



# GENERAL TERMS AND CONDITIONS

Date: January 1st, 2024

These General Terms and Conditions (the "Terms") shall apply in addition to and form an integral part of any agreement of any kind whatsoever (the "Agreement") concluded between Fischer Connectors Distribution SA (CHE-155.266.111), Chemin du Glapin 20, 1162 St-Prex, Switzerland (the "Company") and any natural or legal person (the "Purchaser") purchasing products and/or services of the Company (together, the "Products").

**By entering into a contractual relationship with the Company regarding the sale and purchase of Products, the Purchaser hereby expressly agree to follow and to be bound by these Terms.**

**If a Purchaser does not agree with these Terms, it should refrain from concluding any Agreement with the Company regarding the sale and purchase of Products.**

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## 1. DEFINITIONS

**Advertising Material(s)** shall mean any documents, offers, materials, leaflets, prospectus, catalogues and any other information and contents of any kind, in hardcopy, electronic form (including the website of the Company [www.fischerconnectors.com](http://www.fischerconnectors.com)) or any other form of any kind, related to or about the Company, its activities and/or its Products.

**Agreement** shall mean the principal agreement concluded between the Parties with regard to the sale and purchase of Products, to which these Terms additionally apply and form an integral part.

**Company** shall mean Fischer Connectors Distribution SA (CHE-155.266.111), Chemin du Glapin 20, 1162 St-Prex, Switzerland.

**Deadline** shall have the meaning set forth under article 6 of these Terms.

**Element(s)** shall have the meaning set forth under article 11 of these Terms.

**Force Majeure Event** shall mean the circumstances beyond the reasonable control of the Company, including natural phenomena, government measures, acts of terrorism, demonstrations, fires, explosions, floods, epidemics, pandemics, lockdown measures, quarantines, blockades, strikes or other labor disputes, market fall, stock market and economy crashes, IT system or infrastructure attacks beyond control of the Company, accidents, factory breakdowns, impediments or delays on the part of transporters, impossibility or delay in obtaining supplies or appropriate and necessary equipment, seizure, sequestration or other measures taken by or on the orders of an apparently competent authority and all other acts which are neither foreseeable nor attributable to the Company and which are objectively of such a nature as to delay the provision of the Products.

**Intellectual Property Rights** shall mean any and all intellectual property and proprietary rights in any jurisdiction, including but not limited to (i) all patents, patent applications, patent disclosures, and inventions and all improvements thereto, (ii) trademarks, service marks, domain names, logos, trade dress, corporate names, trade names, and other indicia of source, and all registrations, applications and renewals in connection therewith (together with the goodwill associated therewith), (iii) design rights, copyrights and all works of authorship, neighboring rights, if applicable so-called "moral" rights, and all registrations, applications and renewals in connection therewith, (iv) all rights in software, (v) internet domain names and URLs, (vi) trade secrets, know-how, technologies, databases, processes, techniques, protocols, methods, formulae, algorithms, layouts, designs, specifications, proprietary information and confidential information, and (vii) any and all other intellectual property rights of the same or similar effect or nature as any of the foregoing, in each case whether registered or unregistered and including applications for the

grant of any such rights and the right to apply for such rights, which subsist or will subsist now or in the future in any part of the world.

**Order Confirmation** shall mean the written confirmation (email being sufficient) sent by the Company to the Purchaser detailing the final terms of the transaction between the Parties, *i.e.* among others the Products (type, quantity, etc.) purchased by the Purchaser to the Company, the Purchase Price, the currency, the shipping conditions, the payment conditions and these Terms.

**Party(-ies)** shall mean individually the Company or the Purchaser, respectively collectively the Company and the Purchaser.

**Personal Data** shall mean any information that relates to an identified or identifiable person. This especially includes, in particular, identifiers, such as names, surnames, identification numbers, location data and/or payment data.

**Product(s)** shall mean any products and/or services delivered or otherwise provided by the Company to the Purchaser, as detailed in the Order Confirmation.

**Purchase Price** shall mean the purchase price to be paid by the Purchaser to the Company for the Products ordered, as detailed in the Order Confirmation.

