



GEURTS HEAT EXCHANGERS

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GENERAL TERMS AND CONDITIONS FOR PURCHASE

Geurts Heatexchangers B.V.

Version 03/2021

1. DEFINITIONS

Unless the context otherwise indicates or requires, the following words and expressions shall have the meaning ascribed to them below:

BUYER shall mean Geurts Heatexchangers BV and where the context so admits, include the BUYER's workmen, employees, agents and/or representatives, successors and permitted assigns.

CONFIDENTIAL INFORMATION shall mean any knowledge, data or information disclosed at any time to SELLER by or on behalf of BUYER in writing or by electronic means, in drawings or in any other way and any inferences derived therefrom, whether or not in connection with the PURCHASE ORDER and whether of a scientific, commercial, technical, procedural nature, to the extent such knowledge, data or information is at the time of disclosure:

- (i) not part of public knowledge or literature;
- (ii) has not been disclosed to SELLER by any THIRD PARTY who was not under any restrictions of disclosure.

CONSEQUENTIAL LOSS shall include all indirect or consequential loss or damage, loss of use, loss of profits, loss of production, loss of revenue or business interruption.

GOODS shall mean any and all of the design, engineering, services, warranty related services, labour, assistance, articles, materials, equipment, spare parts, other supplies including but not limited to manuals, operating instructions, reports and drawings and all other documents to be supplied or performed by SELLER as described in (or to be inferred from) the PURCHASE ORDER.

PLANT shall mean the USER's Plant for which the GOODS set out in the PURCHASE ORDER are ultimately intended.

PURCHASE ORDER shall mean the written Purchase Order agreed between BUYER and SELLER together with any appendices or attachments thereto.

SELLER shall mean the person or company identified on the PURCHASE ORDER as the SELLER of the GOODS.

SUBSUPPLIER shall mean any person or company (other than BUYER) having a contract with SELLER for the manufacture and/or supply of the GOODS or a part of the GOODS.

SUPPLEMENT shall mean any written change to the PURCHASE ORDER signed by BUYER.

THIRD PARTY shall mean any party other than BUYER or SELLER.

USER shall mean the ultimate USER of the GOODS.

2. GENERAL

- 2.1 These terms are binding and supersede and replace any SELLER's selling terms and are an integral part of the PURCHASE ORDER and SUPPLEMENT to the PURCHASE ORDER. All terms and conditions in, or attached to SELLER's quotation are hereby expressly declared null and void unless specifically included and spelled out in the PURCHASE ORDER. No other agreement or understanding purporting to modify or change terms, scope, conditions or specifications of the PURCHASE ORDER shall be binding unless it has been confirmed in writing by BUYER.
- 2.2 The PURCHASE ORDER shall only be valid if issued on BUYER's order form and signed by an authorized representative of BUYER. BUYER shall not issue a PURCHASE ORDER or a SUPPLEMENT electronically. BUYER reserves the right to issue PURCHASE ORDERS also and/or only by telex, telefax or letter. BUYER does not accept responsibility for verbal orders, nor for orders which SELLER receives electronically.
- 2.3 If SELLER commences work before returning the acknowledgement copy of the PURCHASE ORDER, duly signed on each page by SELLER's authorized representative(s), SELLER shall be deemed to have accepted the PURCHASE ORDER and all terms, conditions and/or specifications thereof including these purchase terms.

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- 2.4 When conflicts occur between or within the PURCHASE ORDER documents, codes and/or regulations, SELLER shall notify BUYER within ten (10) calendar days after PURCHASE ORDER date in writing. SELLER shall only proceed upon receipt of BUYER's written approval/instructions with regard to such contradictions.
- 2.5 In the PURCHASE ORDER documents, except where the context shows otherwise, words in the singular also mean the plural and the other way round and words in the masculine also mean the feminine and neuter.
- 2.6 Reference in any document forming part of the PURCHASE ORDER to "VENDOR" or "SUPPLIER" shall be deemed to mean SELLER and references to the work shall be deemed to mean the GOODS.

3. DELIVERY

- 3.1 The date(s) stipulated for delivery of the GOODS shall be of the essence of the PURCHASE ORDER. Without prejudice to SELLER's obligation to deliver the GOODS on time, SELLER shall give BUYER notice in writing as soon as possible but not later than five (5) calendar days, of any delay which could have been discovered by an experienced SELLER. Further SELLER shall promptly submit its proposal to BUYER indicating the measures SELLER shall take at its own account to make good the delay in order to maintain the agreed upon delivery date(s).
- 3.2 Should SELLER fail to take aforesaid measures or should BUYER not approve the measures, BUYER reserves the right to ask SELLER to take such measures as BUYER deems necessary and SELLER shall for SELLER's account forthwith implement these measures.
- 3.3 In the event BUYER determines that SELLER's performance is such that it may cause a substantial delay in SELLER's delivery of the GOODS, BUYER reserves the right to remove, after having given SELLER written notice, the GOODS or any part thereof from SELLER's and/or SUBSUPPLIER's premises and to complete the manufacture or have it completed by any means at SELLER's cost without prejudice to any other rights or remedies BUYER may have under the PURCHASE ORDER or at law.
- 3.4 Delivery terms specified in the PURCHASE ORDER are as described in the latest edition of "Incoterms" issued by the International Chamber of Commerce. Where these conflict with the other terms and conditions of the PURCHASE ORDER, the latter shall prevail.
- 3.5 In case of delivery of incorrect GOODS or in excess of the quantity ordered these GOODS may be returned by BUYER and all related costs will be for SELLER's account, unless otherwise provided for in the PURCHASE ORDER.

