

Enerox GmbH

## **GENERAL TERMS AND CONDITIONS OF PURCHASE FOR SUPPLIES AND SERVICES (hereinafter referred to as "GTS")**

Version: 14.10.2021

### **1 DEFINITIONS**

1.1 The terms below have the following meanings:

"**ORDER**" means any Order placed by the Buyer with the Supplier which, in accordance with the provisions of these GTS, that constitutes the conclusion of the Contract.

"**SERVICES**" means all Services, including those at the Buyer's premises, to be provided by the Supplier to the Buyer under the Contract in connection with the supply of the Goods.

"**BUYER**" means any company of the Enerox Group, i.e. any company affiliated with Enerox GmbH, that purchases Goods or Services.

"**SUPPLIER**" means the Party supplying the Goods or Services pursuant to the Contract.

"**PARTIES**" means both Buyer and Supplier.

"**PARTY**" means either Buyer or Supplier.

"**CONTRACT**" means the Contractual agreement between the Parties based on these GTS. The term generally refers to any document, regardless of its form or designation, that provides evidence of the Parties' intentions.

"**GOODS**" means all products and equipment to be furnished by Supplier to Buyer under the Contract. This also includes studies, materials and all accessories necessary for the proper manufacture and operation of such products and equipment, including all spare parts.

"**DOCUMENTS**" means documents of any kind, such as descriptions or specifications, samples, drawings, models or tools, and any other documents provided by Buyer to Supplier.

### **2 SCOPE**

2.1 These GTS including the Code of Conduct pursuant to point 26 below shall apply to all and expressly also future business relations between the Buyer and the Supplier. The version valid at the time of the conclusion of the Contract shall apply in each case.

2.2 The Buyer orders exclusively on the basis of these GTS, unless expressly agreed otherwise in writing. Deviations from these GTS, in particular due to the fact that the Supplier sends deviating, different, additional or

supplementary conditions, only become valid if expressly approved in writing by the Buyer. If the Buyer does not approve such deviations in his Order at the latest, these deviating conditions shall not become binding for the Buyer irrespective of whether he is aware of them. If and to the extent they are to the disadvantage of the Buyer, any and all restrictions of warranty obligations, guarantee and compensation of damage obligations of the Supplier as well as restrictions of the contestation of errors, offsetting prohibitions and reservations of title are ineffective.

2.3 These GTS shall also apply if the Supplier installs or assembles delivered Goods or provides other Services on behalf of the Buyer.

### **3 OFFER AND CONCLUSION OF CONTRACT**

3.1 The Supplier's offers to the Buyer shall be free of charge. The information contained in the offer and/or its enclosures, such as prices, performance data and/or information on the quality of the Goods and Services, shall be binding on the Supplier. The Supplier shall be bound by its offer for at least 4 (four) weeks from receipt by the Buyer unless it expressly states something to the contrary in its offer.

3.2 Legally binding Orders of the Buyer shall be placed in writing. In exceptional cases, Orders may be placed verbally; such Orders shall only become legally effective if the Buyer sends an Order confirmation in writing. If a binding offer is made by the Supplier, the Contract between the Buyer and the Supplier shall be deemed to be concluded as soon as the Buyer places the Order. In all other cases, the Contract shall be concluded if and when the Buyer receives an Order confirmation of the Supplier and returns a written acceptance of this Order within eight (8) days thereafter.

3.3 The Buyer reserves the right to revoke Orders if it does not receive a written Order confirmation within the above-mentioned period. If an Order confirmation differs from the Order, the Contract shall only be concluded upon confirmation by the Buyer.

3.4 Any amendments, deviations, reservations or similar made by the Supplier in the Order confirmation or in any other document shall be ineffective unless the Buyer expressly consents to them.

3.5 In all documents referring to the Order such as Order confirmations, dispatch notes, delivery notes and invoices, the Supplier shall give the Buyer's Order number and Order date, the article number and all other details used by the Buyer to describe the Order in more detail. In the case of call-off Orders, the relevant data of the respective call-off shall also be indicated.

3.6 The Supplier shall deliver the Goods or Services in conformity with the deadlines, the agreed costs and conditions, and shall meet the applicable quality requirements specified by the Buyer in the Contract Documents.

