

# GENERAL TERMS AND CONDITIONS OF SALE AND SERVICES

## 1. INTERPRETATION

1.1. In these general terms and conditions of sale and services (“**Terms**”), unless where the context requires otherwise:

“Business Day”	shall mean any day other than a Saturday, Sunday or a public holiday in the canton of Basel-Landschaft, Switzerland.
“Company”	shall mean the INFORS HT entity indicated on the Contract, i.e., as the case may be, Infors AG (Switzerland); Infors GmbH (Germany); Infors Sarl (France); Infors UK Limited (UK); Infors Benelux B.V. (Netherlands); Infors HT Latin America Ltda (Brazil); Infors Canada Inc. (Canada)
“Confidential Information”	shall have the meaning as defined in section 21.
“Contract”	shall have the meaning as defined in section 2.1.
“Customer”	shall mean the person with whom the Company is contracting.
“Customer Default”	shall have the meaning as defined in section 12.3.
“Delivery Point”	shall have the meaning as defined in section 6.2.
“Force Majeure Event”	shall have the meaning as defined in section 23.1.
“Goods”	shall mean the goods to be sold by the Company to Customer under the Contract.
“Incoterms 2020”	shall mean the rules as defined in the International Chamber of Commerce’s Incoterms® 2020.
Infors AG	Infors AG, having its principle place of business at Rittergasse 27, 4103 Bottmingen (Switzerland)
“Licence Agreement”	shall mean the licence agreement, if any, entered into between the Parties under which the Company grants Customer a non-exclusive right and licence to use the Software for the operation of the Goods.
“Notice”	shall have the meaning as defined in section 3.2.
“Order”	shall have the meaning as defined in section 2.1.
“Party”, “Parties”	shall mean either the Customer or the Company or both together.
“Purchase Price”	shall mean the amount payable to Company by Customer for the purchase of Goods.

"Price"	shall mean the overall price payable under the Contract consisting of the Purchase Price and the Service Fee, excluding any state or local taxes, duties, governmental or similar charges, VAT, customs duties or any additional costs (such as but not limited to insurance costs, etc) which must be paid in addition by Customer at the same time as payment for the Goods or Services unless otherwise agreed in writing by the Company.
"Proposal"	shall have the meaning as defined in section 2.1.
"Services"	shall mean the services to be provided by the Company to Customer under the Contract.
"Service Fee"	shall mean the consideration payable to Company by Customer for the provision of the Services.
"Software"	shall mean any firmware, software or data compilations (i) identified in the Contract or (ii) provided to Customer by the Company in connection with installation or operation of the Goods. For the avoidance of doubt, Software shall not include any "open source" firmware, software or data compilations, as any such "open source" firmware, software or data compilations will be subject to the terms and conditions set out in the relevant "open source" license.
"Supplementary Terms"	shall mean additional and specific terms e.g. Software Licence Agreement or other written contract terms not contained in these Terms which shall be applicable to the Contract.
"Switzerland"	means the country of Switzerland.
"VAT"	shall mean value added tax under the applicable law.

## 2. GENERAL

- 2.1. Upon receipt of Customer's request to provide certain Services and/or to supply certain Goods, Company shall as soon as practicable and in its sole discretion provide Customer with a proposal describing the Services and/or Goods, including the estimated Price and estimated timelines for such Services and/or Goods (the "**Proposal**"). These Terms shall form an integral part of the Proposal. The Proposal given by the Company shall not constitute an offer. The Proposal shall only be valid for a period of 30 Business Days from its date of issue unless otherwise stated in writing. Customer may order the Services and/or Goods described in the Proposal by issuing the signed Proposal to Company (the "**Order**"). The Order shall become a binding contract upon the acceptance thereof by Company in writing ("**Contract**"), at which point and on which date the Contract shall

come into existence. For the avoidance of any doubt, Company shall not be obliged to perform any Services or to deliver any Goods if it has not accepted the Order in writing.