4. SUPPLEMENT

- 4.1 No amendment to the PURCHASE ORDER shall be valid unless set down in a SUPPLEMENT.
- 4.2 BUYER has the right to make any change to the form, quality or quantity of the GOODS or any part thereof or an alteration in the delivery time that may in its opinion be necessary and no such change shall in any way vitiate or invalidate the PURCHASE ORDER but the cost (if any) of all such changes shall be taken into account in ascertaining an equitable adjustment to the amount of the PURCHASE ORDER price.
- 4.3 On receipt of a request for a change in the GOODS and to the extent that SELLER considers that such change has an impact on the purchase price and/or delivery time SELLER shall, within ten (10) calendar days, submit its proposal specifying:
 - a. any effect such change may have on any provision of the PURCHASE ORDER, in particular on the price and/or delivery date of the GOODS.
 - b. such other details as BUYER may require.

Prices for any change shall be agreed upon between BUYER and SELLER. Unless otherwise provided for in the PURCHASE ORDER, such prices shall derive from the unit prices of the PURCHASE ORDER, or be deduced therefrom.

On approval of SELLER's proposal as aforesaid, the SUPPLEMENT shall be deemed to be incorporated in the PURCHASE ORDER, and SELLER shall diligently perform the SUPPLEMENT in strict accordance with the PURCHASE ORDER stipulations. Once a SUPPLEMENT is issued, it shall be deemed to be complete and final and to include the accumulative effect of all the previously authorized SUPPLEMENTS with respect to both cost and time.

No change to the GOODS or the delivery time shall be made by SELLER without a SUPPLEMENT and SELLER shall not commence work on any change requested by BUYER without written instruction to proceed with the change or a signed SUPPLEMENT.

If SELLER does not submit its proposal on the effects of a change within ten (10) calendar days, BUYER shall assume that the change has no effect on the price and/or delivery date of the GOODS.

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- 4.4 Should an agreement on SELLER's response on the change request not be reached within a reasonable time to be determined by BUYER, BUYER may instruct SELLER to implement the change and the dispute shall be settled any time by mutual written agreement or in accordance with the provisions of Article 23.
- 4.5 Should SELLER consider itself entitled to any claim for additional compensation or extension of schedule, SELLER shall send to BUYER statement of facts giving complete and detailed particulars within five (5) calendar days of the occurrence of the event considered by SELLER as constituting a change to the PURCHASE ORDER, it being understood that any failure to comply with this provision shall debar SELLER from its claim being considered.
- 4.6 SELLER shall be solely responsible for assessing the scope content of the PURCHASE ORDER and the price as referred to in the PURCHASE ORDER to ensure it includes for everything necessary to manufacture and deliver the GOODS and for any revision(s) in the GOODS resulting from causes such as but not limited to:
- (i) engineering development; or
 - (ii) BUYER's review of SELLER's documents, drawings, specifications, procedures, etc.; or
 - (iii) noncompliance by SELLER or its SUBSUPPLIERS with instructions, drawings or specifications; or
 - (iv) modifications required for reasons of safety, operability, maintainability, reliability or technical integrity of the GOODS.

5. PRICE

- 5.1 In consideration of SELLER's proper performance of its obligations under the PURCHASE ORDER, BUYER shall pay or cause to be paid the amounts agreed in accordance with the provisions detailed in the PURCHASE ORDER.
- 5.2 The price shall be fixed and firm in amount and currency exclusive of any Value Added Tax (VAT) and not subject to any escalation in cost for the duration of the PURCHASE ORDER nor to a change except by a duly executed SUPPLEMENT.
- 5.3 Payment of any amount due shall be effected within sixty (60) calendar days after receipt of SELLER's correct invoice which shall be submitted to BUYER after delivery of the GOODS, or as otherwise agreed, including documentary requirements and in full compliance with BUYER's invoicing instructions.
- 5.4 Unless otherwise agreed, all invoices shall be expressed in Euro and shall be accompanied by relevant supporting documentation. Any amount stated on the invoice shall be exclusive of any VAT, where applicable, and shall conform to the price stipulated in the PURCHASE ORDER and shall cover payment for all costs incurred by SELLER in performing its obligations under the PURCHASE ORDER and subsequent SUPPLEMENTS.
- 5.5 BUYER reserves the right to dispute any item of SELLER's invoice or if the invoice is prepared or submitted incorrectly in any respect, BUYER shall return a copy of the invoice to SELLER, thereby advising SELLER of the fact that BUYER disputes the invoice and of the reason(s) for the dispute and requesting SELLER to issue a credit note for the disputed part or whole of the invoice as applicable. BUYER reserves the right to pay only the undisputed portion of a disputed invoice. BUYER and SELLER shall endeavor to settle at the earliest possible date any matters in dispute, and any required adjustment to the original invoice shall be the subject of a further invoice, which shall be submitted by SELLER and paid by BUYER in accordance with Article 5.3 above.
- 5.6 Neither the presentation of an invoice nor the payment thereof shall constitute a settlement of a dispute or otherwise waive or affect the rights of the parties hereunder.
- 5.7 If a dispute connected with the PURCHASE ORDER exists between the parties, BUYER may withhold from any amount which becomes payable under the PURCHASE ORDER either the value as estimated by BUYER of the part of the PURCHASE ORDER which is under dispute, or the amount which is the subject of the dispute. On settlement of the dispute, BUYER shall within sixty (60) calendar days of receipt of an invoice of amounts withheld render the appropriate payment.
- 5.8 Payment for the GOODS or parts thereof does not constitute acceptance of the GOODS by BUYER.