3.7 The Supplier undertakes to supply all necessary documents in connection with the Goods. This includes factory drawings, assembly drawings, operating instructions and spare parts lists, certificates; test certificates, customs documents, etc.

#### **4 COMPLIANCE WITH LAWS AND REGULATIONS**

- 4.1 The Supplier's Goods and Services shall comply with the applicable laws and official regulations, all E-NORMs applicable thereto – and to the extent that such do not exist, ÖNORMs – and to the extent such norms do not exist either, DIN-norms with technical content – and all other relevant technical guidelines as well as, finally, the generally accepted technical standards of good workmanship and best practise in the country of origin and the country of destination of the Goods and Services. The Supplier guarantees (*garantiert*) in the meaning of § 880a, 2<sup>nd</sup> limb ABGB (General Austrian Civil Code / *Allgemeines Bürgerliches Gesetzbuch*), to have obtained and to maintain in effect all permits, licences, rights, approvals and powers of attorney which are necessary for the fulfilment of the Contract. If, due to changes in the laws or regulations or at the request of the competent authority, it is necessary to modify or replace equipment, materials, fixtures or works forming the subject of the Contract, these activities shall be the responsibility of the Supplier, who shall be obliged to carry them out without additional payment.
- 4.2 Where Services are provided on site or at the Buyer's premises, the Supplier shall also comply with statutory and regulatory requirements for the protection of persons' health and safety and the safety of the premises and he shall respect the Buyer's internal regulations, established practices and other internal professional rules. The Supplier confirms that it is aware of these statutory provisions and regulatory requirements and he shall make sure that its personnel, sub-contractors and sub-suppliers also obey these rules.
- 4.3 The Supplier undertakes to bear all adverse financial and other consequences resulting from non-compliance with this point and to completely indemnify and hold the Buyer fully harmless and free from third party claims.

#### **5 PERSONNEL OF THE SUPPLIER**

- 5.1 The Supplier undertakes to employ the personnel required for the performance of the Contract and to use all other necessary materials and equipment. The Supplier is obliged to provide qualified and suitable teams to meet the quality targets and the deadlines agreed by the Parties.
- 5.2 The Supplier's personnel shall in all circumstances remain part of the Supplier's hierarchical structures and under its disciplinary authority. As a result, the Supplier, as employer, shall in particular be responsible for the administration, payroll and social security of its employees involved in the provision of the Services.
- 5.3 The Supplier shall under all circumstances bear the unlimited responsibility for its personnel. The Supplier shall assume the responsibility for commuting accidents and accidents at work of its employees that arise as a result of or during the performance of the Service and shall organise the obligatory medical

examinations. The Supplier shall be responsible for accidents caused by its personnel and for damage occurring during the performance of the Service.

- 5.4 The Buyer reserves the right to request from the Supplier all documents certifying compliance with the laws and regulations relating to the working conditions of the Supplier's employees and sub-contractors.

#### **6 TECHNICAL DOCUMENTS, DOCUMENTATION**

- 6.1 On the basis of the technical documents attached to the Contract, the Supplier shall draw up, at its own responsibility and expense and in compliance with the specified delivery periods and deadlines, the plans and documents for the performance of the Services. Before commencing performance of the Contract, the Supplier shall review the documents attached to the Contract to identify any errors, omissions or discrepancies and draw them to the attention of the Buyer.
- 6.2 The Supplier shall be responsible for the preparation of all necessary plans, drafts, engineering calculations and lists as well as for all diagrams, plans and technical documents for operation and maintenance. All contractually agreed plans, documents and the like shall be handed over to the Buyer and shall become the property of the Buyer.
- 6.3 The handing over of these plans, documents etc. constitutes an essential part of the scope of delivery and performance of the Supplier. If these are not provided by the Supplier in time and in accordance with the requirements of the Buyer as well as the specified standards, guidelines, etc., then the Buyer shall be entitled to a penalty in accordance with point 13.