**Purchaser** shall mean the natural or legal person purchasing Products from the Company in accordance with an Agreement and these Terms.

**Purchase Order** shall mean the written order (email being sufficient) sent by the Purchaser to the Company detailing the Products ordered by the Purchaser.

**Taxes** shall mean any and all actual or contingent direct or indirect tax (personal or corporate), customs, social security or pension liabilities, duties, charges, levies, assessments, contributions or the like in any jurisdiction, including any interest, charges, fees, fines, costs, expenses or penalties related thereto and regardless whether payable to a governmental authority or other person and in each case, secondary or joint liabilities for taxes; including but not limited to income taxes (personal and corporate), capital taxes, stamp duties (if any),

withholding taxes, value added taxes (VAT), taxes related to real estate or other property, payroll taxes, pension plan contributions, contributions for unemployment, accident, sickness and similar insurances.

**Terms** shall mean these General Terms and Conditions governing, together with the Agreement concluded between the Purchaser and the Company, the contractual relationship between the Parties.

**Warranty Period** shall have the meaning set forth under article 11 of these Terms.

## 2. ACCEPTANCE

By sending a Purchase Order to the Company, the Purchaser hereby expressly confirms that it has read and understood these Terms and that it unconditionally and irrevocably agrees to follow and to be bound by these Terms.

**Unless otherwise agreed in writing by the Parties, these Terms are the only terms and conditions governing the sale, purchase and provision of Products by the Company to the Purchaser. These Terms shall prevail over any other terms and conditions of any kind. In particular, the Purchaser irrevocably and unconditionally waives the application of its own terms and conditions (if any), even if such terms and conditions have been submitted to the Company and/or if the Company is aware of their existence.**

## 3. ADVERTISING MATERIALS

Unless otherwise agreed in writing by the Parties, any Advertising Materials provided by the Company to the Purchaser, in any manner and by any means whatsoever, either directly or indirectly, shall be provided to the Purchaser for information purpose only and do not constitute an offer, unless otherwise indicated in writing.

Under no circumstances shall the Company be liable (including in case of negligence and/or errors) for the content of the Advertising Materials – especially but not only with regard to the technical data (such as technical documents, specifications, drawings, descriptions, samples, reproductions, presentations, functionalities, etc.) contained in the Advertising Materials – nor for the idea and/or the

perception of the Purchaser based on such Advertising Materials and their content, unless the technical data is expressly warranted in writing by the Company in the Agreement.

If Advertising Commercials contain offers (with prices, discounts, etc.), it is solely an offer to the Purchaser to make a concrete offer to the Company, subject to final acceptance of the Company. In other words, the Company making an offer to a Purchaser in Advertising Materials solely offer the possibility to the Purchaser to send the Company a Purchase Order (on the basis of the terms and conditions detailed in the Advertising Materials), which shall finally be approved in the Order Confirmation. As long as the Company does not send the Order Confirmation to the Purchaser, there is no contractual relationship between the Parties. The Advertising Commercial shall indicate the period of validity of the offer.

#### 4. ORDERING PROCESS

All Purchase Orders received by the Company from the Purchaser are subject to acceptance by the Company in the Order Confirmation. The Company reserves the right to reject any Purchase Order at its sole and entire discretion, without having to explain the reason of its refusal.

The contractual relationship between the Purchaser and the Company shall be deemed entered into only upon the Company's express acceptance of the Purchase Order received from the Purchaser by sending an Order Confirmation to the Purchaser.

The Purchaser shall review the Order Confirmation upon receipt and immediately, but no later than three (3) days after reception of the Order Confirmation, inform the Company of any error or anomaly. Should the Purchaser fail to do so, the Company shall manufacture and/or deliver and/or provide the Products in accordance with the Order Confirmation, which shall be deemed binding on the Purchaser.

#### 5. PURCHASE PRICE

Unless otherwise agreed in writing between the Parties, all Purchase Prices are expressed in CHF (Swiss francs).

