

HOERBIGER

General Terms and Conditions of Sale (“GTC”)

1. GENERAL

These General Terms and Conditions (“GTC”) apply to all sales and services performed by Supplier. They shall be an essential part of the Contract between Supplier and Buyer (“the Parties”). All quotations and order confirmations made by Supplier shall be deemed to incorporate these GTC, regardless of whether explicitly referenced to in the contract or not. Each order shall be deemed an offer by Buyer to purchase the Goods and/or the Services pursuant to these GTC. Acceptance of the Goods delivered and/or Services performed shall be deemed Buyer’s acceptance of these GTC. Supplier explicitly rejects any other terms or conditions. Diverging provisions shall only be applicable if agreed upon between the Parties in writing.

2. DEFINITION

In these GTC, each of the following terms shall have the respective meaning as defined below:

“Buyer”: the person, firm, company or corporation (other than the Supplier) by whom the order is given.

“Confidential Information”: any information disclosed to either Party, either directly or indirectly in writing, orally or by inspection of tangible objects, including without limitation documents, historical financial statements, financial projections and related financial information, general business information or financing and business plans, source code, documentation, financial analysis, marketing plans, customer names, customer list, customer data.

“Contract”: the sum of the provisions including without limitation the respective rights and obligations of Supplier and Buyer as jointly and concurrently concluded between them and having as their subject matter Supplier’s delivery of Goods and/or Services (as defined below) to Buyer. A Contract shall not be deemed concluded until it has been confirmed by Supplier in a written order confirmation and shall be governed exclusively by the contents of the order confirmation – including these GTC and, if expressly referred to, any specifications, attachments and the offer.

“Contract Price”: the consideration Buyer has to pay to Supplier for the Deliverables. Unless otherwise agreed in writing, the Contract Price is exclusive of: (i) packaging; (ii) delivery and carriage charges unless such charges are borne by Supplier in accordance with the applicable INCOTERMS 2020; and (iii) Value Added Tax and any other taxes and duties, which taxes and duties shall be paid by Buyer at the rate and in the manner prescribed by applicable law from time to time. Supplier may adjust the Contract Price stated to take account of any changes, including but not limited to: (i) any changes in the Good specification made at the request of Buyer and agreed by Supplier; (ii) any delay caused by Buyer; (iii) any increase in raw materials or economic costs; or (iv) any changes in volumes.

“Days”: calendar days.

“Deliverables”: Goods and/or Services to be performed by Supplier as specified in the Contract.

“Goods”: any physical object(s) including but without limitation data, software and other information to be supplied by Supplier.

“HOERBIGER Group Company”: any company which is fully owned and/or controlled by HOERBIGER Holding AG, the ultimate parent company of the HOERBIGER Group.

“Services”: any other of Supplier’s performance to be provided to Buyer other than the delivery of Goods.

“Supplier”: the HOERBIGER Group Company providing the characteristic performance.

3. DRAWINGS AND DESCRIPTIONS

All drawings, documents and other technical information relating to the Deliverables or manufacture submitted by Supplier to Buyer prior or subsequent to the formation of the Contract shall remain the property of Supplier. Buyer shall not use for any other purpose than the agreed, copy, reproduce, transmit or communicate to a third party, these drawings, technical documents or other technical information received from Supplier without the prior express written consent of the Supplier.

4. ACCEPTANCE TEST

1. If the Parties have explicitly agreed on the performance of an acceptance test, it shall be carried out according to the terms and conditions of the Contract during normal working hours at Supplier’s premises at Buyer’s costs and expenditures.
2. Supplier shall notify Buyer of the acceptance test in due time to allow Buyer to be present. If Buyer upon notification does not attend an acceptance test, such absence shall be deemed Buyer’s acceptance.

5. APPROVAL

Buyer shall be fully responsible for the fitness of the Deliverables for Buyer’s intended use.

6. DELIVERY, PASSING OF RISK

1. Unless otherwise agreed in writing, any delivery shall be Free Carrier (FCA) Supplier’s premises in accordance with INCOTERMS 2020.
2. Supplier shall be entitled to partial deliveries.

