

**GENERAL TERMS & CONDITIONS OF COMMERCIAL SALE
OF VAN HALTEREN TECHNOLOGIES BOXTEL BV – JUNE 2022 (GTC22)**

1. PREAMBLE

1.1 These General Terms and Conditions of commercial sale (GTC22) apply to all sales transactions made by Van Halteren Technologies Boxtel BV with its professional or business customers, unless deviating agreements have been made in writing. For the avoidance of any doubt, these General Terms and Conditions of commercial sale do not apply to consumers. Any and all other terms and conditions are explicitly excluded and agreed to be not applicable. No variation to these GTC22 shall apply to any purchase order or other Contract unless expressly agreed by Van Halteren Technologies Boxtel BV and Customer in writing.

2. DEFINITIONS

2.1 In these GTC22 the following terms shall have the meanings herein assigned to them:

- **“Conditions”** shall mean these GTC22, including variations to these GTC22 that have been agreed between Van Halteren Technologies Boxtel BV and Customer in writing.
- **“Confidential information”** shall mean either Party’s data, documents and other records embodying information of a confidential and proprietary nature, irrespective if such information is marked as “proprietary” and/or “confidential” or not, such as but not limited to commercial and technical information, in either oral, written or in any other way provided or made available to, or obtained by the other Party.
- **“Contract”** shall mean the written contract between the Parties concerning the supply and erection of the Goods and Services, and all appendices, including agreed amendments and additions thereto.
- **“Contract Price”** shall mean the payment to be made for the Works. If erection is to be carried out on a time basis (time & materials) and has not been completed, the Contract Price shall be considered the price for the Goods with the addition of 10 per cent or of any other percentage that may have been agreed by the Parties in writing.
- **“Customer”** shall mean any individual or entity for whom/which Supplier has provided services or Goods or made a proposal to perform services or provide Goods.
- **“Customer Furnished Equipment” or “CFE”** shall mean any and all equipment and/or materials delivered to Supplier by Customer and/or information provided by Customer to Van Halteren Technologies Boxtel BV, as set out in the specifications or otherwise delivered to Van Halteren Technologies Boxtel BV .
- **“Customer Group”** shall mean Customer, its subsidiaries, parent, affiliated and associated companies including its (sub)contractors, clients, end-users and agents, servants, directors, officers and employees
- **“Day”** shall mean a full calendar day.
- **“Force Majeure”** a Party shall not be considered to be in default or breach of the Contract, and shall be excused from performance or liability for damages to the other Party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of the Contract, arising out of or from any act, omission, or circumstance by or in consequence of any act of God; acts of princes or rulers; civil commotions; acts of military authorities, war, warlike circumstances, blockades; export restrictions; immigration or import restrictions in the Customer’s country, epidemics, pandemics; strikes; lockouts and labour disturbances, floods; extreme weather conditions; prolonged failure of electric current; explosions or fires; accidents; damage to the Works and time taken to repair such damage; general shortage of qualified labour; inability to obtain delivery of materials and equipment provided that the same were ordered in time; rejection of and defects in materials and equipment which could not have been anticipated by Supplier or its (sub)suppliers or (sub)contractors; casting or machining rejects; delays to Supplier’s other commitments resulting from any causes herein described which in turn delay the erection of the Goods or Works or Supplier’s performance under this Contract; delays caused by or contributed by the fault of the Customer or otherwise attributable to the Customer; or any other causes of delay whether or not of a kind previously specified in this clause beyond the control of Supplier or its (sub)suppliers or (sub)contractors, whether or not indicated by the foregoing

words; all the foregoing irrespective of whether or not these events occur before or after the date hereinbefore specified as the date at which the Goods are to be delivered; then and in any such case the date of delivery shall be postponed by the number of working days of delay incurred by Supplier in completing or delivering the Goods or rendering the Works in consequence of any of these causes.

- **“Gross Negligence”** is defined by the law governing the Contract; however, if such law does not define the term “gross negligence”, it means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences.
- **“Party”** shall mean either the Customer or Supplier.
- **“Parties”** shall mean the Customer and Supplier.
- **“Goods”** shall mean all machinery, apparatus, materials and articles and services to be supplied by Supplier under the Contract.
- **“Site”** shall mean the place where the Works are to be performed, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Goods and erection equipment.
- **“Supplier”** shall mean Van Halteren Technologies Boxtel BV, with its registered office at Van Salmstraat 70, 5281 RS Boxtel, the Netherlands
- **“Supplier Group”** shall mean Van Halteren Technologies Boxtel BV, its subsidiaries, parent, affiliated and associated companies including its (sub)suppliers, and its respective agents, servants, directors, officers and employees
- **“Supplier Equipment”** shall mean all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include the Goods.
- **“Third Party”** shall mean any entity other than Supplier Group or Customer Group.
- **“Works”** shall mean the Goods including the erection and other work to be carried out (**“Services”**) by Van Halteren Technologies Boxtel BV under the Contract. If the Works according to the Contract shall be taken over by separate sections intended to be used independently from each other, these Conditions shall apply to each section separately. The term “Works” shall then refer to the section in question.