Generally, the applicable Swiss VAT is added to the Purchase Price billed to the Purchaser who has its seat/registered address in Switzerland within the meaning of the Value Added Tax Act (VAT Act; RS 641.20).

On contrary, the Purchaser who does not have its seat/registered address in Switzerland within the meaning of the VAT Act does not pay the Swiss VAT, unless otherwise indicated in the Order Confirmation.

Unless otherwise agreed in writing between the Parties, all Purchase Prices are expressed as: Delivered Duty Paid (DDP, Incoterms 2020), inclusive of packing costs but exclusive of delivery fees (these ones being charged to the Purchaser by the Company), and without any kind of deduction for shipping and delivery in Switzerland. Unless otherwise indicated in the Order Confirmation, all additional and/or incidental charges, fees and expenses (such as but not limited to insurance, freight charges, export fees (but to the exclusion of the delivery fees which are charged to the Purchaser in accordance with the Order Confirmation), forwarding or import licenses, other authorizations and certifications, any Taxes and levies, as well as any other expenses, costs, fees and charges related to the shipment, storage and delivery of the Products **in Switzerland** shall be exclusively borne by the Company.

Ex-Works (EXW, Incoterms 2020), inclusive of packing costs but exclusive of delivery fees (these ones being charged to the Purchaser by the Company), and without any kind of deduction for shipping and delivery abroad (*i.e.* outside Switzerland). Unless otherwise indicated in the Order Confirmation, all additional and/or incidental charges, fees and expenses (such as but not limited to insurance, freight charges, export fees, forwarding or import licenses, other authorizations and certifications, any Taxes [including foreign VAT, if applicable], levies and customs duties, as well as any other expenses, costs, fees and charges related to the shipment, storage and delivery of the Products **abroad (i.e. outside Switzerland)** shall be exclusively borne by the Purchaser, to the exclusion of the Company. Under no circumstances shall the Company be liable for the payment of these additional/incidental expenses, costs, Taxes, fees and/or charges.

As much as possible, the Order Confirmation shall detail any Taxes, expenses, costs, fees and charges applying in addition to the Purchase Price and which shall be borne by the Purchaser. The additional Taxes, costs and fees that may apply to the Purchaser especially depend on the country in which it has its seat/registered address and where the Products are shipped. Even if the Order Confirmation does not indicate some Taxes, expenses, costs, fees and charges that shall be borne by the Purchaser in accordance with this article 5, these Taxes, expenses, costs, fees and charges shall indeed be borne by the Purchaser in accordance with this article 5.

All Purchase Prices shall be fixed provided that there is no Force Majeure Event increasing such Purchase Prices, in particular the manufacturing costs, including the cost of raw materials, energy and labor costs.

## 6. CONDITIONS OF PAYMENT

All invoices from the Company shall be payable by the Purchaser within thirty (30) days from the date of issuance of the invoice (the "**Deadline**"), unless otherwise expressly agreed and indicated in the invoice and/or the Order Confirmation.

All payments of the Purchaser to the Company shall be made in full, without any set off, deduction or withholding for any counter-claim, Taxes, fees, expenses, duties or other charges. Any bank charges/fees/expenses shall solely be borne by the Purchaser, to the exclusion of the Company. The Company bears absolutely no liability within the context of the payment process, in particular with regard to payment operated through third parties acting as payment provider, bank or credit company.

If the invoice is not settled within the Deadline, and after one (1) reminder sent by the Company to the Purchaser, the Company is entitled to claim from the Purchaser the payment of the remaining unpaid Purchase Price plus accrued interest of 12 % per annum (calculated on the remaining Purchase Price), starting on the day after the last day of the Deadline. Interest shall accrue daily.

The Purchaser shall reimburse the Company for any and all costs, charges, fees and expenses incurred in collecting any late payment, including, without limitation, any reasonable legal fees, internal fees

and attorney-at-law's fees. The Company may also suspend performance of further deliveries and/or provisions of Products in the event of a delay in payment by the Purchaser.

The Company reserves the right, at its sole and entire discretion, to require the Purchaser to provide payment guarantees. If required, these payment guarantees shall be expressly stipulated by the Company in its Advertising Materials and/or before sending the Order Confirmation to the Purchaser.

