

## TESE ITALY S.R.L- GENERAL TERMS AND CONDITIONS OF SALE

August 2023

### 1. PURPOSE-SCOPE

- 1.1 These Terms and Conditions shall apply to any and all sale of Products and Projects ordered from TESE by any Customer.
- 1.2 These Terms and Conditions supersede any previous version of the general terms and conditions of sale distributed by TESE. These Terms and Conditions may be amended at any time and without notice by TESE unless the Parties agreed in writing upon a particular notice period. Any order confirmed by TESE prior to the effective date of these Terms and Conditions shall be governed by the terms and conditions applicable at the time of such confirmation.
- 1.3 Unless otherwise expressly agreed in writing, all Products and Projects are supplied on the following terms and conditions which shall include:
  - (a) The proposal or quote ("Quotation") provided by TESE;
  - (b) These Terms and Conditions;
  - (c) Each Order submitted by the Customer and accepted by TESE.
- 1.4 For the purposes of these terms a reference to "Agreement" shall mean the above documents in Articles 1.3(a) to (c).
- 1.5 If there is any conflict or inconsistency between the above documents, the documents will rank in order of precedence with the order in which they are listed in Article 1.3 above.
- 1.6 Each Order issued by the Customer and accepted by TESE will be accepted on the basis of these Terms and Conditions, to the exclusion of all other terms including any terms and conditions referenced or set forth on the face or reverse side of any Order or other document presented by the Customer. Any acknowledgement or other form of acceptance by TESE of the Customer's Order containing other terms and conditions shall not have any effect in modifying these Terms and Conditions, unless explicitly accepted by TESE in writing.
- 1.7 These Terms and Conditions form the basis of the commercial negotiations. No amendment to the Agreement is valid or binding unless made in writing and signed by both Parties' authorised representatives.

### 2. DEFINITIONS

- 2.1 For the purposes of these Terms and Conditions, the following capitalised terms and expressions shall have the meanings set out below, whether used in the singular or in the plural:

**Acceptance Tests** means acceptance testing based on agreed objective criteria between the Parties, or factory acceptance testing based on TESE standard procedure.

**Affiliate** means any company or entity in which a Party or its parent company or companies now or later owns or controls, directly or indirectly, 50% or more of the voting stock or otherwise controls or is under common control with such company or entity; and "control" as used in this Agreement shall mean the power or authority to, through ownership or voting securities, by contract or otherwise, direct the management and policies of the company or entity.

**Anti-Corruption Law** means any applicable laws or regulations that prevent or prohibit acts of conferring of any kind of monetary and non-monetary gift, payment, gratification or other benefit on any person with the intention to bribe, corrupt, secure benefit or solicit favours from that person, including but not limited to: (i) the French "Sapin II" Law 2016; (ii) the Foreign Corrupt Practices Act 1977; (iii) the United Kingdom Bribery Act 2010; (iv) any legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or the UN Convention Against Corruption, and in addition the relevant anti-corruption laws of the Country.

**Applicable Data Privacy Law** means the General Data Protection Regulation (EU) 2016/679 (GDPR), together with any national implementing laws in any Member State of the European Union.

**Background IP** means the Intellectual Property Rights owned by a Party which are in existence at the date of this Agreement or have come into existence after the date of the Agreement otherwise than in connection with this Agreement.

**Code of Conduct** means the code of conduct adopted TESE, or applicable to TESE as the case may be, and communicated by any means by TESE or its Affiliates.

**Confidential Information** means any information or data disclosed by the Discloser to the Recipient pursuant to this Agreement, either in writing, electronically, orally or visually, subject to the conditions set forth hereafter, and including without limitation any written or printed documents, samples, models, information, plans, designs, concepts, protocol, and certain other information which may include, but is not limited to, techniques, methods, processes, procedures, "know-how", trade secrets, materials, prototypes, samples, tangible things, technical, financial or business information, terms and conditions of any pending or existing agreements between the Parties or any means of disclosing such Confidential Information that the Discloser may elect to use for the duration of this Agreement. Confidential Information so received by the Recipient from an Affiliate of the Discloser shall be considered as Confidential Information and be subject to the confidentiality obligations of this Agreement.

**Country** means Italy.

**Customer** means the Party who has purchased Products and Projects from TESE under the Agreement, and to whom TESE will supply the Products and Projects. and seek payment from in accordance with the Agreement.

**Delivery Point** has the meaning as set out in Article 4.2 of these Terms and Conditions.

**Discloser** means the Party, its Affiliate or authorised third party, that discloses Confidential Information to the Recipient.

**Force Majeure** has the meaning as set out in Article 20.2 of these Terms and Conditions.

**Indirect Tax** means the applicable and prevailing goods and services tax ("GST"), value added tax ("VAT"), sales tax and/or services tax ("SST") levied on any value of Products and Projects deemed to be a taxable supply in the country where such Products and Projects are supplied, the amount of which is to be paid by the Customer when invoiced by TESE, in accordance with local applicable tax laws and regulations.

**Foreground IP** means all Intellectual Property Rights (present or future) created, discovered, generated or have come into existence as a result of, for the purpose of, or in connection with the Products and/or Projects, that either TESE or its third party supplier develops (regardless of whether based on the Intellectual Property Rights TESE provides to its third party supplier or otherwise) during the course of the performance of the Agreement.

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the

confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation or rule

**Order** means the purchase order document issued by the Customer to and accepted by TESE for the purchase of Products and Projects, in accordance with Article 1.6 of these Terms and Conditions.

**Party** means either TESE or the Customer.

**Personal Data** means any personal information or personal identifiable information related to an identified or identifiable natural person, as defined in the Applicable Data Privacy Law, which is collected, processed, managed and/or handled by any of the Parties in connection with this Agreement.

**Price** means the aggregate amount payable by the Customer to TESE in relation to the Products and Projects, as specified in the Agreement.