- 2.2. **These Terms shall apply to all Contracts by the Company for the supply of the Goods or the provision of the Services or both. Any terms and conditions submitted, proposed or stipulated by Customer in whatever form and at whatever time, whether written or oral, and any terms and conditions which are implied by trade, custom, practice, or course of dealing are expressly waived and excluded. Company accepts Customer's Orders solely on these Terms which take precedence over Customer's different or additional terms and conditions. Neither Company's commencement of performance nor delivery shall constitute acceptance of Customer's different or additional terms and conditions. Company's failure to object to provisions contained in any document from Customer shall not be construed as waiver of the Terms or an acceptance of any such provision.**
- 2.3. The Company shall be under no obligation i) to confirm any request or Order sent by Customer to the Company and ii) to favour Customer as against any other person with whom the Company may contract for the sale of any Goods or the provision of any Services offered by the Company.
- 2.4. These Terms supersede and previously issued terms and conditions of sale and services.
- 2.5. No change to these Terms shall be binding unless agreed in writing by a director of the Company.
- 2.6. Unless otherwise agreed in writing, these Terms shall apply to both the supply of both Goods and Services.
- 2.7. These Terms, the Proposal, the Supplementary Terms, if any, and all documents attached thereto constitute the Contract. If any provision within the Contract documents conflict with each other, the following priority is applicable: (a) the Proposal; (b) the Supplementary Terms, if any; and (c) these Terms.

### 3. PRICE

- 3.1. The Purchase Price of the Goods and the Service Fee for the Services shall be **the price stated in the Contract or, if no price is stated, the Company's referenced list prices for such Goods and Services.**
- 3.2. The Company may, by giving notice ("Notice") to the Customer at any time before delivery, increase the Purchase Price and/or the Service Fee if, after the date of the Contract, there is an increase in the cost of the Goods and/or the Services by reason of any circumstance beyond the control of the Company including (without limitation) increases in the cost of material, labour or transport, exchange rate fluctuations, increases in import levies or other taxes. If the Purchase Price and/or the Service Fee is increased pursuant to this section 3.2, Customer may cancel the undelivered balance of the

Contract by written notice to the Company served within 5 Business Days of receipt of the Notice.

- 3.3. Unless otherwise agreed in writing, the Purchase Price is exclusive of costs of packaging and delivery which shall be paid by Customer at the same time as payment for the Goods.

#### 4. TAXES

- 4.1. Subject to section 4.2 an amount equal to any VAT chargeable on any supply of Goods or Services for VAT made pursuant to these Terms by the Company, including, without limitation, any such supply deemed to be made by the Company, shall be paid by Customer to the Company.
- 4.2. The Purchase Price and the Service Fee is exclusive of VAT, if applicable, which the Customer shall additionally be obliged to pay to Company at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 4.3. If the Customer is required under any applicable law to withhold or deduct any tax, the Customer shall increase the sum payable to the Company accordingly to leave the Company with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

#### 5. PAYMENT

- 5.1. The Company may invoice the Customer for the Goods (i) in accordance with the payment schedule outlined in the Contract, i) on or at any time after (partial) delivery of the Goods, if no installation Services are to be provided or ii) subject to section 5.4, after the completion of the installation Services in accordance with section 11.2. Notwithstanding the above, Company shall be entitled to invoice upfront payments at its sole discretion.
- 5.2. Unless otherwise agreed in writing by the Parties, payment of the invoice shall be made by Customer in full and in cleared funds within thirty (30) days of the date of the invoice, in the currency invoiced. Time of payment is of the essence. Payment shall be made solely via electronic funds transfer originating from or cheque drawn on Customer's account held in the country of Customer's principal place of business or via credit card.
- 5.3. If the Customer fails to or is delayed in complying with the pre-installation requirements pursuant to clause 10.1 and such failure or delay exceeds 30 days from the agreed installation date, the Company shall be entitled to raise an invoice for the Price, which shall be payable in accordance with clause 5.2.
- 5.4. If any sums become overdue, the Company may (without prejudice to any other right or remedy available to it) suspend all further deliveries until payment in full thereof has

been made or (at its option) cancel the Contract as regards any Goods which remain to be delivered thereunder and/or as regards any Services which remain to be provided thereunder.

- 5.5. Without prejudice to any right or remedy available to it, the Company may at its discretion charge interest at the lesser of (a) the rate of 8 % p.a. above the Swiss National Bank's base rate from time to time or (b) the highest rate permissible under applicable law on any sum not paid on the due date. Such interest shall accrue on a daily basis from the due date until payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.
- 5.6. Customer shall not be entitled to withhold payment in whole or in part on the ground that it has a claim, counterclaim or set-off against the Company.