7. PAYMENT, DELAY OF PAYMENT

1. Unless expressly otherwise agreed upon in the Contract, all amounts invoiced shall be understood to be net of any tax, duties, packaging and transport. Unless otherwise agreed in writing these shall be borne by Buyer.
2. Payment shall be made in full without set-off counterclaim or withholding of any kind (save where and to the extent that this by law cannot be excluded); and within thirty (30) Days of receipt of invoice.
3. In the event Buyer fails or, in Supplier’s reasonable opinion, seems likely to fail to make payment when due under the Contract, Supplier without prejudice to its other rights reserves the right to either one or any combination of the following: (a) suspend performance (including withholding shipment); (b) require reasonable security for payment (c) unilaterally change payment terms to pre-payment; (d) immediately terminate the Contract or, at Supplier’s sole discretion, the part that Supplier has not yet performed (e) claim additional damages under applicable law; (f) set-off any amount owned by any

Supplier Affiliate to Buyer or any of Buyer's Affiliates; all in case Buyer's default can be remedied but is not remedied within a reasonable grace period as set by the Supplier. Any costs and damages resulting from such termination shall be borne by Buyer.

4. Buyer may set off counterclaims only if recognized or non-appealable. A right of retention may be exercised by Buyer only if it concerns the same contractual relationship.
5. Late payment interest shall apply at a rate of 8% above the ECB's interest rate on the main refinancing operations.

8. DELIVERY PERIOD

8.1 Delivery dates shall be understood to be estimates only.

8.2 If Supplier is delayed or prevented from performing any of its obligations under the Contract due to acts or omissions attributable to Buyer or any of Buyer's representatives, the delivery or completion date and the Contract Price shall both be adjusted accordingly.

8.3 If delivery is delayed due to any acts or omissions of Buyer, or if having been notified that the Goods are ready for dispatch, Buyer fails to take delivery or provide adequate shipping instructions, Supplier shall be entitled to place the Goods into a suitable store at Buyer's expense. Upon placing the Goods into the store, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Supplier accordingly.

9. WARRANTY

9.1 Subject to the exceptions, conditions and limitations set forth in these GTC, Supplier warrants that the Goods and Services shall be in accordance with the quality agreed upon or, in the absence of any specific quality being agreed upon, with Supplier's specifications for the Goods.

9.2 Any claims and rights based on defects shall become time-barred (including for assertion of hidden defects), in the case of Services, after a period of 3 (three) months has elapsed from the date of provision, while in the case of Goods, after the expiry of 12 (twelve) months since taking into operation of the Goods or 18 (eighteen) months since delivery, whichever occurs first.

9.3 Supplier may rectify any defect if, upon passing the risk, the Goods or Services do not have the warranted quality. Supplier warrants to provide subsequent performance by either, at its option, repairing or replacing the concerned parts (subsequent rectification) or by replacing the Goods or Services by such Goods or Services which are free from defects (subsequent delivery).

9.4 Supplier may rectify any defect several times and may decide at its discretion to change from rectification to subsequent delivery. Supplier shall be responsible for all costs incurred in connection with its subsequent performance, especially the transport, shipping, labor and material cost, unless such costs are incurred as a result of the Goods being taken to a place other than the place of performance.

9.5 Supplier assumes no warranty for used Goods, normal wear and tear, material provided by Buyer, any repair or replacement, modification or alteration of the Goods by Buyer itself or any third parties, damage due to improper storage, installation or operation, insufficient security, deviant operating conditions, or due to inadequate maintenance, use of inadequate

operational materials, or damage resulting from any modification or repair not approved beforehand by Supplier in writing or other similar circumstances. Supplier shall not be liable where any non-authorized software or non-authorized spare or replacement parts are used. Any costs incurred by Supplier for examining and removing such defects shall be borne by Buyer upon Supplier's demand. Buyer shall always be solely responsible for the completeness and correctness of any information provided by it.

9.6 Any remedied Goods (either by repair or by replacement) shall be subject to further warranty for the remainder of the original warranty period.

9.7 In case of a defect, Buyer shall be obliged to immediately inform Supplier in writing, otherwise Buyer shall be precluded from any warranty claims. Upon Supplier's request, Buyer shall be obliged to send the Goods to Supplier. Replaced Goods shall be sent back to Supplier at Buyers cost. Supplier shall recover ownership on any such replaced Goods.

9.8 Any additional warranty of Supplier for Goods with digital elements as defined in EU Directive 2019/770 (hereinafter "Digital Goods") and any other national warranty requirements in this regard is excluded vis-à-vis entrepreneurs.

9.9 The warranty as defined in this Clause shall replace all other express, implied or statutory terms, representations, warranties and conditions (including without limitation, any warranty or condition of merchantability or fitness for a particular purpose), in connection with any defect in the Goods and Services.

9.10 The above exclusions and limitations of warranty shall exclude or limit Supplier's warranty not only in Contract but also in tort or statutory law, common law or equity.

