



# **GEA Middle East Standard Terms of Sale**

**for Spare Parts and Services  
(Domestic and Export Business)**

## Definitions

Term	Meaning
<b>Contract</b>	the contract formed between Purchaser and Seller for the supply by Seller of the Scope of Supply.
<b>Contract Price</b>	the contract price set out in the Seller's Offer or, in case of binding contract, in the Contract.
<b>Costs</b>	all costs and expenses incurred or to be incurred by Seller, including overhead, insurance, financing costs and similar charges and a reasonable profit; when calculating Costs, the costs of the Seller's personnel shall be based on Seller's periodic rates as set forth in Seller's Offer or, if not contained therein, according to its rates prevailing when the work is performed.
<b>Day</b>	a calendar day.
<b>Defect</b>	a defect, including omission, at the time of delivery in the workmanship or materials of the Seller's equipment or a failure to prepare documentation or provide Site Services according to commercially reasonable skill and care.
<b>Export Control Event</b>	a situation where the Export Control Regulations may require an Export License or may cause additional costs, delay, prohibit Seller's performance and/or render the Contract not reasonable to perform.
<b>Export Control Regulations</b>	all applicable national and international laws, regulations, orders, embargoes, administrative practices or resolutions that may prohibit or restrict the trade of the Goods including, but not limited to, those specified in Annex A.
<b>Export License</b>	license or an equivalent formal approval by the competent authorities for the supply of the Goods under this Contract which is required to be obtained by Seller under the Export Control Regulations.
<b>Force Majeure</b>	acts of war or terrorism, riots, civil commotion, embargoes, export/import permit delays or refusals, epidemics, strikes, fires, delays in transport or customs clearance, any failure by Seller or its subSellers to obtain any work permit or visa through no fault of their own, earthquakes, floods, hurricanes, typhoons, storms, other acts of God or government or any other circumstances beyond the control of a party.
<b>including</b>	including without limitation.
<b>Incoterm</b>	the series of pre-defined commercial terms published under the name Incoterm® by the International Chamber of Commerce (Paris) as in force at the date of the Seller's Offer. Any term or expression which is defined in or given a particular meaning by the provisions of an applicable Incoterm shall have the same meaning in these Terms, but if there is any conflict between the provisions of the Incoterm and these Terms, the latter shall prevail.
<b>Purchaser</b>	Seller's customer in connection with the Contract.
<b>Purchaser Scope</b>	all works (including civil works, equipment, documentation and services) relevant to the Scope of Supply which are not expressly included in Seller's Scope of Supply, including any works specified in these Terms or Seller's Quotation as being the responsibility of Purchaser (including third parties for whom Purchaser is responsible).
<b>Schedule</b>	the time schedule for the Scope of Supply as set out in the Seller Offer or, in case of binding contract, in the Contract, as such schedule may be modified according to Clause 5.5 of these Terms.
<b>Scope of Supply</b>	the equipment, documentation and services (including Site Services, if any) expressly listed as the Seller's responsibility in the Seller's Offer or, in case of binding contract, the Contract.
<b>Seller</b>	GEA Middle East FZE, with its registered office at Jebel Ali Free Zone, gate 4, LB 15, office 601, P.O. Box 262952, Dubai, United Arab Emirates (UAE)/ registration no. 116282, VAT-No: 100356132900003..
<b>Seller's Offer</b>	Seller's quotation or offer for the Scope of Supply.
<b>Site</b>	the place at which the Scope of Supply is to be performed.
<b>Site Services</b>	the services (if any) provided by the Seller at the Site, including to the extent applicable erection, commissioning and acceptance testing of the Scope of Supply or the supervision thereof, as expressly listed as the Seller's responsibility in Seller's Offer or, in case of binding contract, the Contract.
<b>Terms</b>	these Terms of Spare Parts and/or Site Services.
<b>Warranty Conditions</b>	has the meaning set out in Clause 7.1.4.
<b>Warranty Period</b>	Unless stated otherwise in Seller's Offer or, as the case may be, in the Contract a fixed and non-extendable period of six (06) months from delivery of the relevant equipment or performance of the relevant service.

## General Provisions

These Terms shall apply to and form an integral part of any Seller's Offer and any Contract.

Any provision of the Purchaser's purchase order, offer, acceptance or other document or requirement of Purchaser which forms a part of the Contract and is in conflict or inconsistent with these Terms or which imposes on Seller liabilities that are additional to or different from those set forth in the Terms shall not apply to the Contract and is of no force or effect. Purchaser's terms of purchase and/or service, if any, shall not apply to the Contract and are of no force or effect. These Terms shall prevail over any inconsistent or conflicting provision of the Contract (including Seller's Offer), except only where (i) the Seller has by way of its Seller's Offer or a duly signed document expressly amended a provision of these Terms and has referenced the specific provision of these Terms being amended or (ii) these Terms expressly provide for an option to deviate from the respective provision in Seller's Offer or, as the case may be, in the Contract.