## 6. DELIVERY OF THE GOODS

- 6.1. The time for delivery shall not be of the essence and any time specified in the Contract for delivery of the Goods is intended as a non-binding estimate only. The Company shall not be liable for any loss or damage whether arising directly or indirectly from delay in delivery.
- 6.2. Company shall deliver the Goods EXW (Incoterm<sup>®</sup> 2020) at the facility of the Company outlined in the Contract (the "Delivery Point"), unless otherwise agreed by the Parties. After delivery to the Delivery Point, the Goods shall be at Customer's sole risk and responsibility in respect of all loss or damage arising from any cause whatsoever. Acceptance of any change to the Delivery Point requested by the Customer shall be at the Company's sole discretion and the Customer shall be liable for any additional costs and expenses incurred by the Company as a result of such change.
- 6.3. The Company shall not be liable for any delay in delivery of the Goods if delivery is delayed through Customer's default, if Customer declines or delays in accepting delivery, or if the delivery is delayed due to failure by the Customer to comply with the pre-installation requirements as set out under section 10.1. In the event of such delay, the risk of loss and damage shall pass to Customer and the Company may (without prejudice to any other right or remedy available to it) suspend further delivery and: i) charge a reasonable storage fee and other costs incurred by the Company, ii) **sell the Goods for the Company's account, and/or** iii) **cancel the Contract as regards any Goods that remain to be delivered thereunder.**
- 6.4. **Subject to Company's rights in section 5.4 each delivery shall be considered a separate contract and the failure of any delivery shall not vitiate the Contract as to others.**
- 6.5. Where Goods are supplied by the Company in returnable containers, these must be returned **at the Customer's expense** and in good condition, if requested by the Company. Title to these containers shall remain with the Company at all times, but they shall be

held at the risk of the Customer until returned to the Company. Failure by the Customer to comply with the above provision shall entitle the Company to invoice the Customer for the full replacement value of the containers.

## 7. CHANGES AND RETURNS

- 7.1. The Company reserves the right, subject to prior written notice, to make any change in the specification of the Goods, which does not materially affect the installation, performance, or price thereof.
- 7.2. Goods may only be returned with prior authorization from the Company.

## 8. EXPORT TERMS

- 8.1. Unless otherwise agreed to in writing between the Company and Customer:
  - 8.1.1. Customer shall solely be responsible for: (a) complying with all laws or regulations governing the export or import of the Goods into any country other than the country where the Delivery Point is located in, (b) obtaining, at its own cost, all required export and import licenses, (c) obtaining at its own cost, all other consents, approvals, permits or registrations for the Goods (such as but not limited to registration with governmental agencies) that are required for the sale, distribution, use or otherwise (collectively, the "Governmental Authorizations") in any country other than the country where the Delivery Point is located, and (d) the payment of any duties and taxes thereon. Customer shall provide copies of all licenses and consents to the Company prior to the shipment of the Goods.
  - 8.1.2. Customer herewith confirms that the Goods comply with all safety regulations and has obtained all Governmental Authorizations of any country or state in which the Goods are to be used outside of the country where the Delivery Point is located. Customer shall indemnify, defend and hold the Company harmless in full for any loss or damage whatsoever which the Company has incurred or may incur in the event that such Goods do not comply with any such safety regulations or Customer has failed to obtain all required Governmental Authorizations.
- 8.2. For clarification purposes, the Company shall not be liable for any loss or damage arising directly or indirectly from any delay or failure to obtaining any necessary export or import licences or Governmental Authorizations.

## 9. INSTALMENTS

- 9.1. The Company may deliver the Goods or the Services (if applicable) by instalments and may invoice Customer for each such instalment according to section 5.1. **Each instalment shall be treated as a separate contract so that failure to deliver or defect in one or more instalments shall not entitle Customer to reject the other instalments.**

9.2. If the Goods or the Services are to be delivered by instalments, the Company shall be entitled to invoice each instalment as and when delivery of such instalment has been made and payment for all delivered instalments shall be due notwithstanding the non-delivery of other instalments or other default by the Company. **Failure by Customer to make payment by the due date for any one instalment for whatever reason shall entitle the Company to suspend deliveries of Goods or provision of Services under the Contract but without prejudice to any other right the Company may have under any of the other provisions of these Terms or the applicable law.**

## 10. INSTALLATION OF GOODS

10.1. Where the Goods require installation, the Customer shall, at its own cost, be responsible for preparing and maintaining the installation site in accordance with the Company's pre-installation requirements (such as specifications for power quality/grounding, temperature and/or humidity) and other instructions provided by the Company. Installation will not begin unless such responsibilities are completed.