9.11 The only remedy for defects in Goods and Services is as set out herein. Buyer shall not have any further remedy, warranty claims or any additional rights and any such remedy, rights and claims are hereby expressly excluded, including without limitation damage claims for non-fulfilment or non-contractual performance by the Supplier, except in case of Supplier's gross negligence or willful misconduct.

10. RETENTION OF TITLE, RETURN OF TOOLING

10.1 Subject to this Clause 10 and Clause 12 and notwithstanding the delivery and the passing of risk in the Deliverables, the title of the Deliverables shall not pass to the Buyer until the Supplier has received payment in full of the Contract Price. Until full payment has been issued (i) the Buyer shall hold the Deliverables as the Supplier's fiduciary agent, and shall keep the Deliverables properly stored, protected and insured and (ii) shall immediately notify the Supplier of any (official) action undertaken against the Deliverables.

10.2 Any and all references to Software as part of the Deliverables shall only be deemed to mean a license as granted in Clause 12.2, and nothing set forth in these GTC and the Supplier's quotation or performance shall be construed to grant to Buyer any title, right, assignment or interest to any intellectual property rights whatsoever.

10.3 In case the Deliverables contain any tooling, which incorporates Supplier's specific know-know and/or company secrets, the tooling and any description and documentation thereof shall remain with Supplier until complete destruction and Buyer has no right to inspect and to return the tooling after termination or expiration of the Contract.

11. LIMITATION OF LIABILITY

Supplier shall be liable for damages and defects culpably caused by Supplier or his subcontractors used for the performance of the Contract, irrespective of the legal ground, up to a maximum amount of 100% of the contract value or the damage that is typically foreseeable. The liability of the Supplier for indirect and consequential damages, including but not limited to loss of profit, loss of production and other mere financial or unforeseeable losses shall be excluded. The limitation of liability shall not apply, insofar as this contradicts mandatory law, in case of intent and gross negligence. Furthermore, it shall not apply to defects that were fraudulently concealed or in the event of culpable injury to life, limb or health. Claims under the Product Liability Act shall remain unaffected.

12. SOFTWARE AND DOCUMENTATION

12.1 Title to and ownership of the copyrights in software and/or firmware incorporated into or provided for use with the Deliverables (“Software”) and documentation supplied with the Deliverables (“Documentation”) shall remain with the relevant Supplier Affiliate (or such other party as may have supplied the Software and/or Documentation to Supplier) and is not transferred hereby to Buyer.

12.2 Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, royalty-free license to use the Software and Documentation in conjunction with the Goods, provided that and for so long as the Software and Documentation are not copied or decompiled (unless expressly authorized by applicable law) and Buyer holds the Software and Documentation in strict confidence and does not disclose them to others, or permit others to have access to them (other than Supplier’s standard operating and maintenance manuals). Buyer may transfer the foregoing license to another party which purchases, lends or leases the Goods, provided the other party accepts and agrees in writing to be bound by the conditions of this Clause.

12.3 Supplier and Supplier Affiliates shall retain ownership of all inventions, designs and processes made or evolved by them and save as set out in this Clause no rights in intellectual property are hereby granted.

13. FORCE MAJEURE

13.1 Neither Party shall be liable for a failure to perform any of its obligations under any Contract that arise from cause or events that are beyond its reasonable control, including, without limitation, epidemics, pandemics, quarantine, strikes, lock-outs, official order, war, acts of terrorism, including cybercrime and any measures to combat cybercrime, sabotage, military mobilization, requisition, riots and insurrection, the cessation of import or export possibilities, especially sanctions or embargoes, natural disaster, fire, floods, restrictions in the use of utility supplies as well as defects or delays in deliveries or work by sub-suppliers, including such sub-suppliers’ insolvency, caused by any such circumstances referred to in this Clause (“Force Majeure”).

13.2 To the extent that such Force Majeure causes Supplier to reduce or suspend its performance, Supplier shall not be subject to any liability for delay or non-delivery and the time for performance shall be extended for as many Days beyond the date thereof as are required to obtain the removal of such causes, plus an additional reasonable time period for restart of supplier’s operations and the performance. Supplier may also, during any period of shortage due to any event of Force Majeure at the request of Buyer, obtain substitute raw material(s) or component part(s) at the then prevailing market price, which price shall be passed through and paid by Buyer.

13.3 The Party claiming Force Majeure shall give notice in writing as soon as possible both after the occurrence of the Force Majeure and after the end of the Force Majeure event.

13.4 Buyer shall be obliged to pay for the part of the performance that Supplier delivered, and all of Supplier's Contract-related costs and expenses incurred or having become inevitable, prior to the Force Majeure event.