**Privacy and Data Protection Policy** means TESE 's Privacy and Data Protection Policy available on its website.

**Product** means any hardware, equipment, material, accessory or other commodity, to be sold, provided by TESE to the Customer under the Agreement

**Project** means any Product or combination of Products, that needs to be specifically adapted in order to meet the Specifications, or any set of Products requiring a specific study in order to ensure consistency.

**Project Deliverable** means the Products and/or any other deliverable required to be developed or integrated by TESE pursuant to a particular Project in accordance with agreed Specifications.

**Quotation** means the written proposal or quotation that contains, amongst other things, the Price and list of Products and Projects, and description of the scope of work, offered and to be supplied by TESE to the Customer.

**Recipient** means the Party or its Affiliate that receives Confidential Information from the Discloser.

**Site** means the agreed location or site where the Products are to be delivered or where the Project is to be implemented as specified in the Agreement.

**Specifications** means the drawings, technical specifications and/or plans provided by the Customer in the frame of a Project as specified in the Agreement, or as otherwise agreed by the Parties in accordance with Article 21 of the Addendum for the Supply of Projects.

**Terms and Conditions** means these terms and conditions of sale.

**TESE** means the company TESE ITALY S.R.L., a corporation organized and existing under the laws of Italy having its registered office at Stezzano (BG) via Circonvallazione Est 1 CAP 24040 - Italy, and registered under the number 477 485 BERGAMO.

**Variation** has the meaning as set out in Article 23.1 of the Addendum for the Supply of Projects.

**Warranty Period** has the meaning as set out in Article 7.2 of these Terms and Conditions.

### 3. QUOTATION AND ORDERING

- 3.1 Any Quotation provided by TESE is subject to the Products and Projects being available at such time when the Customer places an Order.
- 3.2 Unless indicated otherwise by TESE in writing, all Prices referred to in any Quotation are based on the quantity of Products or Projects and delivery timetable described in the Quotation, which will only be valid for thirty (30) days from the date of the Quotation. In the event the Customer changes the time required for delivery or the volume or scope of Products and Projects required or places an Order more than thirty (30) days after the Quotation is submitted, TESE reserves the right to vary its Price or to reject the Order.
- 3.3 Subject to any specific legal provisions that TESE may be required to comply with, and unless otherwise specified in writing in the Order or Quotation, an Order shall only be considered firm and binding on each of the Parties if it has been expressly confirmed by TESE in writing. It is further specified that TESE reserves the right to make acceptance of an Order subject to the Customer first issuing a bank guarantee to TESE or another guarantee acceptable to TESE for all or part of the Price indicated in the Order.
- 3.4 Unless otherwise specified by TESE, the minimum order amount is one thousand (€1000) Euros. TESE reserves the right to reject any order of less than this amount, without TESE being held liable. In the event that TESE accepts an order for less than the aforementioned amount, TESE reserves the right to invoice the Customer the sum of one hundred (100€) euros as management and processing fees.
- 3.5 TESE reserves the right to make any changes to the Products at any time, in particular changes to the layout, shape, color, size or materials of the Products represented and described, including their specifications, in its catalogues and brochures.

### 4. DELIVERY, STORAGE, RISK AND TITLE

- 4.1 TESE agrees to supply the Products and Projects in accordance with the terms of the Agreement and in consideration of payment of the Price by the Customer. The Customer must always be up to date with its obligations to TESE, including but not limited to its payment obligations. Should the Customer fail to do so, TESE reserves the right to suspend all deliveries of Products/Projects, without being held liable in any way.
- 4.2 Unless specified otherwise, delivery shall be deemed to have taken place when the Products are made available by TESE at the named place of TESE 's choosing (hereinafter the "**Delivery Point**").
- 4.3 TESE will deliver the Products ready for unloading from the arriving means of transport to the Delivery Point). Risk of any loss or damage to the Products passes to the Customer upon delivery to the Customer at the Delivery Point.
- 4.4 Title in the Products does not pass to the Customer until the Customer has made payment in full for the Products and, further, until the Customer has made payment in full of all monies owing by the Customer to TESE (whether in respect of monies payable under a specific contract or on any other account whatsoever). As a consequence of the foregoing, until the Customer has fulfilled these payment obligations, TESE retains full ownership of the Products supplied.
- 4.5 If the Products are transformed or incorporated into other goods, TESE shall have a lien on the transformed Products or the goods in which they have been incorporated until TESE 's receipt of the full payment of the Price. The Customer undertakes to confirm the existence of this retention of title to third parties to whom it may sell the Products in their original condition or incorporated in other goods.
- 4.6 Should Products be returned, under this Article 4, any down payment received by TESE will vest in TESE, without prejudice to any damages which TESE may claim.
- 4.7 TESE 's rights contained in this Article 4 will survive expiry or termination of the Agreement however arising.
- 4.8 The Prices set out in the Quotation include ordinary packaging in accordance with TESE 's standard practice. If the Customer

wishes to use a different type of packaging from the packaging normally used by TESE, an extra packaging fee will be charged. TESE does not take back packaging, in any circumstances whatsoever.

4.9 If TESE must store any of Customer's materials and/or equipment and/or the Products under an Agreement, TESE shall be entitled to charge Customer a fee for handling and warehousing such materials and/or equipment and/or the Products, until the Customer takes possession thereof.

## 5. ACCEPTANCE

5.1 the Customer will be deemed to have accepted the Products on the date that the Products are delivered to the Customer at the Delivery Point, without prejudice to the warranty provisions hereunder.

## 6. DEADLINES & LIQUIDATED DAMAGES

6.1 Delivery times or timetables are provided as an indication, unless binding delivery times or timetables are expressly accepted by TESE.