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6. WARRANTY/GUARANTEE

- 6.1 SELLER guarantees that (i) all design, engineering, equipment, materials and labour it furnishes, or performs under this PURCHASE ORDER and to be incorporated into the GOODS, and (ii) the GOODS until one (1) year from date of start -up of the PLANT in which the GOODS are incorporated, however not exceeding eighteen (18) months after the last actual delivery date, are:
- (i) in full compliance with the specifications set out in the PURCHASE ORDER;
 - (ii) fit for their intended purpose within the PLANT,
 - (iii) new and free from defects;
 - (iv) free from any liens and encumbrances whatsoever;
 - (v) in accordance with all applicable laws, regulations, national and international standards and codes, such as but not limited to environmental laws and regulations; and
 - (vi) in accordance with accepted standards in the industry, where requirements are not expressly stated in the PURCHASE ORDER.
- 6.2 This guarantee shall run to BUYER, its successors, assigns and USER and is without prejudice to SELLER's liability on any other legal ground. Aforementioned guarantee of SELLER shall not apply to normal wear and tear of the GOODS.
- 6.3 SELLER agrees to replace or repair at BUYER's or USER's option promptly without costs to BUYER or USER any GOODS not conforming to the requirements set forth in Article 6.1 when notified by BUYER or USER. In the event of failure of SELLER to replace or repair GOODS as required within a reasonable period to be determined by BUYER or USER, BUYER or USER may replace or repair same either by itself or by a THIRD PARTY and charge SELLER the cost thereof. Instead of replacement of the GOODS, BUYER may at its own option ask SELLER to refund to BUYER the full PURCHASE ORDER price and cost of originally transporting the nonconforming GOODS to the point of installation. Said refund shall apply in addition to the removal of the nonconforming GOODS by or at the cost of SELLER. The release or waiver by any Inspector shall not affect SELLER's obligations and liabilities under this Article. SELLER shall when fulfilling its obligations referred to above keep BUYER fully informed in writing of the action that will be taken, the costs involved and the results obtained.
- 6.4 The guarantee period of the GOODS shall be extended by any period(s) equal to the period(s) during which the facilities in which the GOODS are incorporated have been out of operation or their putting into operation has been delayed as a result of a defect to which this guarantee applies. Fresh guarantee periods equal to those specified in Article 6.1 from the date of acceptance of repairs or replacements by BUYER or USER shall apply to replaced or repaired GOODS.
- 6.5 Repair may be effected, or replacement may be made, by BUYER or USER or by a THIRD PARTY on its behalf for SELLER's account without authorization by SELLER or SELLER having had the opportunity to inspect the defects in the GOODS in cases where it would be unreasonable or impractical to give to SELLER an opportunity of inspection and/or remedying defects or to demand that prior authorization be obtained, inter alia in view of the threat of further damage or loss which might result thereof, including those as a consequence of delay in installation, work or operations.
- 6.6 If repairs, replacements or inspections are carried out, any cost incurred by BUYER and/or USER including but not limited to the cost of detection of the defect, inspection, removal, transport, supervision, repair, replacement, reinstallation and required adjustment of the systems, in which the GOODS have been incorporated and re-testing of the GOODS together with the cost of cleaning-up shall be for SELLER's account.

7. SECURITY

- 7.1 If BUYER has reason to believe that SELLER is not fulfilling or may not fulfil for any reason whatsoever, including insolvency y, in a proper manner its obligations under the PURCHASE ORDER, BUYER may require financial security from SELLER for the proper fulfilment of those obligations or cancel the order in its entirety.

8. LIENS

- 8.1 SELLER warrants the GOODS to be free from any lien, charge or encumbrance in favour of any THIRD PARTY not declared or known to BUYER before or at the time when title to the GOODS passes to BUYER or USER. SELLER shall hold harmless and indemnify BUYER and/or USER against any lien, charge claims, rights of retention, seizures, attachments or judgements (and BUYER shall have the right to withhold amounts related to same) resulting from SELLER's failure to fulfil its obligations with SUBSUPPLIERS, banks, employees, servants, agents or person(s) or THIRD PARTIES etc. to whom SELLER has made a commitment of any nature.

9. LIABILITY/ INDEMNITY

- 9.1 SELLER shall be liable (without formal notice of noncompliance being required) for any loss or damage incurred by BUYER or USER due to SELLER's or its SUBSUPPLIER's noncompliance with the terms and conditions of the PURCHASE ORDER.