#### **7 PRICES, TERMS OF PAYMENT AND INVOICING**

- 7.1 The agreed prices are fixed prices. Changes thereto during the delivery period are inadmissible, in particular the Buyer accepts no price escalation clauses.
- 7.2 Prices are quoted in Euro ("€") and do not include any statutory value added tax ("VAT"), but do include all ancillary costs, fees, expenses, taxes, customs duties and other charges required for the performance of the Contract, such as transport, packaging, loading and shipping costs, insurance costs, ARA (costs for waste material recycling / *Altstoff Recycling Austria*), commissioning, handover and training costs, testing, sampling, test certificates and any social benefits and expenses.
- 7.3 Changes in tax laws or other changes in circumstances (e.g. changes in national and/or world market prices for raw materials) do not entitle the Supplier to subsequent price increases. The Supplier also bears the risk of exchange rate fluctuations.
- 7.4 An expected quantity stated in an enquiry or non-binding Order of the Buyer is a non-binding guidance value which does not justify any claim of the Supplier to a specific purchase quantity. If the quantity Ordered in a binding way deviates from the enquiry or non-binding

- Order, the Supplier shall not be entitled to increase the agreed prices.
- 7.5 Invoices are to be sent stating the identification features mentioned in point 3.5, such as Order number, item number, Order date, etc. The Buyer reserves the right to reject all invoices that do not relate to an Order or do not show all the identification features mentioned above and under point 3.5 and to return the invoice.
- 7.6 Payment of the invoice shall be made at the discretion of the Buyer, either 30 days with a 3% discount or 45 days net after receipt of the invoice and complete receipt of the Goods, complete performance of the Service and fulfilment of all conditions specified in the Order.
- 7.7 Payments shall be made once per week. All payments within one week of the due date shall be deemed to have been made on time and within the discount period.
- 7.8 The Buyer is entitled to set off his claims against those of the Supplier. The Buyer is entitled to withhold payments.

## **8 DELIVERY AND DELIVERY TIMES**

- 8.1 The delivery periods, completion dates or acceptance dates agreed with the Supplier constitute an essential part of the Contract. These periods and dates, including interim dates, are binding.
- 8.2 The Supplier shall deliver the Goods and perform the Services on the Delivery Date at the Buyer's place of business or at an agreed location within regular business hours and in accordance with general industry practice, the terms of the Contract, the applicable law of the place of delivery and any instructions given in writing by the Buyer. Delivery of the Goods shall be made in accordance with the delivery terms specified in the Purchase Order; if no delivery terms are specified, then the term DAP (Delivered at Place) in accordance with the Incoterms 2020 shall be agreed.
- 8.3 The receipt of the Goods by the Buyer or at an agreed location and, in the case of Services, their completion at the agreed location shall be decisive for compliance with the deadlines and the prerequisites specified in these GTS.
- 8.4 Not less than 10 (ten) days before the delivery date, the Buyer may change the quantity, the delivery period and/or the delivery date.
- 8.5 The Buyer may refuse to accept unfree shipments.

## **9 DELIVERY DELAY**

- 9.1 The Supplier is obliged to notify the Buyer immediately of any expected or actual delays in the delivery process, but in any case before the agreed delivery date. The notification shall be made in writing, stating the reasons and the expected duration of the delay. Any instructions issued thereupon by the Buyer shall be binding.
- 9.2 If the agreed delivery, completion or acceptance date is not met, the Buyer shall be entitled to withdraw from the Contract by setting a reasonable grace period of no more than 10 days, even if notification has been given in accordance with item 9.1.
- 9.3 In the event of a delay, the Buyer shall

furthermore be entitled to a liquidated damages irrespective of fault in accordance with Section 13 **PENALTIES**. The Buyer expressly reserves the right to claim further damages. In particular, the Supplier shall bear the costs of a replacement procurement.

- 9.4 The aforementioned rights shall apply in addition to the Buyer's other statutory claims in the event of a delay in delivery.