## 11. ACCEPTANCE

11.1. Customer shall inspect the Goods immediately upon receipt. In case of a defect, which is apparent from a reasonable visual inspection on delivery, Customer shall notify Company in writing within seven (7) Business Days after receipt of the Goods. If Company fails to notify Company within such period, the Goods shall be deemed accepted.

11.2. In case the Goods require installation by the Company, the Company shall conduct final testing using its standard instruments and procedures. Upon satisfactory completion of such final testing demonstrating compliance with the agreed specifications (with any permitted variations/tolerances) the Company shall notify the Customer of such successful final test completion, or issue a Test Certificate which shall be conclusive evidence of such compliance and thereupon installation of the Goods shall be deemed to be complete and in compliance with the Company's obligations under the Contract. The Goods are deemed accepted (i) seven (7) Business Days after the date on which the Company notifies the Customer that final testing was successfully completed or issues the Test Certificate or (ii) on the date the Customer first uses the Goods for operational use, whichever is earlier. For partial deliveries this section applies to each item of the Goods.

11.3. The Customer, at its reasonable request, shall be entitled to be present at and to witness the testing but shall not be entitled to raise any objection to testing carried out, or to the results thereof, if the Customer fails to attend when advised that testing was to take place.

11.4. Any claim not being made in the above timelines shall be subject to the conditions of section 13.

## 12. PROVISION OF THE SERVICES

12.1. The Company shall provide the Services to Customer in accordance with the Contract in all material respects. The Company shall use commercially reasonable endeavours to meet any dates specified for the performance of the Services, but any such dates shall be non-binding estimates only and **time shall not be of the essence for the performance of the Services.**

12.2. **The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services. The Company shall notify Customer of any such changes made.**

12.3. If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation ("**Customer Default**") the Company shall without limiting its other rights or remedies have the right to i) suspend performance of the Services until Customer remedies the Customer Default; and ii) rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations.

12.4. In case of a Customer Default i) the Company shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations; and ii) Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

12.5. Customer Default includes, without limitation, the Customer failure to (i) perform any of its obligations set out in section 12.9, (ii) ensure that adequate and safe facilities exist at its premises, (ii) properly notify the Company of any hazardous conditions, relevant regulations, and safety procedures, (iii) take any other necessary action prior to the Company performing the Services (e.g. installation), including to remove and/or remediate any hazardous conditions or materials from the Goods or service area. If any risks can result from the co-activities between the Company, Customer (and/or any third party) in the work area, Customer shall notify Company of such risks and the Parties shall negotiate in good faith to agree on a safety coordination plan.

12.6. If the Customer has purchased Goods or Services including remote access support, the Customer shall grant the Company remote access to connect to the Goods and maintain such connection as required by the Company for the performance of maintenance or repair activities as part of the Company's warranty obligations or otherwise. This may



include automatic software downloads and proactive monitoring and access to performance data related to the Goods, to gather and use Goods and resource usage data in various ways such as product development, quality initiatives, benchmarking and reporting services. **If remote access is not provided, the Company shall have the right, but not the obligation, to provide onsite support and Customer shall pay to Company for such onsite support the price states in the Company's current pricelist at the date of performance of the onsite support.**

- 12.7. Subject to mandatory legal provisions or unless otherwise agreed in writing, Customer shall be responsible for proper management, storage, and disposal of all Service and/or installation-related waste. Further, subject to mandatory legal provisions or unless otherwise agreed in writing, the Company's obligation to take back electrical and electronic equipment waste (WEEE) does not include creation of physical access to the equipment; de-installation; decoupling; disinfecting; craning/lifting; transportation to a ground level loading area or -ramp; packing; or any related similar activities. Customer shall perform such activities at its own cost as and when required.
- 12.8. When requested by the Company, Customer shall make available at least one (1) suitably qualified person who can ensure the safety of the Company personnel at all times during installation/performance of the Services. If no such person is made available, the Company reserves the right to charge Customer at the Company's then current pricelist for an additional Company personnel to be present.
- 12.9. Customer shall i) not un-crate the Goods unless in the presence of the Company personnel; ii) provide tools and assistance to un-crate the Goods and move the Goods to the designated location on Customer's premises; iii) cooperate with the Company in all matters relating to the Services; iv) provide the Company, its employees, agents, consultants and subcontractors, with access to Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services; v) provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects and promptly respond to any requests by the Company for direction, information, approvals, authorizations, or decisions that are necessary for the Company to perform the Services; vi) prepare Customer's premises for the supply of the Services; vii) obtain and maintain all necessary licences, permissions and consents which may be required for the Services and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

### 13. WARRANTY

- 13.1. Section 13.2-13.5 shall apply in the event no other specific warranty has been agreed in the Contract and is subject to Clause 14. As regards any Goods covered by a warranty

issued by a third party manufacturer, such warranty terms shall apply to the exclusion of section 13.2-13.5.