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- 9.2 Except as expressly stated otherwise in this Article 9, SELLER shall not be liable for any CONSEQUENTIAL LOSS incurred by BUYER nor shall BUYER be liable for CONSEQUENTIAL LOSS incurred by SELLER. Any liquidated damages or penalties payable under the PURCHASE ORDER and the costs in connection with inspection, location of defects, removal, transport, supervision, repair(s), replacement(s), reinstallation and required adjustments of the system(s), in which the GOODS have been incorporated, re-testing and cleaning-up, as referred to in Article 6.6, shall not be deemed to be CONSEQUENTIAL LOSS.
- 9.3 SELLER shall be liable for and shall hold BUYER and its personnel harmless from and indemnified against all claims, losses, damages, costs (including legal costs) and liabilities of every kind and nature resulting from loss of or damage to property of SELLER, howsoever caused, irrespective of whether the loss or damage resulted from or was contributed to by any act or omission of BUYER, its personnel, or any THIRD PARTY.
- 9.4 BUYER and SELLER shall hold each other harmless from and indemnified against any and all claims, losses, damages, costs (including legal costs) and liabilities of every kind and nature resulting from personal injury, including disability and death, of their respective personnel, as well as from claims in respect of loss or damage to property of their respective personnel. For the purposes hereof, personnel of SUBSUPPLIERS shall be considered personnel of SELLER. The liability of each party as stated in this Article shall extend to any CONSEQUENTIAL LOSS resulting from the occurrence which leads to the material loss, damage or injury for which such party has assumed liability hereunder.
- 9.5 Subject to Article 9.4 above, SELLER shall be liable for all claims, losses – including CONSEQUENTIAL LOSS -, damages, costs (including legal costs) and liabilities of every kind and nature resulting from personal injury, including disability and death, of any THIRD PARTY or loss of or damage to property of any such THIRD PARTY – which term for the purposes hereof expressly includes SUBSUPPLIERS – resulting from or relating to the GOODS and arising prior to the expiration of the guarantee period under this PURCHASE ORDER, SELLER shall accordingly hold harmless and indemnify BUYER and its personnel from and against all of the aforesaid claims, losses, damages, costs and liabilities.
- 9.6 SELLER's strict liability in accordance with Article 9.5 for losses or damages of the types described in this Article shall be limited to the sum of the levels of insurance provided by SELLER under Article 20 and in excess of the sum of such levels of insurance, SELLER and/or BUYER's liability for such losses and damages shall be governed by applicable law as defined in Article 22.
- 9.7 Without prejudice to the provisions set out in Article 9.4 and 9.6 above, SELLER shall be liable in accordance with applicable law for any loss or damage caused by SELLER or its personnel or SUBSUPPLIERS to properties of THIRD PARTIES not resulting from or relating to the GOODS.

10. EXPEDITING/INSPECTION

- 10.1 It is SELLER's responsibility to expedite delivery of GOODS and inspect the GOODS and execution of contracts with SUBSUPPLIERS.
- 10.2 SELLER shall ensure that BUYER or its representative has the opportunity to inspect and/or expedite the GOODS at any time during or after the manufacture, construction or assembly thereof and to check on progress of the work under the PURCHASE ORDER, either at SELLER's premises or at its SUBSUPPLIER's premises or wherever else the GOODS may be, or the work on the GOODS is carried out.
- 10.3 Such inspection and/or expediting shall not relieve SELLER of any obligation or liability under the PURCHASE ORDER.
- 10.4 SELLER shall submit to BUYER immediately, however no later than seven (7) calendar days after PURCHASE ORDER placement, a Progress Report. This shall in principle be in bar chart form, showing engineering, material procurement, fabrication and delivery dates as stated in the PURCHASE ORDER and any SUPPLEMENT thereto. Progress reporting shall take place against the aforesaid Progress Report at regular intervals as determined by BUYER.
- 10.5 In addition, SELLER shall within fourteen (14) calendar days after PURCHASE ORDER placement, advise BUYER of the names, titles and telephone numbers of those persons in the organization, having overall responsibility for the schedule and production control functions, whom BUYER can contact for information concerning the status of the PURCHASE ORDER.
- 10.6 Unpriced copies of contracts issued by SELLER to SUBSUPPLIER(S) are to be forwarded to BUYER at the time of placement for the purpose of expediting. Such contracts shall make reference to BUYER's PURCHASE ORDER.
- 10.7 SELLER shall, if so requested by BUYER, complete Seller's Document List and return same within fourteen (14) calendar days after PURCHASE ORDER placement and periodically thereafter as required by BUYER.
- 10.8 Any costs for inspection tests such as mechanical, chemical, hydrostatic, X-ray, ultrasonic and laboratory tests as well as any personal costs for THIRD PARTY inspectors, such as cost for travel, living and salaries are for SELLER's account, unless otherwise specified in the PURCHASE ORDER. BUYER has the right to ask for additional testing.
- 10.9 Costs for additional inspection/expediting by BUYER caused by reasons for which SELLER is responsible, shall be for SELLER's account. These costs shall include cost for salaries during working and travelling hours, as well as cost for travel, boarding and lodging.

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- 10.10 If GOODS appear as a result of testing not to be in compliance with the requirements of the PURCHASE ORDER, all costs of additional (a new type of test) testing and/or re-testing as determined by BUYER, are for SELLER's account.
- 10.11 BUYER reserves the right also to inspect the packing of the GOODS and the packing lists. BUYER shall be given the opportunity to compare the contents of the packing with the shipping documents including the packing lists.
- 10.12 SELLER may not ship the GOODS unless inspection is made and GOODS are released or inspection is waived in writing by BUYER.

11. PACKING, MARKING AND SHIPPING

- 11.1 The SELLER shall properly prepare the preservation, packing and marking in accordance with the BUYER's "Packing, Marking, and Shipping Instructions."
- 11.2 Any damage or losses to GOODS due to not adhering to the requirements of this Article 11 shall be for the account of SELLER.