### 1. Scope of Supply:

- 1.1 Seller's works shall be limited to the Scope of Supply. The Purchaser shall be responsible for the Purchaser Scope.

### 2. Site Services:

- 2.1 If Site Services are included in the Scope of Supply, Purchaser shall ensure that Seller has safe and appropriate access to the Site at all times required by Seller. Any failure by Purchaser to perform this obligation and any failure as regards readiness of the civil works or equipment outside the Scope of Supply at the Site will entitle Seller to suspend its Site Services upon written notification thereof, stating which civil or other works are delaying, disrupting, hindering or obstructing Seller's works.
- 2.2 Under no circumstances will Seller be responsible for the acts and/or omissions of any other Seller or person provided or made available by Purchaser or for any works or equipment supplied by them, either by way of a deemed employer or otherwise, or for their payment, welfare, provision of safety equipment or safe means of working, or for their work, productivity or workmanship. Purchaser shall be solely responsible for any failure of such persons or Sellers to strictly comply with the instructions and requirements of Seller. Purchaser shall indemnify, defend and hold Seller harmless from any resulting claims and liability for loss or damage to any property or for personal injury or death in any way arising out of the acts or omissions of any such persons and Sellers, save in each case to the extent directly caused by the negligence of Seller.

### 3. Payment:

- 3.1 Unless otherwise expressly stated in the Seller's Offer or Contract, payment of the Contract Price by the Purchaser shall be as follows:  
 (i) Fifty (50) % of the total Contract Price shall be payable upon effectiveness of a Contract, due to be paid within 14 days after receipt of Seller's invoice  
 (ii) Fifty (50) % of the total Contract Price shall be payable immediately upon presentation of the ready for shipment notice and respective invoice .  
 All payments are to be made by electronic transfer, net cash without any deduction, in Euro unless a different currency is stated in the Seller's Offer and within 14 days of the date of Seller's applicable invoice.
- 3.2 Purchaser shall have no right of set-off or right to make any form of withholding or retention against any payment of the Contract Price. The Seller shall have no obligation to commence any Scope of Supply until the first instalment of the Contract Price has been received by the Seller.
- 3.3 If any payment and/or the operative Letter of Credit, if applicable, is not received by the applicable date for payment, Seller may suspend all or part of its performance under the Contract until the payment and any due interest is received in full and/or the Letter of Credit has become operative, if any. If any payment has still not been received in full by Seller 21 days after the applicable due date, then, irrespective of whether or not Seller has commenced any portion of the Scope of Supply and/or suspended its works, Seller shall be entitled by written notice with immediate effect to terminate the Contract.
- 3.4 Should Seller learn about circumstances – having occurred after submission of the Seller's Offer / signing of the Contract, or existing previously but without Seller's knowledge – which may jeopardize Seller's payment titles, including but not limited to, a material adverse change of Purchaser's financial situation – then Seller may request Purchaser to provide sufficient securities or to insist on partial or full upfront payments. Alternatively, in such cases, and in addition to Clause 3.3., Seller may insist to consider the entire Contract Price (and any other sum that may be at stake) as immediately due and to insist on full payment within an appropriate delay, together with an announcement, at Seller's sole discretion, of contract withdrawal and/or damage claims, or, again at Seller's sole discretion, to request Purchaser to immediately pay a conventional fine of ten per cent (10 %) of the entire Contract Price, irrespective of Purchaser's negligence

### 4. Taxes:

- 4.1 The Contract Price and any other amounts to be paid to Seller are exclusive of, and Purchaser shall be responsible for, all duties, taxes (including value added, sales, use, business, excise or withholding taxes), assessments or charges of any kind, except to the extent any taxes or other charges that are assessed on the profits of Seller or which under the applicable Incoterm relating to delivery of the Scope of Supply are payable by the Seller. If any duties, taxes, assessments or charges are imposed on Seller by authorities in the country where the Scope of Supply will be installed in connection with any Site Services and/or in connection with the Contract itself, Purchaser shall reimburse Seller all such amounts. Where the Purchaser is obliged by applicable law to make a deduction from any payment due to the Seller in relation to any such duties, taxes, assessments or charges, the Purchaser shall increase the payment to be made such that the net payment received by the Seller is without any such deduction.