3. OBLIGATIONS OF CUSTOMER

- 3.1 Customer shall, free of charge for Supplier, provide Supplier timely with any CFE and information reasonably required in connection with the Contract, such as - but not limited to - relevant technical documentation, logs, inspection reports and import licenses. All CFE and information provided by Customer to Supplier under or in relation to the Contract shall be deemed complete and correct in all respects and Supplier is entitled to rely fully on such information. Customer shall remain responsible for errors and omissions in the CFE and information supplied by it to Supplier.
- 3.2 Prior to performing any Works by Supplier, Customer shall provide Supplier with relevant information on any laws, regulations and rules which are applicable to the Contract and the Works.
- 3.3 Customer shall obtain, and shall be responsible for, all licenses, permits and authorizations necessary for the Works and equipment of Supplier in Customer’s country, except for Works executed by Supplier in Boxtel, the Netherlands.
- 3.4 Customer shall not assign the Contract, nor use the Contract as any form of collateral, loan basis, creditor undertaking, payment security, or factoring unless approved up front by Supplier in writing.
- 3.5 Customer shall inform Supplier without delay of any facts and circumstances that could be of relevance to the implementation of the Works.
- 3.6 Customer shall provide at no charge for Supplier all reasonable assistance to Supplier at Supplier’s request for Supplier’s applications:
 - a) Which Supplier is required to obtain for the Works from the Contract;
 - b) If applicable, for customs clearance;
 - c) If applicable, for the export of Supplier Equipment when it is removed from the Site.
- 3.7 Customer shall perform the following free of charge for Supplier and at its own risk, unless these are not required for the Works or if it has been agreed otherwise:
 - a) Provision of the drawings and other information and not to be provided by Supplier, relating to the Works and the Site;

- b) Obtaining permits, authorizations and licenses necessary for performing of the Works;
 - c) Organizing required inspections to be performed by Third Parties;
 - d) Performing of construction work such as, however not limited to, demolition work, lifting, transportation facilities, foundations, painting, ground and scaffolding construction;
 - e) Provision of storage space for any equipment, Supplier Equipment and Goods as well as all reasonable protection measures and insurances regarding any stored equipment, Supplier Equipment and Goods;
 - f) Provision of sufficient quantities of gas, fresh water, electricity and (compressed) air including the relevant connection points as well as sufficient telecommunication facilities;
 - g) Provision of unhindered and unrestricted access to the Site;
 - h) Removal of wastewater, waste materials including packaging materials and waste products;
 - i) Making available suitable workspace and a suitable shelter for direct and indirect personnel used by Supplier to perform the Works, equipped with all reasonably expected facilities such as sanitary, lighting, heating, information and telecommunication facilities, sufficient conveniences (lockable cabinets for example) and sufficient storage space;
 - j) Taking the security and precautionary measures necessary, or as required by Supplier, in order to perform the Works in accordance with the agreed government laws/rules and regulations. This includes safety measures necessary in terms of the Occupational Health and Safety and environmental acts due to special risks associated with the services and which exceed the regular Supplier activities and their usual risks.
- 3.8 Additional work and/or additional costs and damage resulting from the delayed or improper performance as per this Clause 3 resulting in delayed execution of this Contract, are for the account of Customer.
- 3.9 Customer Furnished Equipment. Within the agreed number of days from the execution of this Contract, Supplier shall deliver to Customer a schedule of dates for the delivery to Supplier by Customer of Customer Furnished Equipment and Information/(CFE). If delivery by Customer to the designated place of any of the components of Customer Furnished Equipment is delayed beyond the respective scheduled dates of delivery shown on the time schedule, it is agreed that the stipulated delivery date of the affected unit(s) shall be extended on a day for day basis for each day of delay of such Customer Furnished Equipment or such other period, whether longer or shorter, as the Parties may mutually agree in writing taking into consideration the degree the Work is actually delayed by the delay of such Customer Furnished Equipment. Customer shall be responsible for all costs of transportation of Customer Furnished Equipment to the designated place as well as all classification and regulatory certificates. All Customer Furnished Equipment arriving at Supplier's Site shall be stored in a secure area allocated to Customer for storage of equipment and supplies until required by Customer for installation into the Works. Such securing area shall be plainly marked to indicate Customer's possession and ownership of such CFE. Supplier shall not be responsible for the proper functioning of any CFE handled, installed, processed, etc. and the interfaces with other equipment.

4. PRICE AND PAYMENT

- 4.1 The Contract shall be effective from the date the Contract is signed by both Parties, or when the order confirmation is signed and sent back to the Customer, however the Contract commencement date shall be the date on which the last of the following requirements has been fulfilled:
- a) Supplier's receipt of the agreed advance payment, if applicable;
 - b) Supplier's receipt of the agreed payment security, if applicable;
 - c) Supplier's receipt of the export license, if applicable.
 - d) Supplier's receipt of the Customer Furnished Equipment and Customer Furnished Information (CFE), if applicable
- 4.2 Unless otherwise agreed by Parties in writing, the currency of the Contract will be Euro and the payments will be made in Euro. Payments shall be made by Customer within 30 days after the invoice date. A milestone payment plan shall be agreed between Parties.
- 4.3 Customer shall provide sufficient security for payment of the total Contract Price, subject to Supplier's approval. If the Customer does not provide such sufficient security, Supplier shall have the right to wholly or partially terminate or suspend the execution of the Contract by a written notification to Customer.

