not put the Products and/or Services, in their entirety or in part, to any use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or the development, production, maintenance or storage of missiles capable of delivering such weapons or to any military end-use in violation of any applicable embargo (including, but not limited to, embargoes maintained by the EU, UK, US, OSCE and/or UN). In addition, Principal shall not sell, resell, supply, export, re-export, transfer, divert, distribute, or dispose of the Products and/or Services to any third party where Principal knows or has grounds for suspecting that the Products and/or Services are or may be intended for one of the uses specified in this Clause 8.

3. Prior to any transfer to a third party of the Products, the Principal shall in particular without limitation check and guarantee by appropriate measures that such transfer does not violate embargoes, complies with the rules prohibiting or requiring prior authorization for use of the Products in connection with some activities or other products or for trading with some entities, persons and organizations. Principal shall, at all times, maintain an adequate monitoring mechanism to detect possible violations of the Sanctions by any third parties, including by possible resellers. If Buyer does not currently maintain such a monitoring mechanism, Principal shall establish one as a condition to entering into this Agreement.
4. If required to enable authorities or the Contractor to conduct export control checks, the Principal, upon request by the Contractor, shall promptly provide the Contractor with all information pertaining to the particular end customer, the particular destination and the particular intended use of the Products, as well as any export control restrictions existing. Any violation of sub-clauses 1, 2 or 3 of this Section 8 shall constitute a material breach of the agreement between the parties and shall entitle Contractor (i) to terminate any of the pending or future orders / Contracts with the Principal and (ii) to apply any agreed and/or available remedies.
5. The Principal shall indemnify and hold harmless the Contractor from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with (re-)export control laws, orders or regulations by the Principal or third parties to whom the Principal transfers any Products, and the Principal shall compensate the Contractor for all losses (whether direct or indirect) and expenses resulting thereof. Principal shall immediately notify

Contractor if Principal becomes aware of any actual or threatened violations of sub-clauses 1, 2 or 3.

6. Principal will keep and maintain complete and accurate records in connection with Contractor's performance under this Agreement and will retain these records for at least three (3) years after the supply of Products and/or Services. Contractor (or its professional advisers) may audit such records during regular business hours upon reasonable advance notice and subject to reasonable confidentiality procedures. Principal agrees to provide Supplier's designated audit or inspection team reasonable access to the Supplier's records and facilities.

7. Principal agrees furthermore that it shall not engage in any activity that would expose Contractor or any Contractor Affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties, or political party officials or candidates for public office, or to any employee of any customer or Contractor.

## **9. CUSTOMER'S DAILY CARE, LOG**

The Principal shall be responsible for the necessary daily care of the Equipment. The Principal shall further keep a log of the operation and care of the Equipment.

## **10. HEALTH AND SAFETY**

1. The Principal shall ensure that the maintenance, overhaul or upgrading is not carried out under dangerous or unhealthy conditions, and shall take all necessary measures to protect the Contractor's personnel from exposure to any safety or health hazard. Moreover the Principal shall ensure that the Contractor's personnel are informed of any safety regulations in force at the place where the Maintenance is carried out.
2. The Contractor is entitled but not required to communicate to the Principal suggestions with respect to the security of the Equipment and the operation thereof.
3. The Contractor is entitled to interrupt the performance of the Agreement if he is of the opinion that the security conditions at the Location required for the performance of the Agreement are not sufficiently provided and/or guaranteed by the Principal and the Contractor shall in such case be entitled to withdraw his personnel affected thereby or his entire personnel from the Location. The Principal shall be liable for all resulting detriments and disadvantages and indemnify the Contractor accordingly.

## **JOINT PROVISIONS**

### **11. PAYMENT, DELAY OF PAYMENT**

1. Unless expressly otherwise stipulated in the Agreement, all fees and prices are in United States Dollars and the offers, prices and fees of the Contractor are without engagement.
2. Payment shall be made against invoice no later than 30 days after invoice date. Whatever means of payment used, payment shall not be deemed to have been effected before the Contractor's account has been fully irrevocably credited.
3. Upon a payment default by the Principal in the form of non- payment, incomplete payment or late payment, the Contractor shall be entitled to interrupt the delivery of the Products and/or the

performance of the Services. Any applicable time periods for the delivery of the Products or the provision of the Services by the Contractor shall be extended by the duration of the interruption as well as by an appropriate time period for the preparation of the continuation of the services. Any additional costs arising in connection with such interruption shall be borne by the Principal.