6.2 The delivery time or timetables commences on the latest of the following: (i) unconditional acceptance of the Order by TESE; (ii) receipt by TESE of certain information to be provided by the Customer, where the commencement of the fulfilment of the Order is conditional upon the provision of that information; and/or (iii) receipt of the down payment, if applicable.

6.3 TESE will be released from any liability for any binding deadlines, by operation of law, if Force Majeure or other events affect TESE, its subcontractors and/or its suppliers and disrupt the organisation or operations of the business such as, for example, lockout, strike, epidemic, pandemic, war, embargo, fire, flooding, machinery accident, rejection of parts during the manufacturing process, interruption or delay in the transportation or procurement of raw materials, power or components, or any other event beyond the reasonable control of TESE, its subcontractors and/or its suppliers.

6.4 In the event of a delay in delivery falling under TESE's responsibility, where a firm deadline has been accepted and in the absence of provisions to the contrary, TESE shall only be liable to pay liquidated damages, the calculation of which commences after the end of a one-week grace period and in full discharge, of zero point five percent (0.5%) per full calendar week of the price for the Products delivered late, capped at five percent (5%) of the price for the Products delivered late, in all cases. The Parties agree that liquidated damages are genuine and reasonable pre-estimates of and adequate compensation for loss or damage the Customer would suffer for any delay, and as such any liquidated damages payable by TESE to the Customer for any such delay shall be the sole and exclusive remedy available to the Customer for any such delay.

6.5 The Customer may not set off any liquidated damages owed by TESE against any amounts owed by the Customer, on any basis whatsoever, without TESE's prior written consent.

6.6 If the Customer delays, prevents or impedes performance by TESE, TESE shall be entitled to an extension of time and to recover any additional costs incurred due to such delay, prevention or impediment including additional storage costs, demobilization/re-mobilization costs, travel and transportation costs.

6.7 The Customer acknowledges that the Products or part thereof are produced in, or otherwise sourced from, or will be installed in areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic or any other epidemic/pandemic and that the situation may trigger stoppage, hindrance or delays in TESE's (or its subcontractors) capacity to produce or deliver the Products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by TESE (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of TESE's (or its subcontractors') employees. The Customer therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing TESE to contractual sanctions including without limitation, delay penalties, liquidated or other damages or termination for default.

## 7. WARRANTIES

7.1 TESE warrants that the Products manufactured by TESE under its brands and supplied by TESE will be free from defects in design, materials and workmanship arising under normal use and in accordance with any instructions issued by TESE and will operate in accordance with their published specifications for the duration of the Warranty Period.

7.2 Warranty Period means: For Products proven to be defective, the Warranty Periods are set out in TESE's website. If this website does not state the Product's Warranty Period, the default will be the earlier of:

(i) eighteen (18) months from the delivery date, as per Article 4;

(ii) the date that is twelve (12) months from commercial or operational use of the Products by the Customer.

However, if the date of delivery or use, as referred to above, cannot be ascertained, the Warranty Period will start on the date of the manufacturing of the Product, as marked on the relevant Product, and shall last for twenty-four (24) months.

7.3 If the Customer makes a claim during the Warranty Period it will be handled as follows:

(a) In the case of Products and Project Deliverables (where relevant), where there is a defect in such Products, TESE will replace or repair (at its discretion and cost). TESE will not be responsible for the cost of retrieving, removing, reinstalling, retesting or transporting the Products or Project Deliverables to and from the location where the Products are located;

(b) In the case of a Project, if it is not practical to return the defective Product to TESE in accordance with Article 7.3(a), TESE will bear the cost of correcting the defects, by either attending to the defect at the Site where the Project is located or by remote means, as determined at the sole discretion of TESE and at a mutually agreed time;

(c) All warranties for any Product repaired or replaced during the Warranty Period will expire at the same time as the original Warranty Period of such Product that were replaced or resupplied.

7.4 TESE will not be responsible for any defect in Products arising out of or in connection to:

(a) Misuse, abuse, neglect, errors or any other act or omission of or by the Customer or third party not contracted by TESE;

(b) Repair or alteration (improper or otherwise) by the Customer or any person other than TESE;

(c) Installation by the Customer or any person not in accordance with TESE's instructions or in the absence of such instructions, in accordance with generally accepted practices for maintenance of such Products; or

(d) Power failure, power surge, lightning, flood, fire, accidental breakage or other events outside of TESE's reasonable control;

(e) Maintenance, installation or energization not in accordance with TESE's instructions or in the absence of such instructions, in accordance with generally accepted practices for maintenance of such Products;

(f) Improper environmental conditions where the Products are used or installed; or

(g) Improper storage conditions; or

(h) Storage for more than twelve (12) months, or any other period of time as recommend in the Specifications, prior to being put into operation; or