- 13.2. Goods - Goods are warranted to be free of defects in workmanship or materials under normal and intended usage and maintenance by properly trained personnel for a period of **[twenty four (24) months]** from date of delivery or in the case of Goods that require installation by the Company, **[twenty four (24) months]** from completing any agreed installation work, but in no event longer than **[twenty seven (27) months]** from the date of delivery. Any claim not being made in writing in the above timelines and immediately after Customer detects such defect shall be deemed waived and the Company shall have no liability whatsoever. The Company's SOLE AND ENTIRE liability and Customer's SOLE AND EXCLUSIVE remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of the Company. Such repairs or replacement will not extend the warranty period.
- 13.3. Goods – The Company shall not be liable for the Goods' failure to comply with the warranty set out in section 13.2 if the Customer does not abide by the use restrictions, if any, set out in the catalogue, on the Goods, or in the accompanying documentation.
- 13.4. Software - The Company warrants that the Software substantially conforms to its published specifications and that the media on which the Software resides will be free from defects in materials and workmanship under normal use for a period of **three (3) months** from the date of delivery or in the event the Software is intended to be installed and run on the Company's Goods of its own manufacture, **twelve (12) months** from the date of delivery. Any claim not being made in writing in the above timelines and immediately after Customer detects such defect shall be deemed waived and the Company shall have no liability whatsoever. The Company does not warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. The Company's sole AND ENTIRE liability and Customer's SOLE AND exclusive remedy in the event of breach of this warranty is limited to repair, replacement, or refund, at the sole option of the Company.
- 13.5. Services – The Company warrants that all Services will be carried out with reasonable care and skill. The Company's sole AND ENTIRE liability AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY for breach of this warranty shall be at the Company's sole option to give credit for or re-perform the Services in question. This warranty shall only extend for a period of ninety (90) Business Days after the completion of the Services. Any claim not being made in writing in the above timelines and immediately after Customer detects such defect shall be deemed waived and the Company shall have no liability whatsoever.
- 13.6. To the maximum extent permitted by applicable law the Company hereby expressly disclaims, and Customer hereby expressly waives, any warranty regarding results

obtained through the use of the Goods, and the Software, and the Services, including without limitation any claim of inaccurate, invalid, or incomplete results. All other warranties, representations, terms and conditions (statutory, express, implied or otherwise) as to quality, condition, description, merchantability, fitness for purpose or non-infringement (except for the implied warranty of title) are hereby expressly excluded. For sake of clarity, the Company gives no warranty and makes no representation that the Goods, Software and Services will be free from infringement of any patent or other intellectual property right owned or controlled by any third party.

- 13.7. Unless expressly agreed, the Company is not obliged to carry out dismantling or re-installation of any Goods in connection with any warranty claims.
- 13.8. Company shall have no liability under the warranties contained in section 13 in respect of any defect in the Goods arising from i) specifications or materials supplied by the Customer, ii) fair wear and tear, iii) wilful damage or negligence of the Customer or its employees or agents, iv) abnormal working conditions at the Customer's premises, v) failure to maintain the site in accordance with the Company's pre-installation requirements, vi) failure to comply with user manual, or the Company's use restrictions or other instructions (whether oral or in writing), vii) misuse or alteration or repair of the Goods without the Company's approval, viii) or if the Customer is in breach of its payment obligations under this Contract.
- 13.9. Any goods or components thereof supplied under warranty are subject to the shipping conditions detailed in clause 6 in its entirety.