- 4.4 All prices specified by Supplier are exclusive of VAT and exclusive of any and all taxes, duties, levies and the like outside of the Netherlands, such as but not limited to costs of Permanent Establishment and accountant costs which shall be added to the Contract Price, if applicable. Customer agrees to defend, indemnify and hold harmless Supplier from all claims, suits, costs, expenses, liabilities, fines, attorney's fees, judgements and demands as may be incurred resulting from or connected with any assessment, allegation or imposition for taxation outside the Netherlands.
- 4.5 Customer agrees that it shall neither withhold nor set-off any amount payable to Supplier for whatsoever reason. In case of a withholding or delay in payment by Customer, Supplier reserves the right to suspend the Works partially or in whole subject to Clause 7.
- 4.6 Notwithstanding Supplier's rights under Clause 4.5, Customer shall be liable to pay interest on the delayed outstanding amount at the statutory rate without any notice being required. Any additional costs such as, however not limited to, collection costs, incurred by Supplier shall be borne by Customer.
- 4.7 Title to and ownership of the Works shall remain vested in Supplier until the latter has received all payments at its free disposal of the full Contract Price. Customer shall at the request of Supplier provide all assistance in taking all measures necessary to protect Supplier's title to the Works. The retention of title shall not affect the passing of risk as described in Clause 5.2.
- 4.8 Until the moment title has been transferred to Customer in accordance with the previous paragraph, Customer shall take no actions (like combining the Goods delivered, either in production or in storage, with other goods, or transferring, selling or encumbering them in any respect, or taking them into another country) which could jeopardize the unfettered execution of Supplier's property right. Furthermore, Customer shall take any actions reasonably required in order to protect these rights and shall immediately return the Goods to Supplier at the latter's first request.
- 4.9 For work and deliveries, not included in the original Contract, Supplier shall charge Customer prices based on standard rates applicable at the time of execution.
- 4.10 The Contract Price of the offer is based on the prices of the required materials, components and services on the date of the offer. If the costs of execution of the Works increase or are likely to increase after the closing date of the agreement due to disproportionate price increases, caused by an unforeseen market situation/market development, Supplier shall always be entitled to charge Customer a price-increase if and to the extent that such increase is reasonable. In any case Supplier shall reasonably be entitled to a price-increase in case of, but not limited to, any increase in wages, in costs of raw materials and/or other deliverables and/or services to Supplier and/or in any taxes/levies which might apply. Supplier will notify the customer of any change in the prices at least fourteen (14) calendar days prior to the effective date of the change. The same applies for lead times of these materials and services.

5. DELIVERY

- 5.1 Unless otherwise agreed by Parties in writing, delivery of the Goods shall be made in accordance with Incoterm® of 2020 FCA Boxtel, the Netherlands.
- 5.2 Risk of damage and/or loss to the Goods shall pass to Customer in accordance with the agreed Incoterm.
- 5.3 Supplier is entitled to make partial deliveries and Customer is obliged to accept the Goods and/or services including partial deliveries.
- 5.4 If the factory acceptance test (FAT), the dispatch or the collection of the Goods at the designated place of delivery is delayed for reasons not solely attributable to Supplier, Supplier shall be entitled to store the Goods at the expense of Customer in a warehouse at Supplier's choice. Upon such storage, delivery according Clause 5.1 shall be deemed completed and the risk for the Goods shall transfer to Customer accordingly. Should Customer in the event the Goods are ready for delivery after successful FAT and the Customer does not take delivery of the Goods for whatever reason, the Contract Price shall be due and the Customer shall undertake to pay or procure to be paid the Contract Price in accordance with the Contract. Subsequently the Goods shall be deemed delivered and notwithstanding Clause 5.2 5.2 risk of damage and/or loss to the Goods shall pass to Customer.
- 5.5 Unless otherwise agreed, all delivery dates and lead times mentioned by Supplier are indicative and for reference only and shall not constitute any binding obligation on account of Supplier.
- 5.6 Notwithstanding Clause 5.5, should Parties expressly agree on a firm delivery date for the Goods, Customer shall have a right to charge liquidated damages in case of delivery later than this agreed date provided attributable to Supplier. In case such delay is solely attributable to Supplier, Customer shall be

entitled after a written notification and grace period of thirty (30) days to charge liquidated damages in the amount of 0,5% of the value of the delayed Goods for each full calendar week of delay. Notwithstanding any provision under the Contract, the aggregate of the liquidated damages shall never exceed 5% of the Contract Price. Supplier's liability for liquidated damages is subject to and shall be payable only against demonstrated and documented direct damages suffered by Customer due to Supplier's delay. For the avoidance of doubt, timely delivery of a substantial part of the Goods shall in no event constitute a non-permissible delay on Supplier's side. The Parties confirm that liquidated damages sum represents a genuine pre-estimate of the loss that Customer would suffer in the event of a delay attributable to Supplier and that such liquidated damages shall be the sole and exclusive remedy of Customer in respect of such failure and shall settle all claims due to delay finally, for whatsoever reason.