## **10 PACKAGING, SHIPPING (TRANSPORT) AND DOCUMENTATION**

- 10.1 Shipment shall be made free of freight, packaging costs, customs duties and fees for the Buyer on the agreed transport route and in accordance with the terms of delivery pursuant to clause 8
- 10.2 The Goods shall be securely packed at the Supplier's expense in order to prevent damage during loading, unloading and transport, and to prevent personal injury or damage to equipment or other Goods. The Supplier shall be liable for all consequences resulting from missing or defective packaging. The packaging shall be adapted to the type of transport, the handling and the planned cargo handling of the Goods as well as to the climatic conditions at the transport and place of delivery.
- 10.3 The Supplier shall comply with all statutory and regulatory requirements relating to the transport of hazardous substances.
- 10.4 All costs and risks associated with the transport, in particular with regard to transport insurance, permits, customs clearance, special and hazardous Goods transport or special transport measures, shall be borne by the Supplier.
- 10.5 The Buyer reserves the right to return the packaging to the Supplier at the Supplier's expense. If the packaging is returned free of charge for the Supplier, the Buyer shall be credited with the amount or it may charge the costs to the Supplier.
- 10.6 Each shipment is subject to a shipping order with a copy made by the Supplier containing all the information necessary to identify the Goods, in particular references to the Order, the nature and quantity of the Goods and the name of the carrier. In the event of a missing or incomplete shipping order, the delivery shall be deemed to be delayed and, if the Supplier fails to take measures to remedy that in due time before the contractually agreed delivery date, the Supplier shall be liable to pay contractual penalties in accordance with clause 13. Any additional special packaging, shipping, documentation and delivery conditions shall result from the relevant Order. The Supplier shall compensate all damages or costs resulting from any non-compliance with the agreed packaging, shipping, documentation and delivery conditions.

**11 ACCEPTANCE, DANGEROUS ASSUMPTION AND OWNERSHIP**

- 11.1 The Supplier assumes the risk of loss of and damage to the Goods before acceptance of the Goods by the Buyer at the Buyer's premises or at the agreed location in accordance with clause 12 below. Risk and ownership (*Eigentum*) shall pass upon acceptance of the Goods.
- 11.2 Acceptance is evidenced by a signed acceptance protocol.
- 11.3 The purpose of acceptance is to verify the compliance of the Services with the Contractual provisions. Also in the case of deliveries of Goods, the Buyer is entitled to check the compliance of the Goods with the agreed requirements before acceptance.
- 11.4 Any obligation to inspect and/or give notice of defects is excluded by mutual agreement to the fullest extent permitted, so that the Buyer may give notice of any defect of the Goods, including obvious defects, even after acceptance. Irrespective of whether the Buyer checks the conformity of the Goods with the Contractual agreements before acceptance, the Supplier shall in particular be responsible for the quality, quantity and function of the Goods and Services.
- 11.5 In the event of partial non-performance, lack of conformity with the Contract, in particular if the agreed functions are not achieved, the Buyer may refuse acceptance. The Supplier's invoice shall only be settled up to the amount equal to the value of the accepted Goods and Services.
- 11.6 In case Goods are delivered in a smaller quantity than ordered, the Buyer shall be entitled to refuse delivery altogether, in which case the Goods are deemed not to have been delivered, or Buyer may accept the delivered Goods and claim a contractual penalty for the outstanding quantity.
- 11.7 Acceptance shall take place when all contractually agreed work has been carried out to the satisfaction of the Buyer and accepted in a report signed by the Buyer and the Supplier.
- 11.8 Unless otherwise agreed in the Contract, agreed tests and functional tests in the course of the acceptance tests shall be carried out at the expense of the Supplier, who shall be responsible for the required personnel and equipment.
- 11.9 In the event of disputes regarding the results of such tests and inspections, a further series of tests/inspections may be commissioned from an independent organisation at the Buyer's request. The costs of the new test shall be borne by the Party whose opinion has been refuted by the results of this test.
- 11.10 If the Buyer rejects five percent (5%) or more of the Goods (measured by their value) during the acceptance process, the entire delivery shall be deemed not to have been made until all defective Goods in that delivery have been replaced by Goods in conformity with the Contract and a contractual penalty for delayed delivery in accordance with clause 13 shall be payable in respect of that delivery. If the Supplier is in delay, the Buyer shall be entitled to have necessary modifications carried out by

third Parties at the Supplier's expense, but without the Supplier being able to derive any advantage from by evading its liability and warranty obligations.