#### 14. INSTRUMENT SERVICE AND SUPPORT LIFECYCLE

- 14.1. On supply or installation of the agreed Goods or Services, the [Instrument Service and Support Lifecycle table](#) sets out what the Company will reasonably do as part of any after sales service in Clause 13.2-**Error! Reference source not found.** above based on the age of the equipment or part(s).
- 14.2. If the system is upgraded in any way, the [Instrument Service and Support Lifecycle table](#), specifically the section on Upgraded Systems, shall set out the service options available in respect of ongoing service. In some cases, the parts upgraded (and only the parts upgraded) may be covered for warranty or service for a longer period than the non-upgraded parts of the originally supplied goods.
- 14.3. Subject to Clause 15, and notwithstanding anything herein to the contrary, **the Company shall not be liable if:**
- 14.3.1. Goods are no longer available and not in production, whether supplied by them or any third-party;
  - 14.3.2. if the system breaks or becomes damaged and Company's approved individuals are unable to fix the fault; or

14.3.3. if the system breaks or becomes damaged and the Company is unable to provide spare parts.

14.4. With regard to any upgrade:

14.4.1. The warranty associated with the upgrade only applies to the parts which are upgraded;

14.4.2. If damage is thought to have resulted from older parts of the system, the upgraded parts will not be covered; and

14.4.3. no formal support for hardware over ten (10) years old is offered except for Techfors systems, which will be evaluated on a case-by-case basis. At any time The Parties may enter a separate agreement on further formal support at any time if such further formal support is desired. If Customer chooses to upgrade parts against the Company's guidance the hardware support will not be extended. The support period will be calculated from the date of supply or installation of the original system. Upgrades to Techfors systems older than ten (10) years are subject to the terms outlined in section 14.

## 15. LIMITATION OF LIABILITY

15.1. To the fullest extent permissible by applicable law, Company, its affiliates, officers, directors, employees, agents, consultants or suppliers shall have no liability for any direct, indirect, special, incidental, consequential or punitive damages, anticipated or lost profits, business interruption, loss of time, or similar losses arising under or in connection with the Contract. Company's total liability to Customer in respect of all other damages and losses arising under or in connection with any such Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price of the Goods or the Services (as applicable) PAID OR PAYABLE BY THE CUSTOMER under such Contract IN THE PRIOR 12 MONTHS preceding the date of the claim notices.

15.2. The Company shall not be liable for associates and such liability is herewith fully excluded (Art. 101 OR, Hilfspersonenhaftung).

## 16. INDEMNIFICATION

16.1. Customer shall indemnify the Company from and against all losses and claims (including reasonable legal fees and other costs of defending any action) that Company incurs as a result of any third party claim against the Company or its affiliates relating to or in connection with Customer's use of the Goods delivered by Company, or by reason of Customer's breach of the Contract.

## 17. RETENTION OF TITLE

- 17.1. Notwithstanding delivery, the title in the Goods will remain with the Company (Eigentumsvorbehalt) and subject to the following provisions of this section 0 Customer will hold the Goods as bailee for the Company at his own risk until payment in full and in cleared funds of the full Purchase Price of the Goods or any other Goods and Services at any time supplied by the Company and all other sums due from Customer to the Company on any account whatsoever.
- 17.2. The Customer authorizes the Company to enter the retention of title in the public register pursuant to Art. 715 of the Swiss Civil Code at the Customer's expense. In case of seizure or other access to the reserved Goods by third parties, the Customer shall immediately notify Company in writing.
- 17.3. If the law of the country in which the delivery item is located does not permit the agreement of a reservation of title or permits it only in a limited form, Company reserves other rights to the Goods. The Customer shall cooperate in all necessary measures (such as registration) to realize the reservation of title or other rights replacing the reservation of title and to protect these rights.

## 18. SOFTWARE LICENCE

- 18.1. Unless a separate License Agreement has been entered into between the Parties concerning the Software, the Company shall grant, and hereby grants to Customer, a non-sublicensable, non-transferrable, non-exclusive license to use the Software solely in object code format and solely for its own internal business purposes subject to the terms contained herein. The Customer shall not (i) use the Software for purposes other than those for which it was designed; (ii) use the Software in connection with other manufacturers' products unless such connectivity is authorized in the product documentation; (iii) grant, assign, transfer, or otherwise make available to third parties any right whatsoever in the Software; (iv) disclose to third parties any information contained in the Software; (v) copy or reproduce the Software (except for one copy for back-up purposes or as may otherwise be permitted by applicable law); (vi) alter or modify the Software; or (vii) reverse engineer, decompile, disassemble or create any derivative works based upon the Software except as expressly permitted by mandatory law.