- 5.7 Unless expressly otherwise agreed upon, Services shall be provided during a working week which shall be in accordance with normal industry practice. A working day is deemed to be a man-day consisting of eight (8) working hours.
- 5.8 Hours worked outside these normal working hours, on Saturdays or Sundays or on official holidays will be charged separately as overtime.
- 5.9 The Works shall be deemed delivered:
 - a) if Customer does not cooperate in acceptance and testing on the time notified by Supplier for delivery, or wrongfully or without proper motivation refuses to approve;
 - b) if the Works or Goods have left the Site or Customer appears to have in fact taken control of the Goods or Works or, respectively, the part of the Works or Goods upon which was worked ("Beneficial Occupation");
 - c) if Customer does not immediately inform Supplier of possible shortcomings at the time of delivery and/or does not give a written confirmation thereof within 48 hours thereafter.
- 5.10 Minor or usual shortcomings are no reason for refusal of acceptance and approval. These shortcomings will be recorded in writing by Customer and Supplier, in addition to which Supplier will state within which period of time the remedying of these shortcomings will take place.
- 5.11 If Customer fails to take delivery Customer forfeits its rights regarding loss of Goods and shall be liable for cost incurred for storage and maintenance by Supplier.

6. WARRANTY

- 6.1 On delivery, all liability of Supplier ends, except for the Warranty pursuant to this Clause 6.
- 6.2 If Works, except for software, are found to be defective, Customer shall be entitled to require Supplier to rectify the defect free of charge, either by means of repair, replacement or re-execution, at Supplier's sole discretion, provided that all of the following conditions are met:
 - a) It is reasonably possible to rectify the defect; and
 - b) The cause of the defect is directly and solely attributable to Supplier; and
 - c) Supplier is notified of the defect in writing within 14 days of the time when it could reasonably have been discovered; and
 - d) Any additions or alterations to the Goods supplied or the services performed, repairing of faults or maintenance activities have been carried out by Supplier or with Supplier's prior written consent and are compliant with Supplier's specifications and manuals.

Further, Warranty does not apply to defects due to normal wear and tear, perils of the seas, wrongful use, abuse, overload, deferred maintenance and improper maintenance.

- 6.3 The Warranty Period ends 12 (twelve) months after the date on which
 - a) the Works have been taken into use;
 - b) a trial run, FAT or Site Acceptance Test (SAT), whichever comes first, has been found successful;
 - c) the Works have been taken over.or 18 (eighteen) months after delivery according Clause 5.1, whichever comes first.
- 6.4 Costs incurred for transport, disassembly and assembly of the Goods supplied are for Customer's account and excluded from Supplier's warranty obligations. Supplier may request that an item needing repair be returned to its address or to an address specified by it on account of Customer. Supplier is entitled to rectify

defects on its own initiative. Any components that become available as a result of a replacement shall remain/become Supplier's property. The abovementioned obligation to rectify defects also applies to defects in repairs for a period of three months after the repair is carried out and for parts for a period of six months after the good is shipped, but up to the end of the original period of 12 months.

- 6.5 Throughout the validity of the warranty period, Supplier shall have the right to free and unhindered access the Site.
- 6.6 The obligation to repair is limited to repair of the defective part and the warranty obligation thus does not include consequential loss and indirect damages and costs, such as, but not limited to, hoisting equipment, electricity, scaffolding, assisting work, docking, demounting, mounting and travel- and boarding costs of Supplier's Personnel, loss of business, loss of profit, loss of income, etc. If the warranty obligation must be carried out at a location outside the Netherlands, Supplier bears only the material costs and the costs of working time required under normal conditions, as would be incurred when the warranty obligation would have been carried out in the Netherlands. Customer shall bear the costs for travelling, travelling time, waiting time, day and night allowances, tariff expenses as well as costs that are to be borne by Customer according the terms of these Conditions.
- 6.7 Lifetime expectancy and design criteria, mentioned in Supplier's documents, if any, shall neither construe any warranty on lifetime of the Goods nor extension of the warranty period. It shall only be an indicator for the design principles.
- 6.8 Terms or wording and the legal implications thereof such as fit for (the intended) purpose, guarantee, fine, penalty, time is of the essence, turn-key, highest or latest norm, standard, and the like, shall not apply and are explicitly excluded.
- 6.9 No warranty obligation will be enforceable until Customer has complied with all its payment obligations.
- 6.10 All warranty obligations lapse if customer fails in the performance of any obligation pursuant to this Contract.
- 6.11 No warranty obligations for Supplier apply to deliveries, goods and services supplied or prescribed ("Customer Furnished Equipment") by Customer.
- 6.12 Regarding deliveries, goods and services supplied by and work executed by Third Parties and suppliers of Supplier, the Warranty obligations of Supplier shall never be greater or of longer duration than the Warranty obligations of the supplying party towards Supplier. Supplier shall be discharged with respect thereto when it transfers to Customer its possible claims against the Third Party (Parties)
- 6.13 Repair Work, including inspection and the delivery of goods and services, performed upon unjustified Warranty demands by Customer, shall be charged to Customer, in accordance with Clause 4.9 and these GTC22 shall apply.