### 5. Delivery / Risk of Loss / Delays:

- 5.1 Seller shall deliver the Scope of Supply according to the applicable Incoterms by the date specified in the Schedule. If no Incoterm is stipulated, delivery shall be Ex Works manufacturer plant as specified by Seller. If no manufacturer plant is specified, then delivery shall be Ex Works Seller's premises. In case the respective stipulated Incoterm obliges Seller to perform any import formalities for the import into the country of delivery, Purchaser at its cost is obliged to support Seller in any way reasonably required by Seller. Any delay (other than a delay by Seller) in completion of import formalities shall be an event entitling the Seller to an extension of time and compensation of Costs.
- 5.2 Transfer of risk of loss and damage to the Scope of Supply shall be in accordance with the stipulated Incoterm applicable at the date of Seller's Offer. The inclusion of any Site Services within the Seller's Scope of Supply shall not alter this transfer of risk of loss and damage and shall not create any assumption by Seller of any form of care, custody and control over any Purchaser Scope and/or the Site.
- 5.3 Statements of packing, measurements and gross weight are an approximate guide and not binding on Seller.
- 5.4 Upon delivery or the provision of any Scope of Supply, Purchaser will inspect the relevant Scope of Supply and promptly (but in no event more than seven (7) days) inform Seller in writing of any Defect under Clause 7.1.1. Seller will thereupon remedy any such Defect.
- 5.5 In case of (i) any suspension; (ii) exceptionally adverse climatic conditions; (iii) unforeseeable shortages in the availability of personnel or goods attributable in whole or in part to Force Majeure; (iv) any delay, disruption, impediment or prevention of Seller or any breach of contract caused by or attributable in whole or in part to Purchaser (including third parties for whom it is responsible), or (v) any other event or circumstance for which these Terms or the Contract gives Seller an entitlement under this Clause, Seller shall be entitled to payment by Purchaser of its additional Costs and to an extension of time for any delay incurred. Seller shall give written notice to Purchaser of any event giving it an entitlement under this Clause within a reasonable time after becoming aware of the event.
- 5.6 If Seller is more than two (2) weeks late in delivering the Scope of Supply according to the applicable Incoterms for reasons attributable to the fault of Seller (and not for any reasons attributable in whole or in part to Purchaser), Purchaser shall be entitled to terminate this Contract and Seller has to reimburse any down payment received by Purchaser, if any. Any and all other claims for delay or late performance, including any delay in meeting any intermediate or other dates or milestones, shall be excluded.
- 5.7 Each party shall be released from the performance of its obligations under the Contract to the extent such performance is delayed, disrupted, hindered or obstructed by Force Majeure. A party shall give written notice of the occurrence of any Force Majeure within fourteen (14) days of becoming aware of its occurrence.

### 6. Ownership:

6.1 Title in the Scope of Supply will transfer to Purchaser when Seller has received payment of the Contract Price in full.

## **7. Warranties:**

7.1 Warranties regarding Scope of Supply

7.1.1 Subject to the provisions of this Clause 7.1 and Clause 7.2, the Seller warrants that the Scope of Supply shall be free of Defects. This warranty shall expire on the last day of the Warranty Period.

7.1.2 Seller shall be responsible for remedying any Defect under Clause 7.1.1 provided that Purchaser promptly gives detailed written notice to Seller of the Defect and in any event before the end of the Warranty Period. To the maximum extent permitted by applicable law, the Seller shall have no liability for any form of Defect under Clause 7.1.1, latent or otherwise, for which it received written notification after the Warranty Period.

7.1.3 Where Seller is responsible for a Defect under Clause 7.1.1, Seller shall investigate and rectify the same as soon as reasonably practicable (taking into consideration the nature of the Defect, lead-time for replacement parts, etc.). Rectification of a Defect under Clause 7.1.1 relating to equipment and materials included in the Scope of Supply shall be by way of repair or replacement, at the Seller's option, of the relevant part of the equipment or materials that is defective. Rectification of a Defect under Clause 7.1.1 relating to Site Services and documentation included in the Scope of Supply shall be by way of re-performance by Seller of the relevant part of the Site Service or documentation that is defective. Such rectification may include remediation implemented via a remote access solution (e.g., via an IoT edge device or IoT gateway). Seller at its sole discretion shall be entitled to conduct at least three attempts of remedial actions Purchaser shall in each case give Seller all necessary and safe access to and possession of the Site. Purchaser also grants Seller the right to use any remote access capability installed by or for Seller in relation to the Scope of Supply or installed equipment at the Site for investigating and rectifying Defects. Any replacement parts shall be delivered according to the same delivery (Incoterms) terms as specified in the Contract. Purchaser shall be responsible for all labour, equipment, costs used or incurred in the disassembly, removal, transport, installation and commissioning of repaired or replaced defective parts. Seller shall not be deemed to have breached any of its warranty obligations where it has rectified a Defect according to the foregoing. Should Purchaser disable or otherwise restrict, hinder or prevent Seller from remotely accessing the Scope of Supply or related installed equipment at the Site, Seller's ability to perform its warranty obligations may be impaired or delayed; any investigation or resolution of Defects by Seller may be incomplete or inaccurate; Seller may incur additional costs in connection with the investigation and/or the rectification of a Defect (including the incurrence of travel costs), which Seller will be entitled to recover from Purchaser; Seller's warranty obligations will be void insofar as Seller's ability to discharge such obligations are materially impaired.