4. Furthermore the Contractor is entitled to interest for default from the due payment date. Unless otherwise agreed, the rate of interest shall be the lesser of 12% annually or the maximum annual percentage permitted under applicable law.
5. If the default is not remedied by the Principal within the period set by the Contractor, the Contractor shall be entitled to immediately rescind the Agreement. The Contractor shall in this case be due the entire consideration as well as compensation for the loss incurred less any non-incurred expenses.
6. In each of the above cases, the Principal shall be liable for any damages incurred by the Contractor as a result of the payment default.

## **12. LIMITED WARRANTY**

1. Subject to the exceptions, conditions and limitations set forth in these General Terms and Conditions, the Contractor warrants that the Products shall be free of any material defects or processing defects and that the Services shall be performed by specialized personnel in accordance with the requirements defined in the Agreement or otherwise agreed upon in writing between the Contractor and the Principal.
2. The warranty period for any Service rendered or Product used (including for assertion of hidden defects) amounts to one (1) year from the date of delivery of the Product or the provision of the Service.
3. The Principal is eligible to exercise rights under the Contractor's warranty under the condition that the installation, operating and/ or maintenance of the Products and/or Equipment has been in accordance with the specifications, the operating manual and any other information, instructions, recommendations or documents provided by the Contractor as well as with the good industry practice.
4. Notwithstanding the foregoing, the Contractor has no responsibility under the warranty and Contractor shall not be liable to the Principal for:
  - (a) delivery of used materials or Products subject to wear and tear;
  - (b) scheduled maintenance not subject of the Agreement;
  - (c) defects and damage attributed to usage in accordance with specifications (e.g. wear parts);
  - (d) defects arising out of materials provided or a design stipulated or specified by the Principal;
  - (e) defects resulting from defective maintenance, deviant operating conditions, improper use, faulty or incorrect installation, incorrect storage, insufficient security, use of inadequate operational materials by the Principal or third parties or other similar circumstances;
  - (f) defects resulting from unapproved repair, alterations, modification or changes of the Products by the Principal or third parties; or
  - (g) defects resulting from any other actions of the Principal or third parties.
5. The warranty claim with respect to used Products shall be limited to the repair (improvement) or replacement (exchange) by the Contractor at the Contractor's sole discretion. No return of Products may be made by the Principal without the prior, express and written consent of the Contractor. Any Products returned without such consent shall be held at the disposal of the Principal and shall not oblige the Contractor to issue a credit in favor of the Principal. In case of hidden defects or defective Services the warranty claim shall be limited to claim for repair (improvement) only.

6. The Principal shall only be entitled to a price reduction if an improvement by repair or replacement is not possible or advisable for technical or economical reasons (in each case, as determined at the sole discretion of the Contractor) and the Contractor states that he will refrain from carrying out any improvement.
7. Any remedied Product (either by repair or by replacement) which is the subject of a warranty claim is warranted under the same terms and conditions as the originally delivered Product for the remainder of the warranty period of the originally delivered Product.
8. The Principal shall notify the Contractor in writing of any defects on Products or Services immediately following its discovery and within the warranty period set forth in this Section 11, otherwise the warranty claim shall be lost. The Contractor is entitled to request that the Principal send it the allegedly defective Product in question. Failure of the Principal to promptly send such Product to the Contractor releases the Contractor from the performance of the warranty.
9. All warranty claims shall be subject to audit and approval of the Contractor. The Contractor shall notify the Principal of Contractor's disposition of each warranty claim in writing within a reasonable time period.
10. Approved warranty claims shall be performed and completed within an appropriate time period. Replaced Products shall become the property of the Contractor.
11. If the Principal notifies the Contractor of a defect and the Contractor finds no defect for which it is liable, the Principal shall compensate the Contractor for all costs incurred from processing the claim and if in its possession, the Contractor shall return the Product to the Principal at the Principal's expense.
12. The Principal shall at its own cost arrange for any dismantling and reassembly of Equipment other than the Product, to the extent that this is necessary to remedy the defect.
13. The Principal shall at his own cost ensure that the services of the Contractor necessary to remedy the defects (improvement) may be performed and that the required Equipment is accessible upon request.
14. Any additional costs incurred with respect to Products delivered, repaired or replaced in connection with the warranty, including without limitation travel expenses, the Principal's costs for installation and removal of the defective Products shall be borne by the Principal.
15. The foregoing warranties for services and products are in lieu of all other express, implied or statutory terms, representations, warranties and conditions, whether oral, written, express, implied or statutory. Implied warranties of fitness for a particular and merchantability shall not apply and are expressly disclaimed. Contractor's warranty obligations and the principal's remedies thereunder are solely and exclusively as stated herein.
16. Claims for non-fulfillment or faulty performance by the Contractor, except in the case of gross negligence or wrongful intent of the Contractor, shall be limited to direct damages and any claim for indirect, special, incidental or consequential damages and any financial loss is expressly excluded.