12. TRANSFER OF TITLE AND PASSING OF RISK

- 12.1 The full and unrestricted title to the GOODS shall pass to BUYER when the first of the following events occurs:
- (i) the GOODS or part thereof are first identifiable as being appropriated to the PURCHASE ORDER or to the agreement with SUBSUPPLIERS; or
 - (ii) when BUYER pays for the GOODS or part thereof in accordance with the PURCHASE ORDER.

However, such transfer of title will be without prejudice to BUYER's right to refuse the GOODS in case of non-conformity with the requirements of the PURCHASE ORDER.

- 12.2 All GOODS with respect to which ownership has been vested in BUYER in accordance with Article 12.1, shall be registered by SELLER as being held on behalf of BUYER and as being the property of BUYER and such GOODS shall be segregated by SELLER and shall be marked or otherwise identified as such.
- 12.3 Irrespective of transfer of title to the GOODS, SELLER shall remain responsible for risk of loss or damage until delivery of the GOODS to the delivery point specified in the PURCHASE ORDER in accordance with the delivery terms specified.
- 12.4 SELLER shall ensure that in contracts with SUBSUPPLIER(S) provisions similar to those incorporated under Article 12.1 are included to secure BUYER's rights as stated above.
- 12.5 SELLER shall arrange that any rights and titles (together with the obligations connected herewith), which SELLER may acquire vis-à-vis SUBSUPPLIERS or any SUBSUPPLIER may acquire vis-à-vis THIRD PARTIES, can if so required by BUYER and/or USER, be assigned to BUYER and USER.

13. PATENTS, COPYRIGHTS AND TRADEMARKS

- 13.1 SELLER shall, both during the duration of the PURCHASE ORDER and after its expiry or termination, hold BUYER or USER harmless from and indemnified against all claims or actions, as well as all losses, damages and costs (including, without limitation, all damages payable to THIRD PARTY owners of a patent or other industrial or intellectual property right, and any costs due to legal action(s)) incurred or suffered by BUYER or USER arising from infringement of a patent or any other industrial or intellectual property right of a THIRD PARTY, SELLER or any of its SUBSUPPLIERS, published or granted at any time, relating to or affecting the GOODS or any part thereof, or use and sale or resale of the GOODS or any part thereof.
- 13.2 In case any item of GOODS or part thereof, is held to infringe upon a patent or other intellectual or industrial property right of a THIRD PARTY and its use enjoined, SELLER shall, at its own cost, as instructed by BUYER either procure for BUYER and/or USER the right to continued use of any such item of GOODS or part thereof, or replace same with non-infringing processes or modify the relevant item of GOODS.
- 13.3 SELLER shall grant to BUYER and USER a nonexclusive, royalty-free, transferable, irrevocable license under patents, now or hereafter owned by SELLER, to use and sell the GOODS.

14. LICENSE AND PERMITS

- 14.1 SELLER at its own cost shall obtain any license or other permit which is required in the country from where shipment is made and/or origin for the performance of its obligations under the PURCHASE ORDER. The PURCHASE ORDER shall be conditional upon such license or other permit being available in good time. SELLER shall notify BUYER at time of PURCHASE ORDER placement of any such permit requirement(s).

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15. CONFIDENTIALITY

- 15.1 SELLER shall at any time preserve and cause its personnel to preserve the secrecy of any CONFIDENTIAL INFORMATION and shall not disclose to any THIRD PARTY any CONFIDENTIAL INFORMATION except, in each case, with the prior written consent of BUYER. Further SELLER shall not use and shall ensure that its personnel shall not use any CONFIDENTIAL INFORMATION for any purpose other than for the performance of SELLER's obligations under the PURCHASE ORDER.
- 15.2 The undertaking of Article 15.1 above shall continue in so far and for so long as the CONFIDENTIAL INFORMATION has not:
- become part of the public knowledge or literature without breach of confidence on the part of SELLER;
 - been disclosed to SELLER (without obligation to maintain its secrecy) by a THIRD PARTY who could lawfully do so and who did not derive such information from BUYER.
- 15.3 Title to or ownership of a copyright in any CONFIDENTIAL INFORMATION shall at all times remain vested in BUYER.