## 7. TRANSFER OF OWNERSHIP, RESERVATION OF TITLE, RIGHT TO REPOSSESS THE GOODS

The ownership of the Products delivered to the Purchaser shall be definitively transferred to the Purchaser upon full payment of the Purchase Price. The Purchaser shall cooperate (at its own costs) in any actions to be taken for safeguarding the title of the Company until full payment of the Purchase Price.

The Purchaser agrees and authorizes the Company, as the case may be and at the sole and entire discretion of the Company, to enter or register the reservation of title in any register pursuant to any applicable law and satisfy with any related formalities at the Purchaser's expenses and under its liability. For the duration of such reservation of title, the Purchaser shall keep the delivered Products in good conditions and properly insure them accordingly at its own costs and expenses.

Despite the transfer of the ownership of the Products in accordance with this article 7, the benefits and risks regarding the Products are transferred to the Purchaser in accordance with article 10 below. Therefore, the Purchaser expressly understands and agrees that even if it is not formally the owner of the Products (until the full and entire payment of the Purchase Price) it may however be liable for any damages, deteriorations, losses and any other problem affecting the Products upon the occurrence of the transfer of benefits and risks in accordance with article 10 below, especially depending on which Incoterms apply and when the Purchase Price is paid.

If the full Purchase Price is not paid within the Deadline, the Company is entitled, at its sole and entire discretion, to (i) claim payment of the Purchase Price and any additional damages suffered by

the Company (ii) terminate an withdraw from the Agreement, repossess the Products delivered to the Purchaser without any preliminary formalities and independently of any legal proceedings and claim for any additional damages suffered by the Company. The Purchaser undertakes not to oppose the application of this Company's right. Any expenses incurred by the application of this article, as well as the repair of any deterioration and/or wear and tear of the Products concerned shall be entirely borne by the Purchaser, to the exclusion of the Company.

## 8. DELIVERY PERIODS

The delivery periods of the Products shall be mentioned in the Order Confirmation. Unless expressly agreed otherwise in writing, such delivery periods shall be indicative only and the Company bears no liability if it does not respect the deadlines indicated in the Order Confirmation.

The Company shall be discharged from any commitment relating to delivery periods indicated in the Order Confirmation in the event of any Force Majeure Event, as well as in the event of any disruption within the Company, such as, without limitation, accidents, industrial disputes, delayed or defective deliveries of raw materials), or any other circumstances beyond the Company's control. The delivery periods – which remains indicative – shall be extended proportionately in such cases.

Any delay in the delivery shall not grant the Purchaser any right to payment of any financial penalties of any kind, any interests of any kind and/or any direct, indirect, consequential and punitive damages of any kind, nor the right to terminate or withdraw from the Agreement with the Company. The Company shall inform the Purchaser of any delivery delays in writing as soon as possible.

## 9. DELIVERY OF THE PRODUCTS, INSPECTION AND REJECTION OF DEFAULTING PRODUCTS

### 9.1 Delivery of the Products

Unless otherwise agreed in writing between the Parties, the delivery of Products to the Purchaser is considered as completed:

- once the Products have been made available to the Purchaser at the Purchaser's facility, if

the Products shall be delivered in Switzerland (*Delivered Duty Paid, Incoterms 2020*); or

- once the Products have been made available to the Purchaser at the Company's facility, at the Company affiliates' facility or at the facility indicated by the Company in the Order Confirmation, if the Products shall be delivered in any other country than Switzerland (*Ex-Works, Incoterms 2020*).

Thus, unless otherwise agreed in writing between the Parties, the delivery is made:

- at the Company's risk and expenses if the Products shall be delivered in Switzerland (*Delivered Duty Paid, Incoterms 2020*); or
- at the Purchaser's risk and expenses, if the Products shall be delivered in any other country than Switzerland (*Ex-Works, Incoterms 2020*),

At the written request of the Purchaser, the Company will take out freight insurance on the consignment, at the Purchaser sole and unique expenses. Any resulting costs shall be borne the Purchaser, to the exclusion of the Company.