**12 GUARANTEE (GARANTIE), WARRANTY (GEWÄHRLEISTUNG)**

- 12.1 The Supplier guarantees (*garantiert*) in the sense of § 880a ABGB, 2nd case, to deliver the Goods and/or Services in perfect quality according to the provisions and requirements according to point 4. The Supplier guarantees that the Goods and/or Services
- comply with the contractually agreed specifications and have the properties usually assumed by contractual parties (*gewöhnlich vorausgesetzten Eigenschaften*), in particular with regard to functionality and performance,
  - are suitable for the use intended by the Buyer,
  - are carried out with the necessary care, expertise and diligence;
  - comply with all applicable statutory and regulatory provisions, furthermore with the respective applicable EN norms (if such norms are not available, ÖNORMs with technical content), the other relevant or applicable technical norms, standards and guidelines as well as other technically relevant regulations (e.g. TRVB, RVS, ÖVE), all applicable directives and also generally acknowledged rules of engineering and bear the relevant marking.
- 12.2 The Supplier also guarantees that the Goods and Services are free from legal defects (*Rechtsmängel*). The Supplier therefore guarantees the unrestricted transfer of ownership (free from all liens, encumbrances and rights of third Parties) of the Goods and Services upon delivery. In particular, the Supplier warrants that no third Party trademark rights, patent rights or copyrights are infringed. The Buyer rejects any form of retention of title (*Eigentumsvorbehalt*) to the Goods and Services. The Supplier therefore warrants that its Goods, deliveries and Services are free from retentions of title and other restrictions to the Buyer's free disposal of such Services, deliveries or Goods.
- 12.3 The Buyer is not obliged to inspect or examine the delivered Goods and Services. The Parties agree that the obligation to inspect and give notice of defects within the meaning of §§ 377, 378 UGB (Austrian Commercial Code / *Unternehmensgesetzbuch*) is waived by the Supplier.
- 12.4 Any delivery or Service shall only be accepted if it is complete and free of defects. If the Buyer accepts a delivery or Service with reservation, ownership shall nevertheless pass to the Buyer. Apart from such a transfer of ownership, acceptance under reservation does not lead to any acceptance of the Goods or supplies.
- 12.5 Exclusions and/or limitations of liability of any kind by the Supplier, in particular for reasons of warranty or damages, shall not be accepted by the Buyer and shall therefore not be deemed to have been agreed. This applies,