14. INTELLECTUAL PROPERTY INFRINGEMENTS

14.1 Subject to the limitations set forth in these GTC, Supplier shall indemnify Buyer in the event of any claim for infringement of letters patent registered design, design right, trademark or copyright ("Intellectual Property Rights") existing at the date of formation of the Contract arising from the use or sale of the Goods, against all reasonable costs and damages awarded against Buyer in any action for such infringement, or for which Buyer may become liable in any such action, provided always that Supplier shall not be liable to so indemnify Buyer in the event that: (a) such infringement arises as a result of Supplier having followed a design or instruction furnished or given by Buyer, or the Goods having been used in a manner or for a purpose or in a country not specified by or disclosed to Supplier prior to the date of the Contract or in association or combination with any other equipment or software; or (b) Supplier has at its expense procured for Buyer the right to continue to use the Goods or has modified or replaced the Goods so that the Goods no longer infringe; (c) Buyer has failed to give Supplier the earliest possible notice in writing of any claim made or to be made or of any action threatened or brought against Buyer and/or Buyer has failed to permit Supplier, at Supplier's expense, to conduct and control any litigation that may ensue and all negotiations for a settlement of the claim; or (d) Buyer has made without Supplier's express prior written consent any admission which is or may be prejudicial to Supplier in respect of any such claim or action, or (e) the Goods have been modified without Supplier's express prior written authorization.

14.2 Buyer warrants that any design or instruction given by it shall not cause Supplier to infringe any intellectual property rights in the performance of Supplier's obligations under the Contract and shall indemnify Supplier against all reasonable costs and damages which Supplier may incur as a result of any breach of such warranty.

15. CONFIDENTIAL INFORMATION

15.1 Unless otherwise agreed upon between the Parties, any Information given by Supplier to Buyer shall be considered Confidential Information. This Clause however does not apply to any information which Buyer can prove was at the time of disclosure (a) in the public domain (b) disclosed by a third party without any confidentiality obligation towards the Supplier or (c) already known by Buyer.

15.2 Buyer agrees to treat all information received directly or indirectly from Supplier as confidential and to only use such Confidential Information in connection with the performance of the Contract. Buyer shall not disclose or provide access to such information to any third parties.

16. COMPLIANCE WITH LAWS - SAFETY, HEALTH, ENVIRONMENT, EXPORT CONTROL & DATA PROTECTION

16.1 Buyer shall be responsible for compliance with all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union, and the

jurisdictions in which Supplier and Buyer are established or from which items may be supplied, and for fulfilling the requirements of any licenses, authorizations, general licenses or license exceptions relating thereto which will apply to its receipt and use of hardware, software, services and technology.

16.2 In no event shall Buyer use, transfer, release, export or re-export any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licenses, authorizations, or license exceptions relating thereto.

16.3 Buyer agrees furthermore that it shall not engage in any activity that would expose Supplier or any Supplier 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 supplier.

16.4 Buyer agrees to comply with applicable statutory health, environmental, safety, security, ethics, compliance laws and other mandatory requirements and shall hold Supplier harmless from any damage arising due to non-compliance with the above.

16.5 Notwithstanding any other provisions hereunder, national data protection laws and the General Data Protection Regulation (GDPR) EU 2016/679 as amended shall apply and be adhered to by both Parties. Each Party shall use, and ensure that its respective subcontractors use, all personal data of the disclosing Party exclusively for the purposes of performing the Contract. The disclosing Party confirms that it is authorized to provide the receiving Party with personal data.

17. WRITTEN FORM

Any legally relevant amendment, change or supplement to these Terms and Conditions and the entire Contract shall only be valid in writing and signed by both Parties. Constitutive declarations shall be considered to be in writing if made by email and sent to the duly authorized representative of the other Party.

18. SEVERABILITY

If any clause, sub-clause or other provision of the Contract is invalid under any statute or rule of law, such provision, to the extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Contract.

19. NO WAIVER

No waiver by either Party with respect of any breach or default or of any right or remedy and no course of dealing, shall be valid unless expressly agreed upon between the Parties in writing in accordance with Clause 17 (“Written Form”). No such waiver shall be interpreted as continuous waiver or waiver for any other occurrence.

20 TERMINATION

20.1 TERMINATION FOR CAUSE

20.1.1 If any Cause for termination occurs, or if Supplier reasonably believes that any Cause is about to occur, then Supplier may (without prejudice to its other rights hereunder or otherwise) at any time by five workdays prior notice to Buyer, do any one or more of the following: (a)

terminate the Contract, and, as the case may be, any other Contracts with Buyer; (b) suspend any deliveries to be made under the Contract, or under any other Contract with the Customer.