7.1.4 Seller's responsibility for any Defect under Clause 7.1.1 is subject to the condition that it is not caused by one or more of the following: (a) normal wear and tear of parts; (b) use of non-original spare parts; (c) use of feed, consumables or utilities not in strict conformity with the specifications stated in the Contract or in Seller's written manuals; (d) any failure of upstream and/or downstream equipment; (e) modifications without Seller's express prior written consent; (f) use of corrosive or abrasive substances; (g) the storage and handling of any Seller equipment and/or the maintenance or operation of the Scope of Supply by or for Purchaser which is not in strict conformity with good engineering practice, the Contract or any written requirements of the Seller, including any failure to comply with Seller's written manuals or instructions and Purchaser's own quality assurance requirements; (h) information, services, personnel, equipment or other items supplied by or for Purchaser; (i) failure to permit Seller to perform supervision of installation and/or installation; and/or (j) other conditions or circumstances not due to the fault of Seller (collectively, "Warranty Conditions").

7.2 Disclaimer and Limitations

To the fullest extent permitted by applicable law, (i) Seller hereby excludes and disclaims all conditions, warranties, guarantees and representations that are not expressly set out in Clauses 7.1 above or which are implied, statutory, customary or otherwise and which, but for this exclusion and disclaimer, would or might subsist in favour of Purchaser, including any warranties as to fitness for purpose or merchantability; (ii) Purchaser's remedies as set forth in Clause 7.1.3 above shall be the Purchaser's sole and exclusive remedies in respect of any defect in the Scope of Supply, including any Defect covered by Clause 7.1; and (iii) Seller shall not be liable for any loss or damage, including any loss or damages described in Clause 9.2 below, caused by or resulting from any breach of warranty or any defect, including any Defect covered by Clause 7.1, (iv) Seller shall not be liable for Seller's subSellers, other auxiliaries' or any third persons' actions or omissions; and (v) Seller shall not be liable for information and advice unless explicitly stated in the Contract.

7.2.1 Purchaser declares and understands that it is fully aware of the disclaimers and limitations under these Terms and all limitations set forth or referenced in Contract, and will endeavour to seek out sufficient insurance coverage against any damages Purchaser may face.

## **8. Confidentiality and IP; Software; Technical Data and Smart Equipment:**

8.1 Purchaser shall treat all information, drawings and data of any kind made available or provided by Seller under the Contract whether orally, electronically, in writing, visually (such as through site visits, tests or audits) or otherwise and regardless of whether marked "confidential" ("Confidential Information") as private and confidential. Purchaser shall not publish or disclose Confidential Information or any particulars thereof (except as may be necessary for the purposes of the Contract, including disclosure to its and its affiliates' officers, directors and employees, and/or as required by a recognized stock exchange or by applicable law), without the previous written consent of Seller. Nothing in this Clause 8 shall prevent the publication or disclosure of any Confidential Information which either has come within the public domain otherwise than by breach of this provision or was already in the possession of Purchaser with a right to disclose and use such information.

8.2 The intellectual property rights in any equipment, document or other information given or made available (by visual inspection or otherwise) to Purchaser under the Contract or applied to and embodied in the Scope of Supply and the Site Services shall remain the exclusive property of Seller (or its subSellers).

8.3 To the extent the Scope of Supply includes the furnishing of engineering deliverables such as, but not limited to, engineering studies, process studies, detailed price proposals, preliminary drawings, preliminary bills of materials, process and instrumentation diagrams, or specifications not concurrent with a contract for the sale of tangible goods ("Engineering Deliverables"), such Engineering Deliverables are licensed to Purchaser by Seller on a fully-paid up basis only for the purpose of Purchaser utilizing such Engineering Deliverables to procure equipment from Seller and no other supplier. Purchaser is not authorized to use or disclose the Engineering Deliverables in connection with the purchase of equipment from any other supplier and Purchaser will indemnify and hold Seller harmless from any claims, damages, losses and costs (including reasonable attorney's fees) that result from the use of any Engineering Deliverables in conflict with this provision.

8.4 This clause applies insofar as any software, programming, control system or automation of any kind (collectively "Software") are included in the Seller's Scope of Supply. Software also includes all enhancements, upgrades and related documentation that Seller may make available in its sole discretion. Upon receipt of the full Contract Price and subject to Purchaser's compliance with its obligations under this clause, Seller grants Purchaser a non-exclusive and (except as stated expressly below) a non-transferable license to use the Software solely for operating the Goods for the purposes and within the requirements stated in Seller's Offer. Except as stated below, Seller warrants for a period of one year after the date (whichever is earlier) the Software is shipped or otherwise first made available to Purchaser ("Software Warranty Period") that the Software, when properly installed and used in conformity with the Contract, will function substantially in accordance with the software specifications (if any) stated in Seller's Offer. Seller does not warrant that the Software meets Purchaser's or any third parties' data protection or IT security requirements. If Purchaser discovers a nonconformity with the warranty and provides Seller promptly with a detailed written notice of the nonconformity within the Software Warranty Period (including a description of the nonconformity and complete information about its discovery), Seller will use commercially reasonable efforts to substantially correct the nonconformity by, at its option, one of the following: (i) providing a suitable fix, patch or workaround which may include a future revision of the Software; (ii) making available to Purchaser instructions for modifying the Software or indicating a reasonable way for avoiding the effect of the nonconformity; or (iii) making available at Seller's facility corrected or replacement Software. Seller will have no obligation under the warranty stated in this clause in case of improper installation of the Software or any modification or configuration of the Software not authorized in writing by Seller, nor shall it have any responsibility for any non-conformities arising from Purchaser supplied software or interfacing; in each such case, Purchaser shall defend and hold Seller harmless for any resulting loss, injury or damage. In respect of any Software that is acquired by Seller from third parties, Seller's obligation will be limited to transferring to Purchaser any warranty rights obtained by Seller in respect of that Software and the non-conformity. Except as may be stated expressly in this clause, the Software is licensed as is. Seller has no obligation to provide any maintenance, enhancements or upgrades. As between the Parties, Seller retains all copyright, trademarks, patents and other intellectual property rights in the Software and all information other than Purchaser generated information that