### **13. DELAYS FOR WHICH THE CONTRACTOR SHALL NOT BE HELD LIABLE**

1. Unless expressly otherwise stipulated in the Agreement, delivery dates and/or dates for the fulfillment of the Services specified by the Contractor are estimates only.
2. The Contractor shall not be liable for delayed, interrupted Products deliveries or provision of the Services or otherwise delayed performance or partial or total non-fulfillment of the Agreement to

the extent such delay or partial or total non-fulfillment is due to reasons which shall not be ascribed to the Contractor, such as, without limitation:

- (1) Force majeure (see Section 18);
  - (2) Actions or omissions of the Principal, for which the Principal is liable and which have significantly effect on the Products deliveries and/or performance of the Services by the Contractor.
3. The Contractor shall also notify the Principal within appropriate time periods of any circumstances which will lead to a delay or interruption of the Product deliveries and/or of the performance of the Services. The Contractor shall notify the Principal of the estimated consequences on the time schedule and deadlines.
  4. If the aforementioned delays are not exclusively ascribed to the Contractor, the Contractor shall be entitled to an adequate adjustment of prices to be agreed upon in writing by the parties hereto. Any further additional costs shall be borne by the Principal.
  5. The Contractor shall be entitled to rescind the Agreement if services to be performed or parts to be provided by the Principal have not been delivered or performed within an adequate remedial period.
  6. In the event that any delays or interruption of the performance of the Agreement for which the Contractor is not liable shall not be remedied within 120 days each of the parties shall be entitled to rescind the Agreement, provided that the Principal shall only entitled to rescind the Agreement if he is not to be held liable for the delay. In such case, any Products already delivered and Services already performed by the Contractor shall be remunerated and all expenses incurred in connection hereto shall be reimbursed to the Contractor by the Principal.
  7. Except as specified in this Section, the Principal shall not be entitled to any compensation for the Contractor's delay.

#### **14. SET-OFF**

Any set-off of liabilities of the Principal against accounts receivable of the Contractor resulting from the Agreement or other agreements between the parties as well as the withholding of services by the Principal in connection with counter-claims against the Contractor shall be prohibited.

#### **15. INSURANCE**

The Contractor has entered into factory insurance and product liability insurance covering the usual risks and undertakes to maintain this insurance coverage throughout the performance of the Agreement. In excess thereof, the Contractor shall only enter into or maintain any further insurance as agreed in the Agreement.

#### **16. RELEASE AND INDEMNIFICATION**

For purposes of this subsection, the following definitions shall apply: (1) Group – Either the Contractor or the Principal and its respective parents, affiliates, subsidiaries, and each of their respective officers, directors and employees; (2) Claims – Damage, loss, liability, claims, demands and causes of action of every kind and character (including all costs and expenses thereof and reasonable attorney fees associated therewith); and

(3) Property – shall mean everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, real or personal property.



Notwithstanding anything to the contrary herein, the Contractor's liability shall be limited pursuant to Section 16.