7. SUSPENSION

- 7.1 Customer may at any time suspend, at its absolute discretion, the performance of all or part of the Works by giving written notice to Supplier. Delays as a result of such suspension shall be understood to be Permissible Delays and are to be distinguished from non-permissible unauthorized delays on account of which the relevant delivery date specified in the Contract as meant in Clause 5.6 is subject to adjustment in accordance with Clause 7.9 such that any estimated completion of the Work affected by such permissible delay shall be extended accordingly.
- 7.2 Customer shall keep Supplier informed of the date of the likely resumption of the Works.
- 7.3 Customer may request resumption of the Works at any time following the notice of suspension and Supplier shall as soon as practicable resume the Works.
- 7.4 If the execution of the Works or any part of the Works is prevented for a continuous period of thirty (30) days by reason of suspension by Customer, Supplier may request Customer's permission to proceed. If Customer does not give permission, without undue delay after being requested to do so, Supplier may terminate the Contract by sending a written notice of termination to Customer.
- 7.5 Upon such termination, Customer shall compensate Supplier in accordance with Clause 8.2.
- 7.6 Supplier may, after giving not less than fourteen (14) days prior notice to Customer, suspend (part of) the Works if any event occurs which is preventing or hindering Supplier in the performance of its Works under the Contract and such event is not solely attributable to Supplier, and/or if Customer breaches or fails to timely fulfil any of its obligations under the Contract, such as however not limited to:

- a) responding to written requests of Supplier;
 - b) approval and/or release of (technical) documents;
 - c) completion of the civil works in accordance with Supplier's interface requirements or other works for which Customer is responsible;
 - d) obtaining of all necessary permits required for the execution of Supplier's Works outside the Netherlands and on Site;
 - e) providing sufficient working area and all required facilities such as, tools, equipment, water, electricity, and the like, at the work site in Customer's country;
 - f) assuring availability of and free access to the work site as specified or as otherwise may be required by Supplier;
 - g) timely fulfilment of payment obligations;
 - h) issuing of payment securities;
 - i) issuing of documentation required for Export Control purposes.
- 7.7 If such suspension of the Works, partly or in whole, lasts for more than thirty (30) days after the date of Supplier's notice of suspension, Supplier shall be entitled to terminate the Contract, partly or in whole, unilaterally.
- 7.8 If Customer substantially fulfils its obligations as described in Supplier's written notice, Supplier shall resume the Works as soon as is reasonably practicable.
- 7.9 After resumption of the Works as described in Clause 7.3 and 7.8, the Contract Price, time schedule and all other consequences shall thereupon be adjusted by way of a variation to which Supplier is entitled.
- 7.10 Customer shall compensate Supplier for all documented costs that are attributable to such suspension, including all costs necessary for the preservation, storage and safety of the Works.
- 7.11 For the avoidance of doubt and notwithstanding any provision under the Contract, Customer's compensation obligation hereunder shall also include Supplier's costs such as down-time and stand-by costs, during the suspension period and costs for which Supplier will be liable to pay to any of its subcontractors as a direct consequence of the suspension.

8. TERMINATION

- 8.1 Customer shall have the right at any time and at its absolute discretion to terminate the Contract by serving Supplier a notice of termination.
- 8.2 In the event of receipt of such notice of termination, Supplier shall deliver to Customer all Works performed by Supplier up to the date of receipt of the notice of termination, and Customer shall compensate Supplier for:
- a) All Works or part thereof performed by Supplier up to the date of receipt of the notice of termination;
 - b) All documented costs and expenses in connection with commitments entered into by Supplier with other parties or incurred by Supplier and which arise as a direct result of the termination;
 - c) Any other cost or liability which in the circumstances was reasonably incurred by Supplier in the expectation of completing the Work;
 - d) The cost of removal of temporary works and Supplier Equipment from the Site and the return of these items to Supplier's premises;
 - e) A termination compensation for loss of profit equivalent to fifteen percent (15%) of the value of the terminated part of the Work. For the avoidance of doubt, the foregoing is a pre-agreed (i.e., liquidated) compensation to Supplier for its loss of profit.
- 8.3 Either Party shall have the right, by giving a thirty (30) days prior written notice to the other Party, to terminate the Contract, for any of the following reasons:
- a) The other Party becomes insolvent, in receivership, bankruptcy, in administration, in composition or arrangement with its creditors, voluntary winding-up or any equivalent act or thing under any applicable law; or
 - b) The other Party's material breach of any provision of the Contract to which that Party has not commenced remedial activities as soon as may reasonably be expected after written notifications; and
 - c) Any breach or conviction for compliance rules, anti-bribery and corruption
- 8.4 Any claims for termination must be received by notified Party in writing, within fourteen (14) days after the occurrence of the default event.
- 8.5 In case of termination due to default of Supplier, Customer shall be entitled to and, if Supplier so requires,

be obliged to take over that part of the Works which is completed and is free from defects. Customer shall pay Supplier a reasonable price for such part of the Works, with regard to the Contract Price and the circumstances of the case.