Unless specifically instructed by the Purchaser, the Company shall select an appropriate method of forwarding and routing the Products which shall not be guaranteed by the Company (with regard to the delivery in any other country than Switzerland; *Ex-Works, Incoterms 2020*) as the fastest or least expensive delivery method for those Products.

In any case, the Company remains free, at its sole and entire discretion, to deliver the Products itself or to request an affiliate company or a third-party to deliver the Products.

### 9.2 Inspection and rejection of defaulting Products

The Purchaser shall be required to check the delivered Products on receipt. Before signing the carrier's delivery note, the Purchaser shall have to indicate thereon any missing or damaged Products.

The Purchaser shall notify the Company, in writing and enclosing the delivery note with the detailed complaint, of any defects and/or damages affecting the Products without undue delay but at the latest



within eight (8) days following the delivery of the Products at the place of deliverance. In the absence of a notice of defects from the Purchaser within this deadline, the goods shall be deemed accepted by the Purchaser.

Latent defects have to be reported by the Purchaser in a written detailed complaint immediately after discovery of the defect(s), but at the latest three (3) days following the discovery, and within the Warranty Period (see article 11 below), failing which the Company shall decline all warranties or liability. When reporting the latent defects, the Purchaser shall demonstrate when it discovered it.

## 10. TRANSFER OF BENEFITS AND RISKS

The benefit and risks shall pass to the Purchaser at the moment the delivery of the Products is completed, *i.e.* once the Products have been delivered and made available to the Purchaser in accordance with article 9.1 above (so depending on which Incoterms apply).

If delivery is postponed at the Purchaser's request, or delayed for any reason beyond the Company's control, particularly but not only in case of Force Majeure Event, the benefits and risks shall pass to the Purchaser at the time the delivery was originally scheduled with regard to the Products that shall be delivered in any other country than Switzerland. In such case and from this moment, the Products shall be stored for the account and at the risks and expenses of the Purchaser. Unless otherwise indicated in writing by the Company, the Products will be billed to the Purchaser and an invoice – to be paid in accordance with article 6 above – will be sent to the Purchaser.

## 11. WARRANTY

**The warranty period for the Products of the Company is twelve (12) months (the "Warranty Period"), starting the day of the delivery of the Products in accordance with article 9.1 above. If the delivery is postponed at the Purchaser's request, or delayed for any reason beyond the Company's control, particularly but not only in case of Force Majeure Event, the warranty period shall be twelve (12) months starting from notification to the Purchaser that the Products are ready for delivery.**

The warranty shall be void if the Purchaser or any third party carries out modifications or repairs on the Products without the prior written consent of the Company, or if the Purchaser does not immediately take suitable measures to prevent the aggravation of the damage and permit the Company to rectify the defect(s) and/or damage(s).

Within the Warranty Period, at the written request of the Purchaser and provided that Products are proved to be, and acknowledged by the Company as, defective or unusable because of substandard materials or manufacturing defect(s), the Company undertakes, at the Company's sole and only discretion and as quickly as possible, to repair or replace all parts of the Products which are defective or unusable because of substandard materials or manufacturing defect(s). The Company also have the possibility, at its sole and entire discretion, to change all the Products which is proved to be, and acknowledged by the Company as, defective or unusable because of substandard materials or manufacturing defect(s). The replaced parts, respectively the replaced Products, shall become the property of the Company.

Express warranties are only those which have been expressly specified in the Order Confirmation or which are specifications expressly guaranteed. Unless expressly agreed otherwise, the Company does not warranty the purpose of use of its Product intended by the Purchaser.

To the maximum extent permitted by applicable law, the Company disclaims all representations and warranties, express, implied, or statutory, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement, in relation to the Products and/or its functionalities. In addition, the Company makes no representation, warranty, or guarantee regarding the reliability, timeliness, quality, suitability, or availability of the Products. The Company does not guarantee the quality, suitability, safety or ability of the Products.