1. The contractor shall be responsible for and hereby agrees to protect, defend, indemnify and hold harmless the principal group and its insurers from and against all claims arising out of or in connection with damage to or loss or destruction of property of or the personal injury, illness or death of any member of contractor group or its agents, representatives or invitees arising out of or in connection with the products or services provided hereunder.
2. The principal shall be responsible for and hereby agrees to protect, defend, indemnify and hold harmless contractor group and its insurers from and against all claims arising out of or in connection with damage to or loss or destruction of property of or the personal injury, illness or death of any member of the principal group or its agents, representatives or invitees arising out of or in connection with these general terms and conditions or the products or services provided hereunder.
3. The assumption of liability and indemnities in subsections (1) and (2) above shall apply to any loss, damage, expense, injury, illness, death or claim arising out of or in connection with the services provided hereunder, without regard to the cause(s) thereof including, without limitation, strict liability, ultra-hazardous activity, breach of express or implied warranty, imperfection of material, defect or failure of equipment, including any conditions that pre-exist the execution of these general terms and conditions, or the sole, joint, concurrent or gross, active or passive, negligence or other fault of the indemnitee or its employees, agents, representatives or invitees.
4. If any defense, indemnity, or insurance provision contained in these General Terms and Conditions conflicts with, is prohibited by or violates public policy under any federal, state or other law determined to be applicable to a particular situation arising or involving any work hereunder, it is understood and agreed that the conflicting, prohibited or violating provision shall be deemed automatically amended in that situation to the extent, but only to the extent, necessary to conform with, not be prohibited by and to avoid violating public policy under such applicable law. No other provisions of these General Terms and Conditions shall be amended or affected thereby. The parties agree that the exculpatory, indemnification, and hold harmless provisions herein shall be modified or altered only insofar as required by a jurisdiction purporting to limit such provisions, it being the intention of both parties to enforce to the fullest extent all terms and conditions herein agreed to.

## **17. LIMITATION TO LIABILITY**

1. The aggregate liability of the Contractor hereunder and under the Agreement shall be limited to the total consideration agreed to be paid by the Principal to the Contractor for the Products and Services under the Agreement. Products and Services outside of the Agreement provided in connection with the performance of the Agreement shall not give rise to any liability of the Contractor.
2. The Contractor shall not be liable for defects of the Equipment, which were not readily discoverable or apparent, and which arose or showed effects in connection with the provision of Services by the Contractor or with the use of the delivered Products.
3. The Contractor shall not be liable for parts or services provided by the Principal or any third party. The Contractor shall not be required to examine such parts or services.

4. The Contractor shall not be liable for the personnel provided by the Principal, notwithstanding the use of the Principal's personnel together with the Contractor's personnel.
5. In no event shall the Contractor be liable for any indirect, special, incidental or consequential damages or losses arising out of or in connection with any failure to perform obligations under these General Terms of Conditions and/or the Agreement or for any negligent or tortuous act. Indirect, special, incidental or consequences damages or losses as defined in this Section and in Section 11, includes in particular, without limitation, the exclusion of liability for lost profit or revenue, financial loss, production stop, restriction of the use of the Equipment or parts of the Equipment or other installations of the Principal, costs of eventual replacements or other substitutions, costs of energy supply etc.

#### **18. FORCE MAJEURE**

1. Either party shall be entitled to suspend performance of its obligations under this Agreement, if impeded by force majeure. The same applies to unforeseeable events which impedes or excessively hampers the fulfillment of the obligations under the Agreement, which value for force majeure and for which the Party is not to be held liable. Such circumstances include, without limitation, interruption of operations, strike, official order, war, military mobilization, requisition, riots and insurrection, the cessation of import or export possibilities especially embargo, natural disaster, fire, restrictions in the use of power as well as defects or delays in deliveries or work by sub-contractors caused by any such circumstances referred to in this Section. "Force majeure" shall not include events such as the insolvency of a party or default in the obligation to pay any amount required hereunder or under the Agreement.
2. A circumstance referred to in this Section, occurring after the formation of the Agreement, shall give a right to suspension only if this effect on the performance of the Agreement could not be foreseen at the time of conclusion of the Agreement.
3. Regardless of what might otherwise result from these General Terms and Conditions, either party shall be entitled to terminate the Agreement by notice in writing to the other party, if performance of the Agreement is suspended for reasons mentioned under this Section for more than 120 days.