- 8.6 In case of termination due to default of Customer, Supplier shall deliver the Works performed by it until the date of its written notice of termination and be entitled to a compensation as stated in Clause 8.2.
- 8.7 Notwithstanding anything to the contrary herein, it is expressly agreed and understood by the Parties that if the Customer terminates this Contract pursuant to the provisions of this Clause 8, the Customer in no event be entitled to any liquidated damages.
- 8.8 Supplier may at its discretion terminate the Contract with immediate effect if it is able to demonstrate that in accordance with reasonable and commercial standards, execution or further execution is deemed impossible or unfeasible, however provided that Supplier can prove that Customer is reasonably able to have the Contract executed by a third party against reasonable and comparable costs.

9. INSPECTION AND TAKING OVER

- 9.1 Supplier shall notify Customer latest 5 days in advance of any hold, witness or other inspections or tests planned in accordance with the agreed Inspection and Test Plan that require presence of Customer or of an inspection agency nominated by Customer.
- 9.2 Should Customer or an inspection agency nominated by Customer for any reason not be present at the planned inspection or test date, Customer's right to inspection and/or testing shall be deemed to be waived and the inspection/test shall be carried out by Supplier in order not to impede or delay the Works. An inspection or test report shall be made and submitted to Customer for reference only.
- 9.3 Customer shall have no right to inspect or audit Supplier's financial records.
- 9.4 When erection has been completed, Supplier shall notify Customer that the Works are ready for the taking-over tests in accordance with Clause 9.1. The taking-over test shall, unless otherwise agreed, be carried out to determine whether the Works are as required for taking-over according to the Contract.
- 9.5 Taking-over of the Works takes place:
 - a) When the taking-over tests have been satisfactorily completed or are regarded under Clause 9.4 as having been satisfactorily completed, or
 - b) Where the Parties have agreed not to carry out taking-over tests, when Customer has received a notice from Supplier that the Works have been completed according to the Contract.
- 9.6 Customer shall bear all costs of inspections and taking-over tests. Customer shall provide free of charge any power, lubricants, water, fuel, tools, raw materials and other materials required for the taking-over tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labour or other assistance necessary for carrying out the taking-over tests. Supplier shall bear all costs relating to its personnel to execute testing.
- 9.7 The taking-over tests shall be carried out during normal working hours as stipulated in Clause 5.7. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in Supplier's country.
- 9.8 If the taking-over tests show the Works not to be in accordance with the Contract, Supplier shall remedy the deficiencies.
- 9.9 If Customer so requires it shall notify Supplier without undue delay in writing, and new tests shall be carried out in accordance with this Clause 9.
- 9.10 The provisions of Clause 9.9 shall not apply when the deficiency was insignificant. Minor deficiencies which do not affect the efficiency of the Works shall not prevent taking-over, however will be remedied by Supplier within reasonable period.
- 9.11 If, after having been notified in accordance with Clause 9.1, Customer fails to fulfil his obligations under Clause 9.6 or otherwise prevents the taking-over tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the date for taking-over tests stated in Supplier's notice.
- 9.12 Customer is not entitled to use the Works or any part thereof before taking-over. If Customer does so without Supplier's consent in writing, he shall be deemed to have taken over the Works and have taken Beneficial Occupation. Supplier shall then be relieved of his duty to carry out taking-over tests, all sums and/or outstanding invoices shall become due and payable, and the warranty period shall commence.

10. VARIATIONS

- 10.1 Supplier is entitled to make minor changes to the specifications and drawings, not affecting the Work's performance characteristics if such changes are found necessary to suit Supplier's local conditions and facilities, the availability of materials and equipment, the introduction of improved production methods or otherwise. Supplier may seek the Customer's approval to make changes in the specifications and in such cases the proposed changes will be dealt with as stated below in this Clause 10.
- 10.2 Although the Customer will keep variations to the scope of work to a minimum, Customer is entitled to request variations to the scope of work, design and construction of the Works until the Works have been taken over, having regard to the stage of planning for, or the construction or erection of, the Works and/or Supplier's other commitments, provided that a written order is submitted by the Customer with sufficient particulars of the requested modification.
- 10.3 Requests for variations shall be submitted to Supplier in writing and shall contain an exact description of the variation required/requested.
- 10.4 Within reasonable period after receipt of a request for a variation, Supplier shall notify Customer whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for completion and all other terms of the Contract. Supplier shall not take any steps to implement the same, until the above costs and/or any necessary change of the Work's performance or characteristics and/or any extension of the delivery date has been agreed with the Customer in writing and signed (a "Variation Order"). The provisions of the Contract shall apply to any such variation.
- 10.5 Customer shall, as soon as practicable however within 5 days after receiving such proposal respond with unconditional approval (i.e. Variation Order), disapproval or comments. Unless otherwise agreed, Supplier shall not delay any Work under the Contract whilst awaiting a response.
- 10.6 If and when Supplier, on the request of Customer, must make a study in respect of a proposed modification or variation, the delivery date will be extended by the time spent on such study, even when the variation will not be ordered, unless such study does not interfere with the normal progress of work. In the event a variation will not be ordered, Supplier's costs in connection with such a study in respect of a proposed modification or variation, shall be borne by the Customer.
- 10.7 If completion of the Works is delayed as a result of disagreement between the Parties on the consequences of variations, Customer shall pay any part of the Contract Price which would have become due if the Works had not been delayed.
- 10.8 Save as provided in Clause 10.7, Supplier shall not be obliged to carry out variations required by Customer until either the Parties have agreed on how the variations will affect the Contract Price, the time for completion, time of delivery and other terms of the Contract, or the dispute with respect thereto has been settled in accordance with Clause 16.2.
- 10.9 Customer shall carry out any variation work caused by changes in laws, regulations and rules referred to in Clause 3.2, or in their generally accepted interpretation, occurring between the dates of submission of the tender and taking-over. Customer shall bear the extra costs and other financial consequences resulting from such changes, including variation work.
- 10.10 The adjustments of the Contract Price made under this Clause 10 shall be paid by the Customer in accordance with Clause 4 in so far as they represent an increase in the Contract Price.