The Company shall only be liable for expenses resulting from the repair or replacement of defective parts in the Company's workshops. If such parts cannot be replaced or repaired in the Company's workshops for reasons beyond the Company's control, any additional expenses shall be borne by the Purchaser.

The warranty shall not cover damages to the Products which are not due to substandard materials or manufacturing defects, such as but not limited to damages due to natural wear and tear, insufficient or inappropriate maintenance (including failure to maintain the Products according to the Company's instructions), chemical or electrolytic influences, defective wiring work or installation, improper storage conditions, defective operations resulting from non-compliance with the Company's instructions, or damages due to other causes not attributable to the Company or beyond the Company's control, particularly but not only in case of Force Majeure Event.

The Company shall not be liable for damages to the Products resulting from assembly process, installation or testing performed by the Purchaser or any third party, or damages due to other action or process performed on the Products by the Purchaser or any third party which fails to comply with the Company's instructions or which are otherwise beyond the Company's control, particularly but not only in case of Force Majeure Event.

The Company shall not be liable for any defect or failure of the Products which operates in accordance with specifications, illustrations, descriptions or other particulars due to combination or use of the Company's Products with any incompatible equipment or Product of the Purchaser or a third party.

The warranty shall not be liable for damages to the Products caused by the Purchaser and/or any third party due to a wrongful use of the Products or for any use contrary to the intend purposes of the Products.

The Company shall not be liable for defects, lack of sufficiency, lack of fitness for particular purpose or lack of quality of custom connectors or cable assembly solution to the extent attributable to the Purchaser's instructions, specification or other directions.

If the Purchaser provides elements and/or information to the Company which are created, developed, improved or manufactured by the Purchaser or by a third party (the "**Element(s)**") for the provision by the Company to the Purchaser of custom Products (particularly but not only custom connectors or ca-

ble assembly solutions), these Elements shall be delivered free of charge to the Company's factory at the Purchaser's full risks. In no event and under no circumstances shall the Company be liable if such Elements are not delivered in time, in sufficient quantity or in an acceptable condition. In no event shall the Company be liable for the technical functional performance, quality deficiency or any other defects of such Elements and, consequently, of the Products manufactured with such Elements. The Company reserves the right to refuse to use such Elements if they do not meet the Company's quality requirements and standards. In such cases the Purchaser shall indemnify the Company for any related additional costs the Company may incur and/or any damages caused to the Company because of such Elements.

The Purchaser shall be liable for breach of any Intellectual Property Rights or any other titles and rights of any third parties relating to such Elements provided by the Purchaser to the Company. The Purchaser shall fully indemnify the Company for any damages (including legal fees, internal fees and attorney-at-law's fees) due to any claim of any third party in relation to Elements (and/or related Intellectual Property Rights) provided by the Purchaser to the Company.

The Purchaser acknowledges and agrees that remedies set out in these Terms are the Purchaser's exclusive remedies. Unless otherwise agreed in writing between the Parties, the Purchaser shall in particular have no claim for reduction of the Purchase Price, for termination of or withdrawal from the Agreement with the Company, and/or for direct, indirect, consequential or punitive damages.

## 12. LIMITATION OF LIABILITY

To the extent permitted by applicable law, the Company shall only be liable to the Purchaser for willful misconduct or gross negligence.

To all extent permitted by applicable law, the Company's liability shall be limited to the Purchase Price of the Product ordered by the Purchaser which trigger such liability (if any).

In no event shall the Company be liable for any consequential or indirect losses or damages of any kind, including but not limited to loss of profits, loss

of production, loss of benefits, loss of orders or increased operational costs, including if such damages or losses were foreseeable or contemplated by the Parties.

The Company shall not be liable for any failure to perform its obligations hereunder or under the Agreement with the Purchaser due to circumstances beyond its reasonable control, including but not limited to Force Majeure Event, any impediments arising out of local or international foreign trade and custom requirements or any embargos or other sanctions (such as export control provisions).

### **13. TECHNICAL RESERVATION**

Unless otherwise agreed in writing between the Parties, the Products shall comply exclusively with the rules, laws, regulations and standards in force in Switzerland. In no event shall the Company be liable for breach of any rules, regulations, laws or standards applicable in another jurisdiction, especially in the Purchaser's country of domicile, the country of domicile of the Purchaser's clients and/or the country of delivery of the Products.