#### **19. INTELLECTUAL PROPERTY**

1. The Contractor warrants that the Products and Services provided and deliveries made by the Contractor shall not interfere with the intellectual property rights of third parties, including all copyrights, patents, trademarks, and other intellectual property.
2. In the event of any claims by a third party against the Principal as a result of a breach of 19.1, the Contractor shall defend such claims at his own costs provided the Principal immediately informs the Contractor of such claims and provided further that the Principal provides the Contractor with the required powers of attorney and certificates authorizing the Contractor to defend such claims on behalf of the Principal.

#### **20. CONFIDENTIAL INFORMATION**

1. Contractor and the Principal agree to treat all information received directly or indirectly from the other party as confidential and to only use such Confidential Information in connection with the performance of the Agreement. The parties agree not to disclose or provide access to Confidential Information to third parties in any form. For the purposes of these General Terms and Conditions,

third parties shall be deemed to include any person or entity other than corporate affiliates of the Principal or the Contractor.

2. "Confidential Information" shall include, but not be limited to, the following:
  - how and results of internal processes, organizations, policies, business activities and strategies of the Principal or the Contractor achieved or used in connection with the performance of the Agreement,
  - description of the performance of the Agreement, timetables, goals and ideas for the performance of the Agreement, and
  - any other not publicly available information which is obtained by either party on the other party in connection with the performance of the Agreement.
3. The provisions regarding the Confidential Information shall apply to all employees, contractors, staff, consultants and agents of the parties regardless of the type and legal form of employment or cooperation. The parties agree to undertake every measure required to ensure that these persons maintain this confidentiality.
4. The confidentiality provisions shall not apply to the extent that it can be proven that the relevant information is publicly known or has become publicly known without the fault of the party subject to the confidentiality provisions, has been or will be legally obtained from a third party, is already known and available to the receiving party at the time the information is provided.

## **21. COMPLIANCE**

1. The Principal warrants that it will comply with all applicable laws, regulations and other legal requirements regarding the export, import, sale, distribution, marketing and service of the Products and/or Services, including without limitation with the anti-corruption laws and anti-bribery laws of any country having jurisdiction over the Principal or the transaction involving the Products or the Services.
2. The Principal shall not, whether passively or actively, directly or indirectly commit an act which in particular could lead to sanctions for corruption, undue advantage, fraud, infringement of competitions law or insolvency. In case of infringement, the Contractor shall have the right to immediately terminate the Agreement as well as all other agreements, orders or otherwise business relationship with the Principal and to require compensation for the damages suffered; right to other remedy is not waived.

## **22. INDEPENDENT CONTRACTOR**

Contractor is and shall be an independent contractor with respect to the performance of the Services or delivery of the Products, and neither the Contractor nor anyone employed by the Contractor shall be the agent, representative, employee or servant of the Principal in the performance of such Services or provision of Products or any part hereof.

## **23. TERMINATION**

Contractor reserves the right to terminate its Services and the provision of Products at any time if, in its opinion, conditions pertaining to the Services or Products ordered make termination advisable. The Principal shall pay the Contractor its prevailing charges for all equipment, products, goods, and

materials furnished and services performed through termination, regardless of result and even though the services have been terminated.

**24. WRITTEN FORM**

Contractual communications, in particular regarding the performance of contractual services and/or notification of defects, damage claims, and notifications in accordance with contractual or legal requirements shall be made in writing. This Agreement shall not be amended or modified except by written instrument signed by authorized representatives of the parties hereto.

**25. GOVERNING LAW**

This Agreement and the contractual relationship between the parties shall be exclusively governed by, construed, enforced and interpreted in accordance with the laws of the State of Texas, excluding any choice of law rules or conflicts of law principles that would refer the matter to the substantive laws of another jurisdiction.

**26. COURSE OF JURISDICTION AND VENUE**

The exclusive jurisdictional venue for disputes arising under this Agreement shall be the federal and states courts of Houston, Harris County, Texas and for any disputes arising under this Agreement, the Principal and the Contractor hereby agree to submit to the personal jurisdiction of the federal and state courts of Houston, Harris County, Texas.