20.1.2 "Cause" shall be constituted if: (i) Buyer fails to pay the Contract Price or any part of it when due or otherwise breaches the Contract or any other agreement with Supplier or any Supplier Affiliates; (ii) Buyer is unable to pay its outstanding payments as they become due, or Buyer otherwise becomes insolvent or suspends payment or threatens to do so or ceases to do business, (iii) Buyer fails to act where Buyer's action is obligatory or necessary for the performance of the Contract, or (iv) steps are taken to: (a) propose any composition or arrangement involving Buyer and its creditors generally, (b) obtain an administration order or appoint any receiver in relation to Buyer or any of its property, (c) wind-up or dissolve Buyer, or (d) directly or indirectly change the ownership structure and/or control of Buyer.

20.2 TERMINATION FOR CONVENIENCE

In case of a Contract with continuous obligations, Supplier may (without prejudice to its other rights hereunder or otherwise) at any time by 30 Days prior written notice to Buyer terminate the Contract. Claims for damages on the part of Buyer due to such termination or rescission are excluded.

21. FIELD SERVICE WORKS

If field services including, but not limited to, Supplier's or its subcontractors' works on Buyer's site, the site of any of Buyer's contractual partners or that of any other third party, are a subject matter of the Contract or become necessary during its performance, Buyer shall be obliged to grant Supplier access to the site. If Buyer doesn't control access to the site where the field service shall take place, Buyer shall guarantee Supplier's access to the site. In particular, Buyer shall be responsible for identifying and, to the extent possible, fulfilling any prior formal or substantive requirements to be fulfilled, including without limitation statutory or government requirements, or Buyer's own or any relevant third party's applicable policies. Buyer shall inform Supplier in writing at the earliest possible of any such requirements. Any performance or completion date agreed to between the Parties shall be deemed automatically postponed by at least the time that it takes Buyer and Supplier to meet all such requirements. If specific training, instructions or procedures are required of Supplier's personnel prior to them accessing the field services site, Buyer shall, without cost to Supplier, provide sufficient training and instructions in accordance with Supplier and subject to availability of Supplier's personnel. If Supplier's Services are delayed due to reasons attributable to Buyer and as a result additional costs occur at Supplier's end, Buyer shall compensate Supplier for any such additional costs, including mobilization or demobilization.

22. APPLICABLE LAW

22.1 Unless otherwise agreed in writing, the contractual relationship between the Parties shall be exclusively governed by the laws of the jurisdiction in which the Supplier's office is located. With the exception of International Private Law Rules, any reference norms of these laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

22.2 All disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the competent courts at Supplier's principal place of business.

23. SANCTIONS CLAUSE

23.1 Buyer hereby acknowledges that the supply of Goods 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 the EU, hereinafter “Sanctions”).

23.2 Buyer is solely responsible for complying with and shall not do anything which would cause Supplier to be in breach of, Sanctions. In particular, Buyer warrants and represents that it: (i) is not, and is not owned or controlled by a sanctioned party (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, hereinafter “Sanctioned Party”); (ii) will not use, sell, resell, export, re-export, transfer, distribute, dispose of, disclose or otherwise deal with the Goods and/or Services, directly or indirectly, to: (a) any territory to which the supply of the Goods and/or Services would be restricted or prohibited under Sanctions (subject to the Customer 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 Goods and/or Services; (iv) will not put the Goods 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 -7- 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, Buyer shall not sell, resell, supply, export, re-export, transfer, divert, distribute, or dispose of the Goods and/or Services to any third party where Buyer knows or has grounds for suspecting that the Goods and/or Services are or may be intended for one of the uses specified in this Clause 23.

23.3 Buyer shall set up and maintain an adequate monitoring mechanism to detect possible violations of the Sanctions by any third parties, including by possible resellers.

23.4 Any violation of sub-clauses 1, 2 or 3 shall constitute a material breach of the agreement between the parties and shall entitle Supplier (i) to terminate any of the pending or future orders / Contracts with the Buyer and (ii) to apply any agreed and/or available remedies.

23.5 Buyer shall immediately notify Supplier in case of any problems in applying the sub-clauses 1, 2 or 3.

23.6 Supplier reserves the right to carry out screening and background checks on the Buyer and to request information concerning compliance with the obligations, prior to the supply of the Goods and/or Services and at any time during the performance of the respective order /

Contract. Buyer shall promptly provide (i) all requested information and (ii) all assistance that Supplier reasonably requires in relation to such screening and checks.