Unless otherwise agreed in writing between the Parties, the Company shall be free to make any change, at any time and at its sole and entire discretion, to all its Products, manufacturing processes and methods, testing, quality control and assurance processes, system and status, procedures, input, policy, materials, innovations, technologies, developments, techniques (whether or not protected by Intellectual Property Rights), specifications, packaging, labelling, software, environment conditions, equipment, manufacturing site, without having to inform, notify or get the approval of the Purchaser.

The Company shall also be free to change its subcontractors, third party suppliers and/or third party service providers, if any, without having to inform, notify or get the approval of the Purchaser.

In no event and under no circumstances shall the Company have to comply with, and be liable for any breach of any law, rules or regulations applicable to the Purchaser using Products supplied by the Company for its own products, services and/or for any other purpose.

Unless otherwise agreed in writing between the Parties, the Company shall be entitled to unilaterally amend the technical specifications of the Products indicated in the Order Confirmation, provided that such amendments do not trigger any increase of the Purchase Price indicated in the Order Confirmation, and the design, fitness, functionality and performance of such Products is at least equivalent to those of the Products initially ordered.

### **14. INTELLECTUAL PROPERTY RIGHTS**

The Parties agree that the Intellectual Property Rights relating to the Company, its Products, its Advertising Materials, its website and/or any of its activities are and shall remain the exclusive property of the Company.

Any and all technical data, information and other elements protected or not by Intellectual Property Rights communicated to the Purchaser shall remain the sole and unique property of the Company, or of another affiliate company belonging to the Company and/or its group as the case may be.

Under no circumstances shall the Purchaser have the right to reproduce, copy, use, commercialize, improve nor communicate to third parties any Products, technical data, information and other elements protected or not by Intellectual Property Rights received from the Company in any way whatsoever, without the prior written consent and authorization of the Company.

This article 14 shall survive the termination of these Terms and/or the Agreement for an indefinite period of time.

### **15. CONFIDENTIALITY**

The Purchaser agrees to maintain the confidentiality of all proprietary and confidential information indirectly or directly disclosed or communicated to the Purchaser, including but not limited to any and all information about the Company, plans related to the Company's activities and ideas which they contain, trademarks (registered or not), domain names, designs, drawings, media, logos, inventions (protected or not by a patent), technologies, works (protected or not by copyright), graphics, statistics, analysis, models, documents, photography, video, screenplay, software, processes, any information



related to know-how, plans, due diligence reports, operational data, strategies, strategic plans, financial plans, financial analysis, forecasts, budgets, cap table, shares register, financial statements (*i.e.* especially income statement and balance sheet), research data and deliverables, specifications, strategy proposed in the activities plan, strategies, business model, business plan, collaborations and prospects, clients lists, prospects lists, partners lists, agents lists, lists of co-contractors, agreements concluded with third-parties, name of persons working for and/or with the Company, name of potential cooperating persons and/or any other information related, directly or indirectly, to the Company (and its affiliates) and its activities, protected or not by any Intellectual Property Rights, registered or not, or any other right (the “**Confidential Information**”).

Accordingly, the Purchaser agrees to implement all reasonable measures to safeguard this information, to prevent any unauthorized access or use, and to report to the Company any suspected breaches of confidentiality.

This article 15 defines the general obligation of the Purchaser regarding the Confidential Information of the Company. On top of these Terms, the Company and the Purchaser may sign additional agreements and commitments regarding the Confidential Information of the Company, such as non-disclosure agreement (NDA). In any case, this article 15 is not *in lieu* nor replace such agreements and commitments (if any).

## 16. PERSONAL DATA

By providing the Products, the Company may collect and process a certain number of Personal Data that especially but not only relates to the Purchaser, its employees, its board’s members, its independent contractors, its agents, its partners, its clients and other third party.