11. CONFIDENTIALITY AND IP RIGHTS

- 11.1 Neither Party shall, without the prior written approval of the other Party, disclose to any third party any Confidential Information of the other Party, nor shall make any promotional display, announcement or advertisement relating to the Contract, without the prior written approval of the other Party.
- 11.2 These provisions shall not apply to information within the following categories:
 - a) information which, prior to the time of disclosure, was lawfully available in the public domain;
 - b) information which through no fault of the disclosing Party enters into the public domain;
 - c) information obtained by the disclosing Party from a third party who was lawfully in possession of such information;
 - d) information which a Party is obliged to disclose by applicable law, rules or regulations.
- 11.3 The Parties undertake to monitor and control the distribution of proprietary information as described here above within its organization only on a need-to-know basis to ensure the commitments hereunder are duly met.

- 11.4 All intellectual property rights, including but not limited to, all drawings, designs, (technical) documentation, building specifications, computer programs, as well as the carriers on which such rights are laid down (hereafter jointly: "I.P.- rights"), delivered or developed under the Contract by Supplier will at all times remain vested in Supplier and remain the property of Supplier and will be returned to Supplier upon first request or immediately upon fulfilment of the contractual obligations of both Customer and Supplier. Supplier grants to Customer a limited, non-exclusive, non-transferable, royalty free, irrevocable and perpetual license to use the I.P.-rights to the extent necessary to enable Customer to use the Goods in accordance with the Contract.
- 11.5 Notwithstanding any provision in any document under the Contract, and regardless of the priority of documents, Supplier's Works are excluding and undelivered of any:
- a) software source codes; and
 - b) detailed engineering and/or calculations and/or specifications of components and/or workshop production drawings.
- 11.6 The software provided by Supplier will be fully sufficient for daily operation of the drive and control system. Customer acknowledges and respects the copyright of Supplier, vested in the, amongst others, in-house designed Linux based motion control software, and shall not challenge these rights. Supplier warrants that no rights of Third Parties are infringed by granting a license to use this software to Customer, and Customer shall accept the software license terms of those Third Parties, if any.
- 11.7. Customer recognizes that Supplier's software is proprietary to Supplier and title remains vested in Supplier.
- 11.8 Supplier provides no warranty other than explicitly stipulated under the provisions of these GTC22, to the extent permitted by applicable law, except when otherwise stated in writing. Supplier provides the software "as is" without any warranty of any kind, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular use.
- 11.9 Supplier shall, in no event be liable for any damages, including direct or consequential, general or special damages arising out of the use or inability to use the software including but not limited to the loss of data or data being rendered inaccurate or losses sustained by user or any third party or failure of the software to operate and/or communicate with any other software.
- 11.10 Supplier may use free and open source software.

12. FORCE MAJEURE

- 12.1 If a Party is or will be prevented from performing any of its obligations under the Contract by a Force Majeure event, then it shall, without undue delay, give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented.
- 12.2 The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.
- 12.3 Notwithstanding any other provision in these GTC22, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- 12.4 However, a subcontractor failure does not constitute Force Majeure unless the failure is caused by an event of Force Majeure and alternative sources are unavailable to meet the need.
- 12.5 Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure, provided however there is no obligation to make good time or to accelerate.
- 12.6 The affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.
- 12.7 If Supplier is prevented or hindered from performing any of its obligations under the Contract by Force Majeure of which notice has been given and suffers delay and/or incurs cost by reason of such Force Majeure event, Supplier shall be entitled to:
- a) an adjustment of the time schedule for any such delay, if completion is or will be delayed, and
 - b) adjustment of the Contract Price for any such cost
- 12.8 If the execution of substantially all the Works is prevented for a continuous period of sixty (60) days due to a Force Majeure event of which notice has been given, or for multiple periods which total more than sixty (60) days due to the same notified Force Majeure event, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect fourteen (14) days

after the day the notice has been given.