- (i) Any consumables; or
  - (j) Following a direction or instruction from the Customer where TESE has recommended to the Customer against following such a direction or instruction.
- 7.5 TESE does not warrant, in any way, that the Product will meet any targets and/or performance determined by the Customer itself unless those targets and/or performance were expressly accepted in writing by TESE.
- 7.6 THESE WARRANTIES, CONDITIONS, EXCLUSIONS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES (EXCEPT WARRANTIES OF TITLE), INCLUDING BUT NOT LIMITED, TO IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. TESE MAKES NO WARRANTY THAT THE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT CUSTOMER'S USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR SECURE. EXCEPT AS MAY BE PROVIDED IN WRITING BY TESE, TESE SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER THAN AS STATED ABOVE WITH REGARD TO PRODUCTS SOLD BY TESE TO CUSTOMER, BY USING THE PRODUCTS, CUSTOMER UNDERSTANDS THESE LIMITATIONS AND AGREES THAT CUSTOMER USES THE PRODUCTS AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO CUSTOMER'S SYSTEMS OR ASSETS OR LOSSES THAT RESULT FROM SUCH USE.
- 7.7 Certain legislation may imply warranties or conditions or impose guarantees or obligations upon TESE which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. Any Agreement and these Terms and Conditions including this Article 7.10 must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which TESE is entitled to do so, TESE limits its liability in respect of any claim under the provisions to, at TESE's option:
- (i) The replacement of Products or the supply of equivalent Products;
  - (ii) The repair of the Products; or
  - (iii) The payment of the cost of replacing the Products or of acquiring equivalent Products; or
  - (iv) The payment of the cost of having the Products repaired.
- 7.8 Title to any replaced Product and/or the one or more replaced components of that Product will revert to TESE and the Products must be returned to TESE on request.
- 7.9 The warranty does not cover, in any circumstances whatsoever, any travel expenses, the costs incurred to identify the defective part on site or the disassembly and assembly costs for the Product in its own environment.
- 7.10 No repair or replacement of a Product changes thereto during the Warranty Period may cause the Warranty Period for that respective Product to be extended, with the exception of a defect of a Product corrected less than three (3) months before the expiry of the Warranty Period. In such case, the warranty covering the repaired, changed or replaced Product will be extended for up to three (3) months, as of the date of the delivery of the repaired, changed or replaced Product to the Customer.
- 7.11 **Customer's Obligations**  
 The claims for defects shall be subject to the Customer's compliance with its duty and obligation to inspect and to report defects as soon as the defective operation of the Product manifests itself. In order to make a valid claim under this warranty, the Customer must notify the defects it alleges to exist in the Products to TESE in writing as soon as the operating defaults appear and provide to TESE all supporting documents confirming their existence, without undue delay. The Customer shall give TESE such assistance as TESE requires to help TESE identify those defects for TESE to correct. Equally, the Customer must not carry out the repairs directly or through a third party, without TESE's express consent.
- 8. PRICE AND PAYMENT**
- 8.1 Unless otherwise quoted by TESE in its Quotation to the Customer, the Price and prices for Products, are those set out in the TESE's price list in force on the date when the Order is placed by the Customer.
- 8.2 TESE shall be entitled to revise the Price applicable to the Agreement as follows, by one (1) weeks' written notice to the Customer in the event of:
- (a) any fluctuation in the currency exchange rates applicable at the date of the Agreement, if applicable;
  - (b) any increases in the cost of raw materials, transport or labour;
  - (c) any changes in legislation or technical standards.
- The new or revised Price shall take effect upon expiration of the one (1) week notice period or, if a later date is specified in such notice, on that date so specified.
- 8.3 Unless specifically set out in the Agreement, TESE will invoice Products and Projects in accordance with agreed payment milestones set out in the Agreement that may include down-payment (if applicable). If no payment milestones are set out in the Agreement, invoicing will be as per payment milestones set out in the Quotation, and if nothing is stated in the Quotation, invoicing will be on delivery of Products/Projects.
- 8.4 Price is expressed in Euro or such other currency as the Parties may agree. If any expense, charge or other amount to be paid to TESE by Customer under this Agreement were incurred by TESE in a currency other than the currency agreed under the Agreement, the amount to be paid shall be calculated using the official foreign currency exchange rate published by the Country's central bank on the date of payment. Where the price of Products quoted is stated to be based in whole or in part on a conversion between two currencies, Customer shall indemnify TESE against any cost and expense, and loss incurred by TESE which results from any variation in the rates of foreign currency exchange between the date of the quotation of the Products and the date upon which payment becomes due to TESE.
- 8.5 Unless otherwise stated in the Quotation or agreed by TESE in writing, Customer must pay the amount shown on any invoice rendered by TESE, by bank transfer, within thirty (30) days from the date of issue of the invoice.
- 8.6 If for any reason the Customer pays late or defaults in its payment obligations, the Customer shall be liable to pay a late payment penalty at the interest rate of one percent (1%) per month, applied to the outstanding amounts, calculated from the date of payment default to the actual date of payment received by TESE. In addition, TESE reserves the right to claim additional compensation from the Customer, and the Customer shall be responsible and shall be liable to pay for any debt recovery/collection and any legal cost actually incurred by TESE.
- 8.7 If the Customer fails to pay any instalment on time, TESE reserves the right to suspend the performance of all its obligations under the Agreement without any liability whatsoever until the Customer has paid all outstanding amounts in full.
- 8.8 In the event of non-payment of an overdue invoice or a change in the Customer's financial and/or legal situation that could threaten the collection of its debt, all of TESE's debts to the Customer will become immediately payable, including those that are not overdue, regardless of the agreed method of payment and without the need for formal notice. Furthermore, TESE reserves the right in such cases to demand immediate payment before delivery of any new order.
- 8.9 Finally, if on the day the Order is placed the Customer's outstanding debt exceeds the credit limit granted to the Customer

by TESE's credit insurance, TESE reserves the right to reject the order or to demand immediate payment thereof upon receipt and without discount.

8.10 The above provisions apply, where applicable, without prejudice to any damages that TESE may be entitled to claim.

## 9. TAXES

9.1 Unless otherwise stated, all amounts referred to under or in connection with the Agreement are exclusive of any Indirect Tax or withholding tax. In relation to any GST, VAT or SST payable by the Customer for a taxable supply (under applicable law), the Customer shall pay such GST, VAT or SST so invoiced by TESE in accordance with the Country's applicable tax law.

9.2 In the event any withholding tax imposed by any local tax authority is or becomes applicable, the Customer shall not withhold any such withholding tax until the Customer has consulted with TESE, and TESE has agreed in writing with regard to the handling of such withholding tax. If the Customer withholds any amount corresponding to such withholding tax without TESE's consent and proceeds to only pay the remaining balance of the amount so invoiced, the Customer shall remain liable to pay to TESE that corresponding amount so withheld as a debt due to TESE immediately upon written demand.