16. FORCE MAJEURE

- 16.1 Neither party hereto shall be liable for any failure to delay in fulfilling any term of the PURCHASE ORDER, if and to the extent fulfilment has been delayed, hindered, interfered with or prevented by Force Majeure. When used in the PURCHASE ORDER, the term "Force Majeure" shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the said party was unable to foresee and prevent or provide against. Subject to the foregoing, events of Force Majeure may include maritime or aviation disasters, earthquake, fire, explosions, floods, and/or other natural physical disasters, civil disturbances, riots, war or armed conflicts, acts of God, strikes or industrial disputes which affect a substantial or essential part of SELLER's performance of its obligations under the PURCHASE ORDER but not including strikes organized or effected at a local or site level. For the avoidance of doubt the following events shall not constitute Force Majeure:
- any inability of BUYER or SELLER to make any payments due under the PURCHASE ORDER; or
 - compliance by SELLER with BUYER's rules and regulations or any laws, rules or regulations that may be applicable to work performed by SELLER under the PURCHASE ORDER; or
 - a breakdown of any item of equipment utilized by SELLER or any of its SUBSUPPLIERS in the performance of the PURCHASE ORDER; or
 - a contractual commitment made by the SELLER or any of its SUBSUPPLIERS to THIRD PARTIES which limits the ability of SELLER to adequately perform its obligations under the PURCHASE ORDER; or
 - insolvency of SELLER or SUBSUPPLIERS; or
 - late performance by SELLER or SUBSUPPLIERS caused by SELLER's or SUBSUPPLIER's failure to hire adequate labour and/or supervisory personnel.
- Strikes, labour or employment disputes or difficulties or other concerted acts of workmen, whether direct or indirect among SELLER's personnel, or those of any of its SUBSUPPLIERS, shall not constitute Force Majeure on the part of SELLER unless SELLER can demonstrate to BUYER's satisfaction that the relevant strike, labour dispute or difficulty or other concerted act of workmen is not limited to the workforce of SELLER or of the relevant SUBSUPPLIER as the case may be, and does not arise out of an act or omission to act of SELLER or such SUBSUPPLIER.
- 16.2 On the occurrence of any event of Force Majeure the party affected thereby shall:
- immediately give verbal notice of such event to the other party and promptly confirm that notice by letter or telefax, providing details of the event as well as an estimate of the time and extent of the suspension in the performance of the PURCHASE ORDER caused by the event;
 - use all reasonable endeavours to mitigate, as soon as possible, the effect of such Force Majeure upon fulfilment of such party's obligations under the PURCHASE ORDER.
- 16.3 If SELLER is delayed in the performance of its obligations under the PURCHASE ORDER due to an event of Force Majeure then, subject to SELLER having complied with the conditions of Article 16.2 a. above, SELLER shall be entitled to reimbursement of its costs incurred in taking mitigating action pursuant to Article 16.2 b. if and to the extent such mitigating action has been approved in writing by BUYER.
- 16.4 SELLER shall not be entitled to any reimbursement in respect of any event of Force Majeure affecting SELLER's performance under the PURCHASE ORDER.

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- 16.5 If any event of Force Majeure exceeds thirty (30) consecutive or cumulative days, BUYER and SELLER shall meet and discuss the most appropriate course of action in the circumstances. If after a period of ten (10) days from the date of their first meeting, the parties have not agreed on an appropriate course of action but the parties do agree that the event of Force Majeure is unlikely to end in the near future and as a result thereof, the fulfilment by (one of) the parties of (its) their obligations under the PURCHASE ORDER will continue to be delayed, hindered, interfered with or prevented, then, either party may terminate the PURCHASE ORDER by giving ten (10) days written notice to the other party. After said termination, BUYER shall pay SELLER all payments due before occurrence of the event of Force Majeure.

17. ASSIGNMENT AND SUBCONTRACTING

- 17.1 BUYER shall be free to assign any of its rights or obligations under the PURCHASE ORDER subject to prior notification thereof to SELLER. SELLER shall not be entitled to assign any of its rights and obligations under the PURCHASE ORDER to any THIRD PARTY without the prior written consent of BUYER.
- 17.2 SELLER shall not be entitled to enter into a contract with SUBSUPPLIERS for the performance of the whole or a part of the PURCHASE ORDER. However, SELLER shall be entitled to subcontract part of the performance of the PURCHASE ORDER to SUBSUPPLIERS after the prior written approval of BUYER has been obtained.
- 17.3 Subcontracting does not relieve SELLER from any obligation or liability under the PURCHASE ORDER.

18. TERMINATION

- 18.1 BUYER may terminate the PURCHASE ORDER forthwith by written notice:
- (i) in the event of SELLER's noncompliance with any of the terms and conditions of the PURCHASE ORDER, or
 - (ii) if bankruptcy proceedings have been commenced against SELLER even if they have been stayed; or the SELLER makes an assignment for the benefit of or composition with its creditors generally; or if the SELLER goes into liquidation either voluntary (except for reconstruction or amalgamation) or compulsory; or if a receiver or judicial manager is appointed in respect of any or all of its assets; or if there is a threat that any of these things will happen.
- 18.2 In the event the PURCHASE ORDER is terminated as aforesaid, the following shall be the respective rights and obligations of BUYER and the SELLER.
- a. The SELLER shall, if so required by BUYER, within fourteen (14) calendar days from the date of termination, assign to BUYER the benefit of any agreement with SUBSUPPLIERS for the supply of equipment or material, forming part of the GOODS.
 - b. The SELLER shall subject to the stipulation of Article 18.2.c. below:
 - (i) be paid the price of any portion of the GOODS delivered to BUYER prior to the date of termination (if and to the extent not already paid), provided these GOODS are in strict compliance with the stipulations of the PURCHASE ORDER, or alternatively BUYER may return the GOODS or parts thereof and retransfer ownership therein to SELLER in which case SELLER will return all payments made by BUYER.
 - (ii) be paid the price of any portion of the GOODS of which the title has transferred to BUYER, but of which delivery has not taken place before termination. Said portion of the price will be paid after delivery of the GOODS in accordance with Article 5.3, provided that these GOODS are in strict compliance with the stipulations of the PURCHASE ORDER.
 - c. The SELLER shall allow or pay to BUYER the amount of any cost, direct loss and/or damage caused to BUYER by the termination, including any other cost, loss and/or damage caused to BUYER. Once paid, such sums shall be deemed full and final payment to SELLER who is not entitled to any other payment whatsoever in respect of the termination under this Article for the GOODS supplied.