- for example, to changes in the statutory allocation of the burden of proof to the disadvantage of the Buyer or to the shortening of deadlines and the like.
- 12.6 The warranty period (*Gewährleistungsfrist*) shall be 3 (three) years from acceptance, unless a longer period is provided by law. In the case of legal defects and hidden defects (*versteckte Mängel*), the warranty period shall not commence before the day on which the defect becomes known to the Buyer. Written notification of the defect shall be sufficient for compliance with the warranty period.
- 12.7 In the event of defective delivery or defective performance, the Buyer shall be entitled to choose,
- to demand remedying of defects (i.e. rectification or amendment) or replacement (*Verbesserung (Nachbesserung oder Nachtrag) oder Austausch*); or
  - to demand an appropriate price reduction; or
  - to demand the cancellation of the Contract (redhibitory action / *Wandlung*) or part thereof, even in the case of minor defects, and to obtain supplies elsewhere at the Supplier's expense. In the event of cancellation, the Buyer shall also be entitled to terminate (*Rücktritt*) other Contracts with the Supplier - even if these concern other Goods or Services.
- 12.8 This shall not affect claims for compensation for direct or indirect damage or consequential damage (*Mangelfolgeschäden*) caused by a defect. The Supplier shall fully indemnify and hold the Buyer harmless with regard to all consequential costs or damages caused by the defect (e.g. dismantling and reinstallation costs, transport costs) irrespective of fault (*verschuldensunabhängig*).
- 12.9 In the event of replacement or of cancellation of the Contract, the Supplier is obliged to carry out the replacement or to take the Goods or deliveries back at the Buyer's premises or where the Goods are located at that time. If the Supplier fails to collect the defective Goods or - despite a written request and the setting of a grace period - fails to collect them within the time limit, the Buyer may arrange for the return/taking back at the Supplier's expense and risk.
- 12.10 These guarantee and warranty provisions also apply if the Supplier installs or assembles Goods on behalf of the Buyer. In this case, the warranty or guarantee period shall commence with the acceptance of the fully assembled Goods by the Buyer in accordance with the written acceptance confirmation.
- 12.11 The Supplier undertakes to inform the Buyer 6 (six) months in advance if the Goods supplied are no longer offered or no longer produced, so that the Buyer can place a final Order for the Goods in the desired quantity and at the Contractually fixed price. The Supplier agrees to supply the Buyer with the Goods on reasonable terms and conditions for a period of at least 3 (three) years after production has ceased or has been discontinued.
- 13 CONTRACTUAL PENALTY AND LIQUIDATED DAMAGES**
- 13.1 In the following cases and in the other cases mentioned in these GTS, compensation for damages (penalty) by the Supplier irrespective of damage and fault is agreed.
- 13.2 The penalty amounts to
- a) 1% of the delivery value (Order value), in total, for each commenced calendar week of delay with a deadline or exceeding a deadline, however, not more than 25% of the delivery value (Order value).
  - b) 1% of the delivery value for each deviation of a delivery from the agreed specifications, if the defect is remedied within the set period, in all other cases 5% of the delivery value (Order value) of the affected delivery/the affected part of the performance.
  - c) at least the amount of penalties and other compensation that the Buyer must pay to its customers.
- 13.3 Buyer shall be entitled to invoice the penalty or to deduct it from Supplier's invoice.
- 13.4 The payment of penalties shall neither release the Supplier from its Contractual obligations nor exclude any further claims for damages or other rights to which the Buyer is entitled.
- 14 LIABILITY AND COMPENSATION**
- 14.1 in excess of a penalty pursuant to item 13, the Supplier shall also be liable for loss of profit (*entgangenem Gewinn*), consequential damages (*Mangelfolgeschäden*) and pure financial loss (*reine Vermögensschäden*) caused by any failure to fulfil its contractual obligations.
- 14.2 The Contractor shall be liable for the performance of its Services also taking into account the applicable statutory and regulatory provisions and the specific working conditions at the work site(s).
- 14.3 The Supplier shall be liable within the scope of the statutory provisions, including in particular provisions on product liability, for damage caused by him or his personnel or persons otherwise attributable to him. The Supplier shall also be liable for its sub-contractors as well as for its Suppliers. Exclusions and limitations of liability are not agreed.
- 14.4 Insofar as the Buyer is held liable on the basis of product liability, the Supplier shall indemnify and hold the Buyer harmless. The same shall apply whenever claims are asserted against the Buyer by third Parties on account of culpable acts or omissions on the part of the Supplier.
- 14.5 The Supplier shall reimburse the Buyer for the necessary costs of modifications, recalls and retrofits carried out to prevent further damage. In addition, Supplier shall reimburse Buyer for all expenses arising from or in connection with recalls from Buyer and/or third Parties receiving Goods directly or indirectly.
- 15 SUBCONTRACTING, SUBCONTRACTORS**
- 15.1 The Supplier is obliged to provide the Service personally.
- 15.2 The Supplier shall only be entitled to use sub-contractors following the prior written consent

of the Buyer, unless its offer already provides for the commissioning of specific sub-contractors. Buyer may refuse sub-contractors or sub-contracting for specific parts of the Goods or Service for objective reasons.

- 15.3 If the Buyer agrees to sub-contracting, the Supplier must inform him of the nature and scope of the work to be sub-contracted and the name and address of the sub-contractors.
- 15.4 In the event of early termination of the Contract for good cause, Buyer shall have a right to enter into all Contracts of the Supplier with sub-contractors. The Supplier shall provide for such a step-in right of the Buyer in all its sub-contracts (without a right of the sub-contractor to amend the contract) and provide evidence thereof upon the Buyer's request.

## 16 INSURANCE

- 16.1 The Supplier is obliged to take out the insurances that are necessary and appropriate for the respective risk at his own expense and for the entire period of contract performance and to maintain them until the expiry of the warranty period. This shall be done on terms customary in the industry and with a liability sum of at least EUR 5 million per case of damage and year.
- 16.2 At the Buyer's request, the Supplier shall be obliged to submit the insurance certificate(s) as proof of the conditions referred to in this clause.
- 16.3 This clause does not constitute a limitation of liability for the Supplier. The fact that the Supplier complies with the above provisions and those of the separate Contractual documents relating to insurance shall not have the effect of exempting it from liability or reducing its liability.