## 10. CUSTOMER'S GENERAL OBLIGATIONS

10.1 Before the conclusion of the Agreement, the Customer shall provide TESE with such information and documentation as is required for TESE's delivery of Products, and/or the performance of Project set out in the Agreement. Accordingly, the Customer shall notify to TESE any and all special requirements for TESE's delivery of Products and/or the performance of the Project arising from the Site and keep TESE informed of any changes to those conditions. TESE may decline to deliver Products and/or perform the Project set out in the Agreement at any time and at the Customer's own expense and risk, if TESE considers and concludes that any of the conditions that the Customer needs to or is obligated to act on in order for TESE to effect the delivery of Products and/or performance of the Project has not been met or satisfied and, in particular but not limited to, if the said conditions affect the safety of TESE's personnel.

## 11. INTELLECTUAL PROPERTY

11.1 Each Party will retain all Intellectual Property Rights in their respective Background IP.

11.2 Subject to TESE's receipt of payment in full for the Products and Project, TESE will grant to Customer a royalty-free, non-exclusive, non-transferable, irrevocable and perpetual license to use TESE's Background IP necessary for Customer to enjoy the benefit of the Products and Project for the purposes of or in connection with Customer's business.

11.3 The Customer acknowledges that TESE retains ownership of TESE's Background IP. TESE acknowledges that the Customer retains ownership of the Intellectual Property Rights of any Customer Background IP. To enable each Party to perform their obligations under each Agreement and for the Customer to enjoy the benefit of the Products and Projects for the purpose of or in connection with its business, each Party grants to the other Party a non-exclusive, non-transferable, royalty-free, irrevocable and perpetual license to use its Intellectual Property Rights for that purpose.

11.4 All Foreground IP shall be owned by TESE, and as such, any Foreground IP that TESE develops during the course of the performance its obligations under the Agreement shall belong to and be owned by TESE, and as such all such Intellectual Property Rights in the Foreground IP shall be vested in TESE and at no time nor under any circumstances be transferred to the Customer.

11.5 In the event that any claim is made against the Customer for infringement of any person's Intellectual Property Rights arising of the Customer's use of Products supplied under the Agreement, TESE will, at its own expense, conduct any ensuing litigation and all negotiations for a settlement of the claim. TESE will bear the costs of any payment made in settlement, or as a result of an award in a judgment provided that:

- (a) The Customer promptly notifies TESE in writing of any such claim being made or action threatened or brought against the Customer;
- (b) The Customer grants TESE the right to assume sole authority to conduct the defense or settlement of such claim or any related negotiations;
- (c) The Customer provides TESE with all reasonable information, cooperation and assistance.

11.6 Notwithstanding any other provision of the Agreement, TESE will not be liable in any case whatsoever where the claim is based on or is related to:

- (a) Specifications that the Customer provided to TESE;
- (b) Where the Customer has combined Products with non-Products, data or business processes whether with or without TESE's knowledge or written consent;
- (c) Where the Customer has altered or modified the Products without TESE's written consent.

11.7 TESE is not required to supply the design and/or manufacturing drawings for its Products, in any circumstances whatsoever, even if the Products are delivered with installation drawings. All of those drawings are the exclusive property of TESE.

11.8 In case TESE's Background IP and Foreground IP or any part thereof, is held by any court proceedings to constitute infringement and/or its use is enjoined, TESE shall, at its own expense and option; replace same with substantially equal but non-infringing Product, or modify it so it becomes non-infringing, provided that no such replacement or modification shall in any way amend or relieve TESE of its warranties and guarantees set forth in this Agreement.

In the event TESE is unable to do either of the foregoing, the allegedly infringing item shall be returned to TESE and TESE's maximum liability shall be to refund to Customer the amount paid for such item, less a reasonable depreciation for use and damage.

11.9 The Parties' agree that this Article 11.9 states the Parties' entire liability and sole remedy with respect to infringement or claims thereof related to or in connection to Intellectual Property Rights under this Agreement.

## 12. CONFIDENTIALITY

12.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of three (3) years after termination or expiry of this Agreement, without prior written consent, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted as follows:

- (a) Each Party may disclose the other Party's Confidential Information to its employees, officers, representatives or advisors, and those of its Affiliates, on a strict need-to-know basis and for the purposes of carrying out the Party's obligations under this Agreement, to the express exclusion of any possible competitor of TESE. Each Party shall ensure that its employees, officers, representatives, or advisors to whom it discloses the other Party's Confidential Information comply with this condition;
- (b) As may be required by law, court order or any governmental or regulatory body.

12.2 No Party shall use any other Party's Confidential Information for any other purpose than to fulfil its obligation under this Agreement. None of the Parties may, in the absence of the prior written agreement of the other Party make use of all or part

of the Confidential Information disclosed by the other Party in accordance with the terms hereof, to manufacture and market (directly or indirectly) any products or to assist a third party to manufacture and market any products (unless this is the purpose of the Agreement).

- 12.3 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party; or to be implied from this Agreement
- 12.4 Except as expressly stated in the Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information.
- 12.5 Other than as expressly permitted under this Agreement, on termination or expiry of this Agreement for whatever reason, each Party shall cease to use any Confidential Information of the other Party save that either Party will be permitted to retain one copy for the purposes of and for so long as required by any law or by judicial or administrative process or its legitimate internal compliance issues.