The Company uses Personal Data mainly for the purpose of executing the Agreement, providing the Products and ensuring the Purchaser’s satisfaction (especially by sending it a “*customer satisfaction survey*”). The Purchaser recognizes that the Company has therefore a legitimate interest to collect and process Personal Data, among others the one communicated to the Company, as well as the one

detailed in the Purchase Order and the Order Confirmation.

The Company undertakes to process the Personal Data in accordance with all the applicable data protection laws and regulations that may apply to the processing of the Personal Data and according to the highest standard of security applicable in Switzerland and abroad. The Company implemented and will maintain appropriate technical and organizational security measures for the processing of the Personal Data, considering the nature, scope, and purposes of the processing of the Personal Data in order to protect the Personal Data.

## 17. INDEMNIFICATION

The Purchaser expressly agrees to defend, indemnify and hold harmless the Company and its affiliates with their respective shareholders, officers, directors, employees, agents (each, an “**Indemnified Party**”) from and against any losses, claims, actions, costs, damages, penalties, fines and expenses, including without limitation legal fees, internal fees, attorneys’ and experts’ fees and expenses, that may be incurred by an Indemnified Party arising out of, relating to or resulting from any breach by the Purchaser of these Terms, the Agreement, as well as any laws, rules or regulations.

In case of any violation of this article 17, the Company is entitled to seek an injunction to prevent the infringement of these Terms, the Agreement and/or any laws, rules or regulations, in addition to all other legal or equitable remedies that may be available. The Company’s rights under this article 17 are cumulative, and the Company’s exercise of one right shall not waive its right to assert any other legal remedy.

This article 17 shall survive the termination of these Terms and/or the Agreement for an indefinite period of time.

## 18. NON-DISPARAGEMENT

During the term of the Agreement and for an indefinite period of time after the termination of the Agreement, each Party shall not make any disparaging remarks, or any remarks that could reasonably be construed as disparaging, regarding the other Party (including its directors, officers, repre-

sentatives, agents, contractors, employees, shareholders or affiliates), its activities, its businesses or any products or services (including the Products) offered by each of the Party.

This article 18 shall survive the termination of these Terms and/or the Agreement for an indefinite period of time.

## **19. INDEPENDENT CONTRACTOR**

Each Party is an independent contractor and nothing in this Agreement shall render one of the Party an employee of the other.

This Agreement does not create any joint venture nor simple partnership (*société simple*, especially pursuant to articles 530ff of the Swiss Code of obligation [CO; RS 220]) between the Parties.

## **20. TAXES**

Unless otherwise agreed in writing between the Parties, each Party shall be responsible for declaring and paying its own Taxes due on the basis of and/or arising out from the execution of the Agreement and these Terms.

## **21. TERM**

These Terms shall be effective and remain in full force and effect as long as the Agreement is and remains in full force and effect.

## **22. MISCELLANEOUS**

### **21.1 Severability**

If one or several provisions of these Terms are held to be unenforceable, null, or invalid for any reason, they shall not affect the validity of the other provisions of these Terms that shall continue to bind the Parties.

### **21.2 No waiver**

The failure of any of the Parties to enforce any of the provision of these Terms or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights or in any way affect the validity of these Terms.

The waiver of any breach of these Terms by any Party shall not operate to be construed as a waiver of any other prior or subsequent breach.

## **21.3 Survival**

Provisions of these Terms which are expressed to survive its termination or the termination of the Agreement or that from their nature or context are contemplated to survive such termination shall remain in full force and effect notwithstanding such termination.

## **23. GOVERNING LAW AND JURISDICTION**

Any dispute, controversy arising out of or in connection with these Terms or any Agreement between the Company and the Purchaser, including the validity, breach or termination thereof, shall be governed by and construed in accordance with Swiss law, without reference to its conflict of law provisions, as well as and to the extent permitted by applicable law, to the exclusion of any international treaty.

Any dispute, controversy arising out of or in connection with these Terms or any Agreement between the Company and the Purchaser, including the validity, breach or termination thereof, shall be submitted to the jurisdiction of the competent courts in Lausanne, Switzerland, subject to the right of appeal to the Swiss Supreme Court (*Tribunal fédéral*).