13. COVID-19

13.1 Customer and Supplier acknowledge the COVID-19 pandemic is unprecedented. Notwithstanding anything to the contrary stated herein, Customer is not entitled to rescind, terminate, determine, withdraw from, etc. the Contract if the delay is directly related to the outbreak and spread of the coronavirus, being a pandemic so declared by the World Health Organization on 11 March 2020 and the associated COVID-19 disease and all SARS-CoV-2 related variants. The delay so directly caused shall be regarded and treated as Permissible Delay as referred to in Clause 7.1. Supplier and the Customer shall use reasonable endeavours to mitigate the impact of any such delay and the associated COVID-19 disease and all SARS-CoV-2 related variants. As a consequence, the delivery date or time schedule, if any, shall be postponed by any period of time Contractor requires due to delays incurred in designing, engineering, constructing, purchasing, testing, commissioning and delivering the Works as a consequence of the outbreak and spread of the coronavirus and the associated COVID-19 disease and all SARS-CoV-2 related variants as well as all governmental measures taken in this regard.

14. NOTICES

14.1 All notices and other communications given or made pursuant to this Contract shall be in writing and shall be deemed effectively given:

- a) upon personal delivery to the Party to be notified;
- b) when sent by electronic mail if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day;
- c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid;
- d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.

14.2 All communications shall be sent to either Party's representative as defined in the Contract.

14.3 The language for communications under the Contract shall be English, unless contractually otherwise agreed.

15. LIMITATION OF LIABILITY

15.1 Supplier's aggregated total liability for property damage and personal injury shall be limited to 25% of the Contract Price, or EUR 2.500.000,-, whichever is the lowest.

15.2 Supplier and Customer shall each assume their legal liability towards Third Parties at law.

15.3 Neither Party shall be liable to the other Party for any compensation of consequential damages and indirect loss such as, however not limited to, loss of production, loss of profit, loss of use, loss of reputation or for any other consequential or indirect loss whatsoever. Notwithstanding the foregoing, Customer recognizes that downtime or idle time of Supplier's production and engineering facilities resulting from:

- a) Suspension for Customer's convenience following Clause 7.1
- b) Suspension for Customer's default following Clause 7.6

- c) Termination for Customer's convenience following Clause 8.1
- d) Termination for Customer's default following Clause 7.7

will not be consequential or indirect loss under this Clause 15.3, but will be compensated as a direct loss to Supplier. This is also valid for the termination compensation as described in Clause 8.2.

16. EXPORT COMPLIANCE

16.1 In case Export Licenses shall be required for the Works, Customer shall provide Supplier, within fourteen (14) calendar days after Contract award, an import license and/or end user certificate, as may be required by Supplier.

16.2 Supplier's receipt of such Export License from the Dutch official authorities shall be a condition precedent for commencement of the Works.

16.3 Works will only be executed under the provision that their fulfilment complies with national or

international export control regulations and does not violate any embargoes or other sanctions. Customer commits himself to supply all necessary information and documents necessary for the export or transfer. Delays due to export control assessments or export control licensing procedures invalidate terms and dates of delivery. When licenses are not granted, or the delivery and service is not licensable, this Contract becomes void in respect of the affected parts.

- 16.4 Customer must in case of re-export of the items for the Works or any part thereof (hardware and/or software and/or technology and/or corresponding documents, irrespective of the mode of supply) supplied by Supplier or services provided by Supplier and its subcontractors (including any sort of technical assistance) to Third Parties at home and abroad comply with all applicable national and international regulations of (re-) export control law.

17. ASSIGNMENT

- 17.1 Assignment by the Customer - The Customer shall not be entitled to assign its rights hereunder to a Third Party except with the previous consent in writing of Supplier. However, Supplier shall not unreasonably withhold its consent, provided that any and all cost inherent in such assignment of any nature whatsoever, including legal cost and attorney's fees to be incurred by Supplier with respect thereto shall be borne by the Customer.
- 17.2 Assignment by Supplier - Supplier has the right to freely assign its rights and duties hereunder to a Third Party, to its bankers and other financial institutions.. If Supplier assigns its rights as above, any and all cost inherent in such assignment of any nature whatsoever, including legal cost and attorney's fees to be made by the Customer with respect thereto shall be borne by Supplier.

18. APPLICABLE LAW AND DISPUTE RESOLUTION

- 18.1 These Conditions shall be governed by the laws of the Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 18.2 Subject to Clauses 18.3 and 18.4, all disputes arising in connection with the present agreement, or further agreements resulting therefrom, shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI) with place of arbitration in Rotterdam, the Netherlands. The arbitral tribunal shall be composed of one arbitrator. Proceedings shall be held in the English language.
- 18.3 Prior to arbitration as set out in Clause 18.2 Parties shall first try to settle their dispute of any nature (both technical and financial) through negotiations and thereafter by means of communications between higher management.
- 18.4 In case that the Parties fail to reach an agreement within sixty (60) days following the commencement of the dispute, any Party may seek a technical expert. Any Party may suggest a suitable expert in certain area, and should the Parties be unable to bring into accord with the proposed expert within thirty (30) days, one Party may request from a specialized institution (to hire an independent specialist – in relevant area) to select a suitable expert and his decision shall be binding for the Parties. The remuneration to the technical expert and the accompanied expenditures shall be divided between the Parties.