### 13. LIMITATION OF LIABILITY

- 13.1 The Agreement and these Terms and Conditions set out TESE's entire liability and are in lieu of all other warranties whether statutory, express or implied, including but not limited to implied warranties of merchantability and fitness for purpose.
- 13.2 Notwithstanding any other term of the Quotation or Agreement, whether express or implied, TESE's total liability under the Agreement arising out of or in connection with the Agreement, Quotation or these Terms and Conditions, whether in contract, tort (including negligence of any kind), strict liability, indemnity or otherwise arising out of TESE's performance or non-performance of the Agreement, will not exceed in the aggregate the Price, exclusive of tax, actually paid to TESE pursuant to the Agreement giving rise to such liability. This limitation shall continue to apply notwithstanding any fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.
- 13.3 Notwithstanding any other term of the Agreement, Quotation or these Terms and Conditions, whether express or implied, to the maximum extent permitted by law, TESE, its Affiliates, or their officers, directors, employees or their subcontractors, shall not have any liability to the Customer (whether for breach of contract, tort (including but not limited to negligence or breach of statutory duty), misrepresentation, restitution or otherwise) including pursuant to any indemnities and/or conditions for any (a) loss of profits; (b) loss of bargain; (c) loss of contract opportunity or expectation; (d) loss of use; (e) loss of revenue; (f) loss of anticipated savings; (g) loss of tender and/or bid costs; (h) loss of re-tender and/or re-bid costs; (i) loss of or corruption of data or information; (j) loss of sales; (k) losses arising out of increased operating costs; (l) loss resulting from third party claims; (m) loss of reputation; (n) depletion of goodwill or similar losses; or (o) pure economic loss (in each case whether direct or indirect) or for any special, indirect, or consequential loss costs, damages, charges or expenses whatsoever and howsoever arising.

### 14. SUSPENSION AND TERMINATION

- 14.1 If the Customer fails to pay any sum or perform any of its obligations due under the Agreement by the agreed due date, TESE may by written notice, in addition to any other rights it may have, suspend and/or postpone supplying the Products and Projects without any liability whatsoever to the Customer for any, but not limited to, delay or damages incurred, until all overdue amounts are paid. The Customer will be liable to TESE for all costs and expenses, including but not limited to reasonable legal fees, handling, storage, insurance and labour costs, financial costs and the bank fees relating to the collection of overdue amounts and/or borne by TESE and its contractors and, all costs generated by the extended delivery time. If the performance of the Agreement is suspended for more than ninety (90) days for any reason whatsoever, TESE will be entitled to terminate the Agreement and receive all costs referred to above, without prejudice to any potential claim.
- 14.2 A Party may terminate the Agreement by providing immediate written notice to the other Party if any of the following events or circumstances occurs:
  - (a) The other Party goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration (or the equivalent under the laws of another jurisdiction); or
  - (b) A Party fails to remedy any breach of an essential obligation under the Agreement within thirty (30) days after receipt of written notice from the other Party of details of the breach.
- 14.3 If TESE suspends the Agreement under Article 14.1 or terminates the Agreement under Article 14.2, the Customer must pay TESE all monies due (including an allowance for profit) under the Agreement which may include but shall not be limited to:
  - (a) Payment for the Products provided to the date of the suspension or termination;
  - (b) Products, equipment or materials wholly or partially procured by TESE for the performance of the Agreement;
  - (c) Costs of demobilization from Site.

For the avoidance of doubt, in the event of termination pursuant to this clause 14.2, for Products specifically manufactured and/or customised by TESE in accordance with the Customer's Specifications or requirements and for which TESE would not be in a position to resell them easily to any other third party on the open market, the Customer shall be obliged to pay TESE the full Price of such Products, whether the latter are in the production phase or completed but not delivered..

### 15. DISPUTE RESOLUTION

- 15.1 The Parties shall attempt to resolve in good faith any disputes, disagreements or claims arising directly or indirectly from the interpretation, validity, performance or termination of the Agreement within thirty (30) days from the date of written notice sent by either Party to the other Party.
- 15.2 If the Parties cannot resolve the dispute themselves within thirty (30) days of the initial notice of the dispute given by either Party, each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the court within whose jurisdiction TESE's registered office is located and its appellate courts and waives any right to object to proceedings being brought in those courts for any reason, notwithstanding third-party notices or impleaders, multiple defendants and interim/summary proceedings.

### 16. GOVERNING LAW

- 16.1 The Agreement shall be governed by and construed in accordance with the laws of the Country, to the exclusion of its conflict in law provision and the 1980 Vienna Convention on the International Sale of Goods.

### 17. COMPLIANCE WITH PRIVACY LAWS

- 17.1 Each Party agrees to comply with its obligations under the Applicable Data Privacy Law in respect of Personal Data obtained by or disclosed to it pursuant to this Agreement.
- 17.2 Each Party must only collect, use and disclose Personal Data for the purpose of fulfilling its obligations under this Agreement

unless otherwise permitted under this Agreement. A Party must notify the other Party as soon as possible when it becomes aware of:

- (a) A complaint alleging an interference with privacy;
- (b) Any breach, or possible breach of this Article 17; or
- (c) In relation to any Personal Data collected and/or handled by any of the Parties in connection with this Agreement.

Client acknowledges that TESE belongs to a global group of companies with legal entities, business processes, management structures and technical systems that cross borders. as such, personal data may be collected and stored on servers located in other countries including the United States and in addition TESE may share information about Client within the organization and may need to disclose such personal data to other member entities of the group to which it belongs, in other countries in which that group of companies does business for the purposes or uses outlined in TESE group's privacy and data protection policy.