19. TERMINATION FOR CONVENIENCE AND SUSPENSION

TERMINATION FOR CONVENIENCE

- 19.1 BUYER shall have the right, at any time and at its absolute discretion, to terminate or suspend the PURCHASE ORDER without any notice of default or judicial intervention being required for the purpose. Such termination shall become effective immediately after delivery of written notice ("Notice of Termination" or "Notice of Suspension") to SELLER or on such later date as specified in the notice, whereupon SELLER shall promptly discontinue any further performance of manufacturing of GOODS.

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- 19.2 Unless BUYER instructs SELLER to do otherwise, upon receipt of the Notice of Termination pursuant to Article 19.1 SELLER shall for the terminated portion of the GOODS:
- (i) immediately discontinue all manufacturing of GOODS in a safe and orderly fashion and in accordance with any instructions given by BUYER;
 - (ii) follow directions given by BUYER on the work to be performed (if any) including the close-out services after receipt of the Notice of Termination;
 - (iii) do all things necessary and all work required to preserve and protect all GOODS in progress or completed at any location;
 - (iv) together with BUYER, within five (5) working days of receipt of the Notice of Termination, develop a plan for the close-out of the PURCHASE ORDER. Immediately following the development of the plan, but in no event later than six (6) working days after receipt of the Notice of Termination, SELLER shall reduce its staff in accordance with the requirements of such plan and any instructions given by BUYER;
 - (v) not place additional purchase orders or subcontracts in connection with this PURCHASE ORDER;
 - (vi) as directed by BUYER and on terms satisfactory to BUYER, suspend, transfer to BUYER or terminate and close-out (at minimum or no cost to BUYER) all existing purchase orders and subcontracts which SELLER may have placed with any SUBSUPPLIERS in connection with this PURCHASE ORDER;
 - (vii) transfer to BUYER or dispose of the GOODS in progress or completed and assets acquired for execution of the PURCHASE ORDER, in accordance with BUYER's instructions.
- 19.3 In the event of suspension of the execution of the PURCHASE ORDER or part thereof, SELLER shall follow directions similar to those set forth in Article 19.2 above, as provided by BUYER at the time of suspension.
- 19.4 SELLER shall continue to perform any portions of the PURCHASE ORDER not terminated or suspended.
- 19.5 In the event of termination of the PURCHASE ORDER by BUYER under Article 19.1 SELLER's claim for compensation shall be restricted to the aggregate of the following items:
- (i) BUYER shall pay SELLER the sum of the cost of GOODS satisfactorily performed by SELLER prior to the date of termination, including overhead and profit on such costs.
 - (ii) BUYER shall pay SELLER Cancellation Costs incurred by SELLER as a direct result of the termination of the PURCHASE ORDER. As used herein, Cancellation Costs shall be the reasonable and necessary expenses incurred which directly result from the cancellation of the PURCHASE ORDER, including for example the costs of cancellation of materials orders. SELLER shall not be entitled to compensation for costs resulting from SUBSUPPLIERS' recovery of any damages or any other expenses, profits or disbursements in connection with said cancellation and as such, they are not included in Cancellation Costs
 - (iii) BUYER shall pay SELLER direct costs incurred in SELLER's demobilization, whereby it is agreed that BUYER's total liability for payments related to SELLER's or its SUBSUPPLIERS' personnel impacted by the termination of the PURCHASE ORDER shall extend for no more than two (2) weeks after the date of termination.
 - (iv) Payment of the amounts as referred to in this Article 19.5 shall constitute the sole and full compensation payable by BUYER to the exclusion of any other compensation and SELLER shall not be entitled to recover for any other expenses, losses, damages, costs including overhead, profits, lost earnings, lost income or similar losses, or disbursements.
 - (v) BUYER shall have audit rights pursuant to Article 24 to verify the items referred to in this Article.
 - (vi) Payments already made by BUYER to SELLER and any net proceeds of sale of GOODS or other items shall be subtracted from the above.
 - (vii) SELLER shall ensure that in contracts with SUBSUPPLIERS provisions similar to those incorporated under this Article 19.5 are included.
- 19.6 In the event of a partial termination of the PURCHASE ORDER under Article 19.1 the action will be handled as a SUPPLEMENT in accordance with Article 4.

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SUSPENSION

- 19.7 Where BUYER suspends the execution of the PURCHASE ORDER, other than for reasons due to SELLER, BUYER shall pay SELLER the actual substantiated costs incurred by SELLER as a direct result of putting into effect such suspension and, where appropriate, shall, in accordance with Article 4, authorize a SUPPLEMENT to reflect the consequences (if any) of the suspension of the PURCHASE ORDER.
- 19.8 BUYER may, at any time, authorize resumption of the suspended part of the PURCHASE ORDER by notifying SELLER of the part of PURCHASE ORDER to be resumed and the effective date of withdrawal of the suspension. Except as expressly otherwise instructed by BUYER in such notification, SELLER shall promptly after receipt of such notification resume the parts of the execution of the PURCHASE ORDER to be resumed according to the notification.