## 19. INTELLECTUAL PROPERTY

- 19.1. Company has licensed-in all intellectual property rights relating to its Goods, Software and Services.
- 19.2. Unless explicitly stated in these Terms, Customer shall not acquire or be entitled to claim any right, title or interest in and to the intellectual property rights relating to the

Goods, Software and Services, including (without limitation) in and to any patents, inventions, designs, trademarks, trade names, logos, copyrights and know-how.

- 19.3. Company warrants that, at the time of the entering into the Contract, it is not aware of any violation of any third party intellectual property right. Subject to compulsory law, wilful intent and gross negligence, Company shall have no liability and Customer shall have no rights or remedies with respect to any suit instituted against Customer based upon claims that the Goods, Software or Services infringe a third party's right.
- 19.4. Customer shall immediately inform the Company on becoming aware of i) any relevant fact which may affect the intellectual property rights relating to the Goods, Software and Services, the Company's or its affiliates' reputation or ii) any relevant fact which may cause the Company to suffer material adverse publicity or iii) any counterfeit of the Goods or iv) any infringement of the intellectual property rights relating to the Goods, Software and Services or v) that the sale or advertisement of the Goods or Software infringes the rights of any third party.

## 20. DATA PROTECTION

- 20.1. The Company commits itself to complying with the applicable data protection legislation. The processing of data is governed by the privacy policy, which is available on <https://www.infors-ht.com/en/privacy-policy/>.
- 20.2. By concluding the Contract, the Customer also undertakes to comply with the applicable data protection law.

## 21. CONFIDENTIALITY

- 21.1. Each Party undertakes that it shall keep strictly confidential and that it shall not at any time disclose to any person any information which is disclosed to such Party from the other Party, and which is marked as confidential or should be considered as confidential by a reasonable person concerning the business, affairs, customers, clients or suppliers of the other Party and/or its affiliates, including (without limitation) in relation to these Terms and any Contract between Customer and the Company ("**Confidential Information**"), for a period of ten years from the date of disclosure except as permitted by section 21.2. Each Party agrees to use and utilise Confidential Information disclosed by the other Party solely for the performance of the Contract and to treat the disclosing Party's Confidential Information with the same degree of care as it uses for its own confidential information, but at least using reasonable care. Each Party agrees to limit its internal dissemination of Confidential Information to only those employees, officers, consultants, authorised agents, affiliates and subcontractors who have a need to know the Confidential Information for the performance of the Contract and who are contractually bound by restrictions of disclosure and use at least as onerous as those in this section.

21.2. The restrictions of section 21.1 shall not be applicable to Confidential Information i) to the extent permitted by the disclosing Party's written consent; ii) to the extent receiving Party can prove that Confidential Information is public knowledge or, after disclosure hereunder, becomes public knowledge through no fault of the receiving Party; (c) to the extent Confidential Information can be shown by receiving Party to have been in receiving Party's possession or control prior to the date of disclosure hereunder; (d) to the extent receiving Party can establish that Confidential Information was received from any third party, which, by receiving Party's reasonable judgment, did not breach any restrictions of disclosure; (e) to the extent receiving Party can establish that the Confidential Information was independently developed by itself without reference to disclosing Party's Confidential Information; or (f) to the extent receiving Party can establish that it is required by law or order of a competent court or administrative authority to disclose Confidential Information to a third party, provided however that receiving Party immediately upon learning of such obligation, and prior to disclosure, if lawfully possible, notifies disclosing Party of such disclosure obligation and reasonably cooperates with disclosing Party in limiting the scope of disclosure, if lawfully possible.

21.3. Upon the written request of the disclosing Party, the receiving Party shall return to the disclosing Party (or destroy, as requested by the disclosing Party) all written materials and documents made available or supplied by the disclosing Party to the receiving Party that contain Confidential Information of the disclosing Party and/or its affiliates, and the receiving Party shall use all reasonable efforts to destroy all notes, copies, summaries, analyses and reports made by the receiving Party's representatives to the extent containing same; provided, however, that subject to the terms and conditions of these Terms, the receiving Party shall be entitled to retain one archival, securely stored copy thereof solely for purposes of determining its continuing obligations under these Terms and the Contract and shall not be required to destroy (i) any records required to be held by it in accordance with applicable law or (ii) any off-site computer files created during automatic system back up which are subsequently securely stored by the receiving Party.