#### 18. ANTI-BRIBERY - CORRUPTION AND ETHICS

- 18.1 The Customer acknowledges that TESE is committed to eliminating all risk of bribery and corruption and influence peddling in its business activities. The Customer shall comply and take steps to ensure that its employees and representatives comply with Anti-Corruption Law of which the Customer acknowledges that it has full and complete knowledge. The Customer must immediately notify TESE of any suspected, or known, breaches of Anti-Corruption Law.
- 18.2 The Customer undertakes that none of the Customer's employees, beneficial owners, shareholders, or any other person who is involved in or will benefit from the performance of the Agreement or has an interest in the Customer is:
  - (a) A civil servant, public or governmental official;
  - (b) An official or employee of TESE or one of its Affiliates; or
  - (c) has been convicted of, or otherwise been subjected to any administrative sanction or penalty for, any offence involving fraud, bribery, corruption, influence peddling, money laundering, or any other criminal offence involving dishonesty as an element. Customer will immediately notify TESE if any such individuals are the subject of any investigation into any such offences.
- 18.3 The Customer undertakes that all information provided to TESE by the Customer relating to its ownership, activities, experience, compliance with laws and regulations is accurate, comprehensive, and not misleading.
- 18.4 In case TESE is subject to an investigation pursued by public authorities in relation with this agreement, the Customer shall cooperate with TESE to the best of its capacity and provide to TESE all information that is reasonably requested for the purpose of assessing TESE 's own potential liability under the applicable laws and regulations.
- 18.5 Should the Customer, its employees or any of its partners, including their employees, shall have any concern about ethics, compliance or TESE 's Code of Conduct and related policies, at TESE, it may raise alert through their point of contact or in accordance with the procedure described on the TESE website.

#### 19. EXPORT CONTROL COMPLIANCE

- 19.1 Neither Party shall comply with any foreign boycott laws or requirements, which are in violation of any law, rule, or regulation of Country.
- 19.2 Products and/or Projects provided by TESE under this Agreement contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Customer acknowledges and agrees that the supply, assignment and/or usage of the Products, information, other deliverables and/or the embedded technologies (hereinafter referred to as "**Deliverables**") under this Agreement shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations.
- 19.3 Unless applicable export license/s has been obtained from the relevant authority and TESE has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Customer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons.
- 19.4 If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit TESE from fulfilling any of its obligations under the Agreement, or would in TESE 's judgment otherwise expose TESE to a risk of liability under the applicable export control laws and/or regulations if it fulfilled of its obligations under the Agreement, TESE shall be excused from all obligations under the Agreement.
- 19.5 Each Party shall execute and deliver to the other any documents as may be required to effect or evidence compliance of the export control provisions set out in this Article 19.

#### 20. MISCELLANEOUS

- 20.1 *Independent Parties*  
Nothing contained or implied in the Agreement will create nor constitute the creation or establishment of a relationship of partnership, joint venture or agency between the Parties, and neither Party has any authority nor right to bind the other Party to any obligations.
- 20.2 *Force Majeure*
  - (a) Except for the Customer's payment obligations, a Party will not be liable to the other if performance of its obligations to the other Party is delayed, impeded or prevented by any act or event beyond the reasonable control of a Party, whether foreseen or not, which delays, interrupts or prevents such Party from performing its obligations under the Agreement or events occurring in or affecting TESE 's premises or business or those of its contractors and/or suppliers, which may disrupt the organisation or business activity of the Party ("**Force Majeure**").
  - (b) Force Majeure shall include without limitation, act of God, lock-outs, strikes, illness, epidemic, pandemic, war, insurrection, riot, civil commotion, act or threat of terrorism, embargos, lightning, earthquake, fire, flood, storm or extreme weather condition, theft, malicious damage, lockout, industrial dispute (whether affecting the workforce of a Party and/or any other person) breakdown or failure of plant or machinery or machinery accident, rejection of parts during the manufacturing process, interruption or delay in the transportation or procurement of raw materials, power or components, or any other event outside the control of TESE , its contractors and/or its suppliers or act of any government or governmental agency including laws regulation or ordinance and proclamation.
  - (c) All such Force Majeure conditions preventing performance shall entitle TESE to an extension of the date of delivery of the Products and/or Projects by a period of time equal to the period of delay incurred as a result of the Force Majeure

- or to any other period as the Parties may agree in writing.
- (d) If TESE is delayed in the supply of Products and Projects due to Force Majeure which continues for more than two (2) months, either Party may terminate the Agreement by written notice to the other Party.
- 20.3 **Assignment/Novation**  
Each Party undertakes not to assign, transfer to third parties or otherwise dispose of in any way whatsoever of the rights and obligations arising from the Agreement, without the prior written approval of the other Party (such approval not to be unreasonably withheld or delayed).  
Notwithstanding the foregoing, TESE nevertheless has the right to assign or transfer all or part of the Agreement to one of its Affiliates.
- 20.4 **Severability**  
If any provision of the Agreement, or the application thereof to any person, place or circumstance, will be held by a court or tribunal of competent jurisdiction to be invalid, unenforceable, or void, the remainder of the Agreement and such provisions as applied to other persons, places or circumstances will remain in full force and effect.
- 20.5 **Entire Agreement**  
This Agreement (including the Terms and Conditions, the Quotation and the Orders) constitutes the entire agreement and mutual undertaking between the Parties. The Agreement cancels and replaces any other agreement, proposal, offer, guarantee or liability, whether written or oral, previously agreed between the Parties within the scope of the Agreement, with the exception of those specifically mentioned in this Agreement. Any alteration or modification to this Agreement will only become effective once an amendment has been signed by the representatives of both Parties..
- 20.6 **No Third Party Rights**  
The Quotation or Agreement only generate rights and obligations between the Customer and TESE to the exclusion of any other third party, including Affiliated Companies.
- 20.7 **Cumulative Remedies**  
TESE 's rights and remedies set out in these Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 20.8 **Press Release**  
Neither Party shall issue any press release concerning TESE 's work without the other Party's consent. Notwithstanding the foregoing, TESE may identify Customer as a client of TESE, use Customer's name and logo and release and announcement regarding the award of the Agreement. TESE may generally describe the nature of the supplies in TESE promotional materials, presentations, case studies, qualification statements and proposals to current and prospective clients.
- 20.9 **Waiver**  
A delay in exercising or failure to exercise a right or remedy under or in connection with the Agreement will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial, exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the Party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 20.10 **Language**  
The English version of this Agreement takes precedence over any other version translated into another language.