may be used or transmitted via or processed by the Software. The Software may not be sold or otherwise transferred or given to any third party without the prior written consent of Seller and prior written agreement between Seller and the third party, except that the Software (and the license granted herein) may be transferred to persons who have acquired the Goods without obtaining Seller's prior consent. Purchaser shall not reverse engineer, modify or decompile the Software or in any other manner attempt to locate or identify the source code. To the extent that the Software contains open source software ("OS-Software"), the following applies: notwithstanding anything to the contrary in this Clause, Seller makes the OS-Software available to Purchaser on the basis of the applicable OS-Software license terms, which terms will govern Purchaser's use of the OS-Software exclusively (including, for the avoidance of doubt, with respect to warranty and liability). To the extent permitted by law, Purchaser's rights and remedies in respect of the Software are stated exclusively above.

- 8.5 Seller annually publicly discloses its audited greenhouse gas emissions according to the Corporate Value Chain (Scope 3) Accounting and Reporting Standard ("GHG protocol"). In order to increase the accuracy of its reporting on the use phase of its sold products (Scope 3.11 greenhouse gas emissions), Seller is interested in its customers' specific energy grid mix. Thus, Purchaser shall disclose towards Seller the specific energy grid mix, i.e. the share of renewable energy used to power the specific sold product, to the extent such information is collected and tracked. Purchaser shall provide the required information and shall agree, that Seller may utilize this information in an aggregated form for its annual sustainability reporting and auditing. Apart from that, this information will be kept confidential.
- 8.6 Where Seller's Scope of Supply includes a Connected Product or a Related Service, GEA Group Companies each have a perpetual, world-wide, irrevocable, non-exclusive, transferable, sub-licensable and royalty-free right to generate, collect, process, analyse, store, aggregate, and otherwise use Technical Data transmitted to the GEA Cloud from the Connected Product or Related Service for one or more of the following purposes: providing the Scope of Supply; discharging Seller's warranty and other obligations under the Contract; troubleshooting, monitoring, improving the function of and further developing the Scope of Supply (including the Connected Product and/or Related Service) and the Installed Works; providing Purchaser with product support and information on the Scope of Supply and Installed Works; establishing benchmarks and optimization potentials and optimizing the Scope of Supply and Installed Works; developing, designing, engineering, manufacturing, supplying, automating, improving, updating, monitoring and/or servicing equipment, software, cloud-based solutions, processes and services; creating and modifying algorithms, statistical analyses and artificial intelligence solutions; optimizing project execution and similar capabilities; supporting the marketing and sales efforts; and generating and using for commercial purposes any Derived Data, including with the aim of making such Derived Data available to third parties; and other similar purposes. Seller shall exclusively have all rights, title and interest in and to all Derived Data, provided that Purchaser may use any Derived Data provided to it via a Connected Product or a Related Service for operating and maintaining the Scope of Supply and auxiliary equipment at the Site.
- 8.7 Purchaser will transmit to the GEA Cloud such Technical Data as is needed or appropriate for Seller to discharge its warranty and other obligations under this Contract. Further, upon a GEA Group Company's written request, Purchaser will undertake such measures as may be reasonably required to enable such company's secure access to the Scope of Supply, Installed Works and related Technical Data and to provide at its discretion updates to the installed automation, software and control systems. Purchaser will enable Seller to connect, or if agreed Purchaser will connect, the Scope of Supply (or a portion thereof) during its installation or (if requested by a GEA Group Company) at a later point of time and the Installed Works (if and when requested by a GEA Group Company) to Seller's cloud and/or IT environment or other similar solution. Purchaser will ensure that the internet or other connection to the IoT edge device or IoT gateway is fully accessible to Seller remotely and at Site and the connection meets such requirements (e.g., configuration, security, etc.) that may be issued by Seller from time to time or which are recommended or required by applicable regulations or standards. Nothing in these Terms obligates Seller to provide digital solutions; Purchaser acknowledges that Seller may offer from time to time digital solutions for the Scope of Supply and or Installed Works pursuant to supplemental terms. This clause does not result in any warranty or other similar obligation being given or undertaken by Seller in respect of any Technical Data or Derived Data. Seller may, in its discretion, delete any stored Technical Data at any time, provided such deletion will be in accordance with applicable laws. Except to the extent required by applicable law, nothing in these Terms requires Seller to provide any access to Technical Data or make such data available where doing so i) would result in disclosure of Seller's trade secrets; ii) could undermine the security or safety of the Scope of Supply; or iii) would result in the disclosure of data relating to the testing of new products, substances or processes that are not yet placed on the market.
- 8.8 As used in these Terms, "GEA Group Companies" means Seller and its affiliated companies; "Connected Product" means a physical product at the Site that via a component (e.g., an IoT edge device or IoT gateway), operating system or other means obtains, generates and/or collects Technical Data and communicates, or is intended by Purchaser and Seller to communicate such data to Seller's cloud and/or IT environment or other similar solution; "Installed Works" means the equipment, automation, software and control systems at the Site to which the Scope of Supply relates or is connected; "Related Service" means a digital service, including software or a cloud-based solution, that enables a GEA Group Company or a third party acting on its behalf to obtain, generate and/or collect Technical Data where the service is connected to the Scope of Supply or the Installed Works in such a way that its absence would prevent the Connected Product or Installed Works from performing one or more of its functions or which adds to, monitors, updates, optimizes, modifies or adapts the functions of the Scope of Supply or Installed Works; "Technical Data" means raw product data generated by the use of a Connected Product or Related Service, including relevant metadata that make the raw data usable, including without limitation data regarding the condition, operation, efficiency, productivity, availability, maintenance, status, malfunction and/or optimization of the Connected Product; "Derived Data" means i) all data or information that is derived by the GEA Group Companies (or third parties acting on their behalf) from Technical Data, including without limitation statistical or other analysis and data derived by means of algorithms or application of proprietary software; ii) all data or information that is derived by means of sensor fusion or other similar means or methods; and iii) all data where the Technical Data is aggregated together with other data (provided such aggregated data does not allow for identification of the Technical Data collected under this Contract or allow a third party to derive such data from an aggregated data set). Technical Data does not include any Derived Data.