## 22. TERMINATION

22.1. The Company shall have the right to extraordinary terminate all or any Contracts with Customer with immediate effect by giving written notice to Customer, with no obligation to fulfil further own obligations, if Customer (i) commits a material breach of any of the provisions of the Contract which is not capable of remedy or not remedied within seven (7) Business Days of the date of receipt from the Company of a notice specifying the breach and requiring it to be remedied; (ii) becomes bankrupt or otherwise incapable of paying its bills as they fall due or if a receiver or administrator in bankruptcy has

been appointed to run Customer's affairs; (iii) has any distraint, execution or other process levied or enforced on any of its property; (iv) is dissolved or ceases or threatens to cease to trade; or (v) brings the reputation of the Company into serious disrepute or otherwise causes the Company to suffer material adverse publicity and following receipt from the Company of a notice informing Customer that this is the case, Customer has failed to remedy the matter, event or circumstance which caused or resulted in such serious disrepute or material adverse publicity within seven (7) Business Days of the date of such notice.

22.2. On termination of any Contract between the Company and Customer for any reason whatsoever, Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by Customer immediately on receipt.

22.3. Termination of any Contract between the Company and Customer for any reason whatsoever shall not affect any of the rights, remedies obligations and liabilities of either the Company or Customer that have accrued prior to termination and section 13, 15, 16, 19, 21, 22.3, and 30, will continue to be enforceable notwithstanding termination.

## 23. FORCE MAJEURE

23.1. A "Force Majeure Event" means the occurrence of any event beyond a Party's reasonable control including, without limitation, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, pandemics, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

23.2. Except for payment obligations, neither Party shall be held liable for any failure in performance of any part of the Contract or any breach of contract resulting from Force Majeure Event.

23.3. The Company reserves the right i) to defer the date of delivery, ii) to cancel the Contract or iii) to reduce the volume of the Goods to be delivered to Customer or the Services to be performed for Customer (without liability to Customer), if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event.

23.4. In the event the affected Party's delay or non-performance as a result of Force Majeure continues for a period of more than sixty (60) Business Days, either Party shall have the



right to terminate the Contract in writing with immediate effect. Customer shall pay for all Goods supplied and Services performed prior to the date of such termination, such payment to be made on or before the last day of the month following the month during which termination was effected.

23.5. If the Company has contracted to provide identical or similar goods to more than one customer and is prevented from fully meeting its obligations by reason of any of the causes referred to in Condition 23.1, the Company may determine at its sole discretion which contracts it will honour and to what extent it will honour such contracts.

#### 24. WAIVER

None of the provisions of these Terms shall be deemed to have been waived unless such waiver is confirmed in writing. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No waiver of any provision of these Terms shall constitute a waiver of any other provision or of the same provision on another occasion.

#### 25. ASSIGNMENT

Customer shall not assign or transfer or purport to assign or transfer any of its rights or obligations under the Contract to any other person without the prior written consent of the Company.

#### 26. SEVERANCE

Should one of the provisions of the Contract or of any additional stipulations agreed upon be or become invalid, the validity of the remaining conditions and stipulations shall not be affected thereby. Parties shall use their best endeavours to replace the invalid provisions with a valid provision with respect to the same subject matter.

#### 27. NOTICES

27.1. Any notice required or authorised to be given under these Terms shall be in writing and may be served by tracked courier delivery or by email.

27.2. Notices shall be deemed served i) in the case of a notice sent by tracked courier delivery, on the fourth Business Day following the day of posting, and ii) in the case of a notice sent by email, one hour after transmission, or if not sent on a Business Day, on the next Business Day.

## 28. NO PARTNERSHIP OR AGENCY

The Parties hereto are independent contractors and nothing contained in this Terms shall be deemed or construed to create a partnership, joint venture, employment, franchise, agency or fiduciary relationship between the Parties.

## 29. ENTIRE AGREEMENT

The Contract constitutes the entire agreement and understandings (oral and written) between the Parties relating to the subject matter hereof and supersede all previous oral and written communications between the Parties with respect hereof.

## 30. GOVERNING LAW AND JURISDICTION

30.1. Unless otherwise agreed between the Parties, these Terms and any Contract between Customer and the Company shall be governed by and construed exclusively in accordance with Swiss law, without reference to its conflict of law rules The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

30.2. Unless otherwise agreed between the Parties, any disputes arising out or in connection with this Terms or the Contract shall be exclusively resolved by the competent courts of Basel, Switzerland.