## ADDENDUM FOR THE SUPPLY OF PROJECTS

In relation to Projects, the Terms and Conditions set out above are amended or supplemented as follows:

### 21. AGREEMENT ON SPECIFICATIONS AND PROVISION OF INFORMATION

- 21.1 If the Project involves preparing and reaching mutual agreement of Specifications with the Customer, TESE will work together with the Customer to prepare the necessary Specifications in accordance with the Timetable, or if there is no Timetable, within thirty (30) days of the Agreement's entry into force or such other time as is agreed between the Parties. The Customer will review and either provide amendments or approve the Specifications within five (5) working days of receipt of the Specifications. In the absence of any written comments within five (5) working days, the Customer will be deemed to have approved the Specifications. Any changes to the approved Specifications will be considered a Variation in accordance with Article 23.
- 21.2 It is the Customer's responsibility to provide TESE with any and all data required to determine the features of the Project, in particular, but not limited to, the functionalities required for the Project, installation and environmental conditions.
- 21.3 The Customer agrees to respond to any requests for further information or instructions from TESE within five (5) working days after the receipt of such request for further information or instructions by the Customer. If the Customer does not respond within that period (or such other period identified by TESE), TESE will have the right to claim an extension of time relating to the Customer's failure to provide TESE with the necessary information.

### 22. DELAY AND EXTENSION OF TIME

- 22.1 Unless there is a Timetable specified in an Agreement, TESE will, if so requested by the Customer, submit a Timetable to the Customer for approval prior to commencing the supply of the Project Deliverables.
- 22.2 Any Timetable submitted by TESE pursuant to Article 22.1 as requiring the Customer's approval will be approved or commented on in writing by the Customer within five (5) working days after the receipt of such Timetable by the Customer. If the Customer does not respond within that period (or such other period agreed with TESE, it will be deemed to have approved the Timetable.
- 22.3 TESE will, at all times, take all reasonable steps to ensure that the Project Deliverables are supplied in accordance with the Timetable. If the supply of the Project Deliverables will be delayed by an act or omission of the Customer or by an event beyond TESE 's reasonable control, and the delay was not contributed to by TESE, TESE will promptly submit a claim to the Customer for an extension of time to the Timetable setting out the details of the cause of the delay, the activities affected and the extension of time needed. The Customer will, acting reasonably, consider TESE 's claim and grant the extension of time requested or such other mutually acceptable period of time as an extension to the Timetable (which shall not be unreasonably withheld or denied).
- 22.4 Any changes to the approved Timetable including those pursuant to Article 22.3 will be considered a Variation in accordance with Article 23.

### 23. VARIATIONS



- 23.1 If the Customer wishes to alter, amend, omit, add or otherwise vary an Agreement or Timetable including suspend the delivery, it will issue TESE with a written Variation request ("Variation"). TESE will review the Variation request and provide a quote to the Customer setting out the cost of the Variation and the impact on the Timetable.
- 23.2 As soon as practicable after receipt of the quote from TESE, the Customer will either accept the quote by signing and returning it to TESE or reject the quote in writing. If the Customer and TESE are unable to agree upon the amount of the difference in cost or impact on the Timetable the provisions of Article 23.3 shall apply.
- 23.3 If the Parties can agree upon the Variation to the Timetable and the only outstanding item is pricing, the Customer may direct TESE to proceed with the Variation request in accordance with TESE 's standard schedule of rates. Unless TESE reaches agreement with the Customer under Article 23.2 or it receives a direction under this Article 23.3, TESE will not be required and is not obligated to proceed with the Variation request.

#### **24. TESTING AND ACCEPTANCE**

- 24.1 For all Project Deliverables, the following provisions will apply:
- (a) TESE will notify the Customer in writing when the Project Deliverables are ready to be submitted for Acceptance Tests and within ten (10) days after receiving such notice, the Customer, or TESE if applicable, will conduct Acceptance Tests on the Project Deliverables and advise the other in writing of whether the Project Deliverables have passed the Acceptance Tests or the Project Deliverables have failed the Acceptance Tests.
  - (b) If the Project Deliverables fail to pass the Acceptance Tests, the Customer must notify TESE in writing setting out details of the known defects in the Project and permit TESE , within a reasonable period of time taking into account the nature of the defects and the likely time it will take to remedy the defects, which period shall not be less than ten (10) working days, to correct the defects and resubmit the Project to the Customer to conduct Acceptance Tests again.
  - (c) If the Customer's representative is unable to attend Acceptance Tests at TESE 's site notwithstanding reasonable notice, the Customer will be deemed to have waived its right to attend and the conclusions of the Acceptance Tests will be deemed to have been produced by both Parties and to be enforceable against the Customer.
  - (d) The Project Deliverables will be deemed accepted upon the occurrence of the earlier of:
    - (i) the date that the Customer gives written notice to TESE that the Project Deliverables have passed the Acceptance Tests; or
    - (ii) (ii) the date that is fourteen (14) days after completion of the Acceptance Tests, provided that during the fourteen (14) day period after completion of the Acceptance Tests the Customer did not notify TESE in writing of any defects in the Project Deliverables; or
    - (iii) (iii) the date the Customer makes commercial or operational use of the Project Deliverables other than for the purposes of conducting the Acceptance Tests.

#### **25. CONTRACTUAL WARRANTY FOR PROJECTS**

- 25.1 Provided a separate Project Deliverable warranty is indicated in the Agreement, then all Project Deliverables provided pursuant to the Addendum for the Supply of Project shall perform in accordance with the Specification agreed with the Customer for the Warranty Period defined in the Agreement.  
For the avoidance of doubt where there is no reference to an additional warranty period for Project Deliverables in the Agreement then no specific Project Deliverable warranty shall apply, and the terms of Article 7 herein shall be applicable to the Project Deliverable.

END OF THE DOCUMENT