## **9. Remedies and Limitations of Liability:**

### **9.1 Exclusive Remedies**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER'S RIGHTS AND REMEDIES AS EXPRESSLY STATED IN THE CONTRACT (WHETHER BY WAY OF DAMAGES, PAYMENT OR REIMBURSEMENT OF COSTS, LIQUIDATED DAMAGES, PRICE REDUCTION, MAKE GOOD OR REMEDIATION, TERMINATION OR OTHERWISE) SHALL BE ITS SOLE AND EXCLUSIVE RIGHTS AND REMEDIES REGARDLESS OF THE EVENTS, CIRCUMSTANCES OR THEORY ON WHICH A CLAIM MAY BE BASED (INCLUDING TERMINATION, BREACH OF CONTRACT OR STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, INDEMNITY, RESCISSION/WITHDRAWAL OR OTHERWISE).

### **9.2 Exclusion of Certain Damages**

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, EXCEPT ONLY:

- (a) TO THE EXTENT OF ANY LIQUIDATED DAMAGES PROVIDED FOR IN THE CONTRACT; AND
- (b) TO THE EXTENT THE EXCLUSION OF SELLER'S LIABILITY IS PROHIBITED BY APPLICABLE LAW (IN WHICH CIRCUMSTANCES SELLER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW),

SELLER SHALL, TO THE ULTIMATE LIMITS OF THE LAW, IN NO CASE WHATSOEVER BE LIABLE FOR ANY LOSS OF REVENUES OR PROFITS; LOSS OF OPPORTUNITY, PRODUCTION OR CONTRACTS; LOSS OF USE; STANDBY COSTS; LOSS OF OR DAMAGE TO FEED, RAW MATERIALS, UTILITIES OR PRODUCT; PLANT DOWNTIME OR DELAYS; LOSS OF GOODWILL; LIQUIDATED DAMAGES OR PENALTIES IMPOSED ON PURCHASER BY ITS CUSTOMERS OR THIRD PARTIES; PURCHASER'S CONTRACTUAL LIABILITY TOWARDS ANY THIRD PARTY; RECALL COSTS; LEGAL ACTIONS COSTS, ANY DAMAGES FINES OR PENALTIES PAYABLE BY PURCHASER; OR OTHERWISE FOR ANY FINANCIAL OR ECONOMIC LOSSES OR DAMAGES, AND IN EACH CASE IRRESPECTIVE WHETHER THE LOSSES OR DAMAGES IN QUESTION ARE DEEMED TO BE DIRECT, CONSEQUENTIAL, INDIRECT OR OTHERWISE, OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY, LOSSES OR DAMAGES HOWSOEVER CAUSED OR ARISING.