## 17 INTELLECTUAL PROPERTY

- 17.1 In addition to the transfer of ownership of the delivered Goods or Services, the Supplier shall grant the Buyer all necessary and exclusive rights of use to all intangible property rights such as patent rights, copyrights, trademark rights and design rights which are necessary for the use of the delivered Goods or Services.
- 17.2 If a claim is made against the Buyer by a third Party due to the infringement of intellectual property rights or copyrights in the Goods or Services supplied by the Supplier, the Supplier shall obtain the right to use the Goods or Services for the Buyer at its own expense. The Supplier shall indemnify the Buyer against all expenses, costs, claims and other expenses incurred in connection with the claim by the third Party.

## 18 CONFIDENTIALITY

Unless stricter confidentiality obligations are agreed in the NDA that shall be concluded between the Contracting Parties before the start of their cooperation, the following shall apply:

- 18.1 In the absence of prior written consent from the Buyer, the Supplier shall be obliged to consider as confidential and treat as such and not disclose to any third Party any information or data, whether of a technical, financial,

legal, economic or other nature, communicated to it by the Buyer in writing or orally, in the context of the performance of the Contract.

- 18.2 With regard to third parties and employees involved in the performance of the Contract, the Supplier shall take all appropriate measures to ensure that they comply with the confidentiality obligation.
- 18.3 Information that is not subject to the obligation of confidentiality by the Supplier comprises the following:
- Information that is publicly known or became publicly known without the Supplier's involvement;
  - Information that was demonstrably already known before it was communicated to the Supplier;
  - Information communicated by third Parties who are not bound by any confidentiality agreement with any other Party.
- 18.4 This confidentiality obligation shall remain in force for a period of 5 (five) years after termination of the Contractual relationship, irrespective of the reason for termination.

## 19 TERMINATION OF CONTRACT, NOTICE AND RESCISSION

- 19.1 The Buyer is entitled to terminate the Contract with immediate effect for important reasons. Important reasons are in particular:
- Liquidation or receivership of the Supplier, full or partial changes in the Supplier's capital, mergers, spin-offs or acquisitions.
  - the Supplier repeatedly fails to deliver on time or in the agreed quality, or
  - the Supplier does not fulfil its obligations towards third Parties (for example in the case of enforcement by courts)
  - if the Supplier becomes insolvent or a need for reorganisation (or a comparable crisis under the law applicable to the Supplier) occurs or is imminent
  - if the opening of insolvency proceedings is rejected for lack of assets or a comparable decision is made under the law applicable to the Supplier.
- 19.2. In the event of an early termination by the Buyer, the Supplier shall immediately hand over to the Buyer all finished and unfinished work, software, studies and development files.
- 19.3 Further, Supplier shall immediately hand over to the Buyer all documents provided by the Buyer and documents drawn up in connection with the performance of the Contract which may be helpful for the Buyer in instructing a replacement supplier for the unfinished Services or work or incomplete supplies. The Buyer shall deduct the costs incurred by such handing over from those amounts due to the Supplier. If any deposits have been made, they shall be refunded in full to the Buyer within eight (8) days.  
This clause does not prevent the Buyer from bringing a legal action against the Supplier.
- 19.4 If an early termination of the Contract declared by the Buyer is invalid, the Supplier shall only be entitled to payment for the Goods and Services delivered and accepted and at the agreed prices.

19.5 Force majeure, labour disputes, strikes, operational disruptions for which the Buyer is not responsible, riots, terrorism, measures by public authorities and other unavoidable events entitle the Buyer – without prejudice to its other rights – to rescind from the Contract in whole or in part or to terminate the Contract insofar as such events are not of insignificant duration and reduce the Buyer's need of the concerned Goods or Services.

## 20 NON-TRANSFERABILITY

In the event of imminent termination of the Agreement, the Supplier shall not be entitled to transfer the Agreement or individual obligations contained therein, in whole or in part, to third Parties without the express prior consent of the Buyer.

## 21 AMENDMENTS

The Supplier is obliged to inform the Buyer of any amendments it intends to make to the Goods to be delivered, even if such changes have no effect on the features which are required by the Buyer pursuant to the contractual documents.