### **9.3 Maximum Aggregate Liability**

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, EXCEPT ONLY TO THE EXTENT THE EXCLUSION OR LIMITATION OF SELLER'S LIABILITY IS PROHIBITED BY APPLICABLE LAW (IN WHICH CIRCUMSTANCES SELLER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW), SELLER'S MAXIMUM AGGREGATE LIABILITY TO PURCHASER UNDER OR IN CONNECTION WITH THE CONTRACT SHALL IN NO CASE EXCEED IN THE AGGREGATE FIFTY (50) % OF THE CONTRACT PRICE AS RECEIVED BY THE SELLER, IRRESPECTIVE WHETHER SUCH LIABILITY ARISES BY WAY OF BREACH OF CONTRACT (INCLUDING TERMINATION) OR OF STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, INDEMNITY, CONTRACT PRICE REDUCTION OR REPAYMENT, TERMINATION, RESCISSION/WITHDRAWAL, MAKE GOOD OR REMEDIATION OR OTHERWISE.

- 9.4 The expiry of the Warranty Period shall, to the maximum extent permitted by applicable law and save only as set out in the last sentence below, constitute conclusive evidence for all purposes and in all proceedings whatsoever between the parties that Seller has completed its obligations under or arising out of the Contract and performed the Scope of Supply and made good all Defects therein in accordance with its obligations under the Contract. After the expiry of the Warranty Period, all claims of any nature whatsoever the Purchaser may have against Seller, whether known or not, under or arising out of the Contract and the use of the Scope of Supply, and any right, cause of action and or remedy shall be deemed to be barred and extinguished. Provided always that this provision shall not apply in case of fraud or to the extent any proceedings were commenced and served in writing on the Seller within the Warranty Period.

#### **10. Permits / Safety:**

- 10.1 Purchaser shall be responsible for (i) all permissions, consents and permits in connection with the Site, and with owning, erecting, testing, commissioning, operating and maintaining the Scope of Supply and any related equipment, plant, facilities or utilities, and for the performance of the Site Services (if applicable); (ii) maintaining the Site in a safe working condition and as a safe place of work for all personnel at the Site at any time, providing safe means of access to the Scope of Supply at all times, conducting all activities on the Site in a safe manner and as prescribed by applicable directives, laws, rules, regulations, codes and standards and as set forth in the operating and maintenance manuals and instruction sheets furnished by Seller; (iii) not removing or modifying any safety device, guard or warning sign provided as part of the Scope of Supply. If the Purchaser fails to strictly observe any of the obligations in this Clause, Purchaser shall indemnify, defend and hold Seller harmless from any resulting claims and liability arising out of loss or damage to any property or out of personal injury or death, save to the extent directly caused by the negligence of Seller.

#### **11. Export Control:**

- 11.1 Purchaser acknowledges that the Goods to be provided by Seller are or may be controlled by Export Control Regulations which may result in an Export Control Event. In case of an Export Control Event Seller shall be entitled to all additional costs and expenses which may be needed for Seller to fulfil its obligations under the Seller's Offer or, in case of binding contract, the Contract, including costs and expenses needed to obtain an Export License. Purchaser agrees to provide to Seller without undue delay all necessary information that may be requested to obtain an Export Licence, such as end-user certificates. Seller will inform Purchaser about material delay to obtain an Export License, a revoked license or any prohibition to execute the contract without undue delay.
- 11.2 If an Export License is denied or revoked or if an embargo prohibits the execution of the contract or if any other Export Control Event will hinder Seller to fulfil one or more of its contractual obligations Seller shall be excused from the performance of its obligations under the Seller's Offer or, in case of binding contract, the Contract, with immediate effect. This shall, without limitation, also apply in case that Seller may be hindered to fulfil its contractual obligations due to the fact that any of Seller's suppliers or subSellers are hindered by an Export Control Event to supply the Goods all or in part. In any case Seller shall not be liable or accountable to Purchaser for any claims for delay, loss or damage in connection with an Export Control Event.
- 11.3 Subject to Clause 11.2, if Seller gives notice to Purchaser that its performance of the Seller's Offer or, in case of binding contract, the Contract will be hindered by Export Control Regulations and/or Export License or embargos, each party shall be entitled to terminate the Seller's Offer or, in case of binding contract, the Contract, by giving one week prior written notice.
- 11.4 Purchaser shall implement and follow all necessary procedures to comply with Export Control Regulations related to the Goods to be provided by Seller, and guarantees not to engage in any activity which it or Seller reasonably believes could be subject to civil, criminal or administrative liability, including but not limited to the sale, lease, transfer, or sublicensing of any Goods without appropriate authorization. Purchaser shall indemnify and hold harmless Seller from and against any claim, proceeding action, fine, cost, loss and damage arising from or related to the breach of this warranty.

#### **12. Data Processing:**

- 12.1 Purchaser agrees that Seller will collect, process and use personal data and other data disclosed by Purchaser in the course of the business relation with Seller for the purpose of (1) managing and performing the Contract with Purchaser (which includes the creation and processing of invoices), (2) advertising and/or offering further goods and services to the Purchaser and/or (3) managing the business relationship with Purchaser through e. g. a customer relationship management system. Such data may include the following data categories of persons being employed or retained by Purchaser inter alia name, title, company, function within the company, business contact details (phone and fax number, e-mail address, mail address), history of orders, history of issues (e. g. warranty claims or disputes). Within the limitation of the above described purpose, Seller can collect, process and use the above described data (i) by itself and/or through the use of affiliates or other external subSellers and (ii) from countries within and/or outside the European Union or European Economic Area. Purchaser will ensure (e. g., if necessary, through consent declaration of the data subjects or other appropriate means available under the law) that Seller can use the above described data for the above described purposes.

#### **13. Miscellaneous:**

- 13.1 If any provision of the Contract is determined to be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions and the parties will substitute the invalid or unenforceable provision by a valid provision that achieves as closely as possible the same economic effect.
- 13.2 Any Clause or paragraph headings or other headings appearing in the Terms are for reference only and shall not affect the construction of those Clauses or paragraphs. Words importing the singular shall include the plural and vice versa where the context requires. The Contract shall not be construed or interpreted against or to the disadvantage of either Purchaser or Seller whether on the grounds that the Contract represents Purchaser's or Seller's standard or customary terms and conditions of business and/or that the Contract and or any particular recital, article, clause and or annex or appendix thereof may have originated from Purchaser or Seller or other similar grounds.
- 13.3 The Contract sets forth the entire agreement between Seller and Purchaser with respect to the subject matter thereof and supersedes any previous agreement or arrangement between the parties. Except to the extent expressly and specifically set forth in the Contract, all oral representations, warranties, undertakings and other statements of any kind and all documents given or exchanged on or prior to the date of Contract (including any brochures or sales material of Seller) are expressly excluded and disclaimed by Seller. Purchaser acknowledges that it has not relied on and is not relying on any such representations, warranties, undertakings, statements or documents when entering into the Contract.
- 13.4 The Contract may not be assigned in any manner by either party without the other party's prior written consent, but this shall not require Seller to obtain any consent, or otherwise limit its entitlement, to subcontract any part or parts of its obligations under the Contract as it may see fit.

#### **14. Disputes / Applicable Law:**

- 14.1 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the International Chamber of Commerce – ICC Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one or more. The seat, or legal place, of arbitration shall be in Dubai, UAE. The language to be used in the arbitration shall be English only. Notwithstanding any other provision in the contrary, regarding dispute resolution or jurisdiction, the Seller shall have the unilateral right, at its sole discretion, to initiate legal proceedings against the Purchaser in any court of competent jurisdiction at the Purchaser's principal place of business. This right is in addition to, and does not replace or negate, any other dispute resolution mechanisms or jurisdictional provisions set forth in this Agreement. The Purchaser hereby consents to the personal jurisdiction of such courts for the purposes of any such action initiated by the Seller. The governing laws of the contract shall be the substantive laws of Switzerland to the exclusion of its conflict of law principles.

## ANNEX A

### SPECIAL EXPORT CONTROL REGULATIONS

**Export control requirements applicable for recipients ("Purchaser") of any goods and/or services (including software, if any) provided by or received directly or indirectly from any company, legal entity or permanent establishment ("Seller") belonging to or being directly or indirectly controlled by GEA Group AG registered in Düsseldorf, Germany ("GEA"):**

Seller's ultimate parent company, GEA, is seated in Germany and therefore all group companies of GEA shall, to the widest extent permitted by the applicable laws, adhere to all Export Control Regulations in force in Germany including without limitation all Export Control Regulations enacted by the European Union including but not limited to Council Regulation (EU) Nos 833/2014 and 765/2006. It is therefore agreed that Purchaser shall, but only with respect to the Scope of Supply/Work to be provided by Seller and only to the extent permitted by the applicable law, comply with the Export Control Regulations in force in Germany regardless whether they are deemed applicable to Purchaser under international law.

Therefore, the following provisions shall be accepted by Purchaser and shall supersede and be substituted for all conflicting provisions agreed elsewhere:

1. If Purchaser acquires from Seller goods or technologies listed in Annexes XI, XX, XXXV or XL of Council Regulation (EU) No 833/2014, or any other Annexes that are or may become applicable to the Export Control Regulations specified above, Purchaser shall not sell, export or re-export, directly or indirectly, such goods to the Russian Federation or for use in the Russian Federation and if Purchaser acquires from Seller goods or technologies listed in Annexes XVI, XVII, XVIII or XXX of Council Regulation (EU) No 765/2006 or any other Annexes that are or may become applicable to the Export Control Regulations specified above, Purchaser shall not sell, export or re-export, directly or indirectly, such goods to Belarus or for use in Belarus;
2. Purchaser shall undertake its best efforts to ensure that the purpose of item 1 is not frustrated by any third parties further down the commercial chain, including by possible resellers;
3. Purchaser shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purposes of item 1;
4. Any violation of items 1, 2 or 3 shall constitute a material breach of an essential element of the Contract, and Seller shall be entitled to seek appropriate remedies, including, but not limited to termination of the Contract; and
5. Purchaser shall immediately inform Seller about any problems in applying items 1, 2 or 3 including any relevant activities by third parties that could frustrate the purpose of item 1. Purchaser shall make available to Seller information concerning compliance with the obligations under items 1, 2 and 3 within two weeks of the simple request of such information.

Any breach of the foregoing obligations shall constitute an Export Control Event.