The Buyer has the option to accept or reject these amendments. In the event of rejection, the Supplier must be able to continue to provide the Goods and/or Services for the period required by the Buyer. In the event of a consent, it must be given in writing and duly signed by a representative of the Buyer. Such consent shall in no way relieve the Supplier of its contractual obligations vis a vis the Buyer other than the accepted amendment. In the event of any defect in the Supply as a result of such variation, the Supplier shall be obliged to take back the amended Services and/or Goods and perform all its Services and/or provide the Goods in accordance with the contractual specifications as they were prior to such amendment. Any subsequent Services and/or Goods shall also be made in accordance with the contractual specifications as they were prior to such amendment.

## 22 ENTRUSTED DEVICES

The Supplier is responsible for the storage, maintenance and use of the equipment entrusted to him. Such equipment may only be used for the contractually agreed purposes. If equipment entrusted to the Supplier is damaged, destroyed or lost through the Supplier's fault (*Verschulden*), the Supplier shall, in addition to damages and interest, restore the equipment to the condition in which it was handed over to him or replace it. The Buyer may terminate the Contract at the Supplier's expense if the Supplier fails to return the equipment entrusted to it.

## 23 PRIVACY

23.1 The Supplier shall comply with all data protection laws and the General Data Protection Regulation applicable to the supply of Goods under the Contract.

23.2 The Buyer's privacy policy can be viewed here: <https://www.cellcube.com/de/datenschutz/>.

## 24 PLACE OF PERFORMANCE, CHOICE OF LAW, PLACE OF JURISDICTION

24.1 The place of performance for the delivery of Goods and the provision of Services shall be the Buyer's registered office or the place

specified by the Buyer.

24.2 The Contract between the Supplier and the Buyer and the arbitration clause in these GTS shall be governed by Austrian law excluding its conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.

24.3 The exclusive place of jurisdiction for all disputes or claims arising out of or in connection with this Contract, including disputes as to its validity, breach, termination or nullity, shall be the Commercial Court of Vienna. The Buyer may also bring legal actions against the Supplier at the latter's general place of jurisdiction.

24.4 If the Supplier seat is outside the European Union (EU), all disputes or claims arising out of or in connection with this Contract, including disputes as to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Institution of the Austrian Federal Economic Chamber (VIAC) by an arbitrator appointed in accordance with these Rules. The language to be used in the arbitration proceedings shall be German. The provisions of the Vienna Rules on the Expedited Procedure shall apply.

## 25 MISCELLANEOUS

25.1 Should one of the provisions of these GTS be or become invalid, or should a legal loophole become apparent, this shall not affect the validity of the remaining provisions.

25.2 In place of the invalid or unenforceable provision, that provision shall apply which corresponds as closely as possible to the intended purpose or intention of the Parties.

25.3 The language of negotiation, of the Contract and the contract execution shall exclusively be English.

25.4 In order to be legally effective any Orders, their amendments and supplements must be in writing. The same applies to any amendment of the Contract including these GTS as well as this clause 25.4 itself on the requirement of the written form. This shall also be valid for any termination. Oral agreements of any kind, including subsequent amendments or supplements to the GTS and this clause 25.4 on the requirement of the written form, must be confirmed in writing by the Buyer in order to be legally effective. All amendments and supplements to the legal transactions concluded with the Buyer must be in writing in order to be legally effective; this shall also apply to any agreement to waive the written form requirement in the future.

25.5 The requirement of the written form is also fulfilled by messages sent by e-mail or fax.

## 26 CODE OF CONDUCT

26.1 The principles and guidelines for sustainable, ethical, moral and legal conduct in business as defined in the Buyer's Code of Conduct are an integral part of these GTS and can be viewed here: <https://www.cellcube.com/code-of-conduct>

26.2 Such Buyer's Code of Conduct is expressly noted and accepted by the Supplier. The Supplier shall ensure that its employees and other

persons attributable to it as well as sub-Suppliers comply with these principles and guidelines.

- 26.3 The Buyer shall have the right to verify compliance with the Code of Conduct on site at the Supplier's premises. Buyer shall execute this right after prior notice, to a reasonable extent and with due regard to the legitimate interests of the Supplier.

Enerox GmbH  
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