20. INSURANCE

- 20.1 SELLER shall take out at its costs and maintain the following insurances which must be legal and valid in all countries where SELLER has any obligations under the PURCHASE ORDER.
- (i) Adequate insurance covering property of SELLER and loss of or damage to the GOODS, the latter until delivery of the GOODS to the delivery point specified in the PURCHASE ORDER has been effected, unless otherwise provided for in the PURCHASE ORDER.
 - (ii) Insurance against legal liability to THIRD PARTIES for any loss, damage, death or bodily injury incurred by them arising out of the performance of the PURCHASE ORDER and occurring on or before expiry of the guarantee period under the PURCHASE ORDER, with a US Dollar Five Million limit per occurrence or such greater amount as may be required to comply with applicable laws.
 - (iii) Insurance against claims by THIRD PARTIES in respect of loss, damage, death or bodily injury incurred by them arising out of or in connection with the use of owned, leased, non-owned and hired vehicles used in the execution of the PURCHASE ORDER, with a US Dollar One Million limit per occurrence or such greater amount as may be required to comply with applicable laws; adequate waterborne and airborne craft liability insurance for owned, non-owned or hired craft that are used for the PURCHASE ORDER, covering liabilities arising from the use and/or operation of the waterborne craft (including floating construction equipment) or the airborne craft (as the case may be) in the care, custody or control of the SELLER, including liability for damage due to collision, pollution and removal of wrecks.
 - (iv) Workmen's compensation and employers' liability insurance with US Dollar Five Million limit per occurrence or such greater amount as may be required to comply with applicable laws.
 - (v) Any insurance which SELLER is required to take out under any of the applicable laws.
- 20.2 In respect of the insurances which SELLER is required to procure or have procured under Article 20.1, SELLER shall ensure that:
- (i) Evidence (in the form of a certificate of insurance or policy or other form satisfactory to BUYER) is provided to BUYER within seven (7) days of the PURCHASE ORDER placement and at each applicable renewal date of the relevant insurance.
 - (ii) If so requested by BUYER all insurance shall be effected with insurers and on terms approved by BUYER.
 - (iii) No cancellation of any insurance shall be effected and no alterations to the terms of any insurance shall be made without the BUYER's prior written approval
 - (iv) The insurance shall name BUYER and USER and their respective officers, directors, agents, employees and servants as additional insured.
 - (v) The insurances, except as in each case expressly otherwise agreed by BUYER, shall include appropriate severability of interest clauses.
 - (vi) The insurances shall provide (by means of endorsement or in another manner agreed by BUYER in writing) that the insurers expressly waive all rights of subrogation against the BUYER and USER and their respective officers, directors, agents, employees, and servants.
 - (vii) The insurances shall constitute primary insurances without any right of contribution from any insurances taken out by BUYER.
- 20.3 If SELLER shall fail to effect and/or keep in force any of the insurances referred to in the PURCHASE ORDER, then BUYER (without prejudice to any other remedies available to it under the PURCHASE ORDER or at law) may at SELLER's cost, effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose.

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- 20.4 SELLER's liability under the PURCHASE ORDER shall not be restricted, limited or altered by any stipulation or arrangement in the PURCHASE ORDER with regard to insurance or by any approval of insurance policies by BUYER. All losses and damages for which SELLER is liable and which are not recoverable under any insurances shall be for SELLER's account.

21. DRAWINGS/ DOCUMENTS

- 21.1 SELLER shall, within the time as specified in the PURCHASE ORDER submit drawings/documents for review and/or final drawings/documents.
- 21.2 SELLER shall be responsible for correctness and completeness of the documents prepared by or on behalf of SELLER and shall not be absolved from its liability or obligations under this PURCHASE ORDER by reason of any review, approval, examination, whether expressed or implied by or on behalf of BUYER.
- 21.3 All drawings, designs and specifications supplied by BUYER shall be deemed to be the exclusive property of BUYER and may not be lent, copied or otherwise used without the previous written consent of BUYER.
- 21.4 Title to all drawings, specifications, calculations and other documents prepared by SELLER in accordance with the PURCHASE ORDER shall vest in BUYER and BUYER shall have the right to use such documents for any purpose whatsoever.
- 21.5 In case BUYER's requirements are not expressly denoted in the drawings/documents submitted to the SELLER but deemed necessary for the GOODS to comply with the stipulations of the PURCHASE ORDER, SELLER understands such are implied and shall be deemed to be part of SELLER's scope of supply/work.
- 21.6 It shall be the responsibility of SELLER to notify BUYER of any discrepancies, errors, inconsistencies and omissions in the specifications, drawings or any other PURCHASE ORDER documents and to obtain interpretation and/or decisions on any questions that may arise as to the intent of these documents prior to the use by SELLER of such documents. No compensation whatsoever will be made for SELLER's failure to comply with the above.

22. APPLICABLE LAW

- 22.1 The PURCHASE ORDER shall be governed, construed and interpreted in accordance with the laws of The Netherlands, with the exclusion of the United Nations Convention for the International Sale of Goods.

23. ARBITRATION

- 23.1 Any dispute, controversy or claim arising out of or relating to this PURCHASE ORDER or SUPPLEMENTS thereto, or the breach, termination or invalidity thereof, shall, if it cannot be settled amicably, be settled finally by arbitration in accordance with the Rules of the Netherlands Arbitration Institute as are in force on the date of this PURCHASE ORDER, by three Arbitrators appointed in accordance with such Rules. The place of arbitration shall be The Hague, The Netherlands and the language of arbitration shall be English.
- 23.2 SELLER shall reimburse BUYER for all judicial and extra judicial costs which BUYER may incur when exercising BUYER's rights under the PURCHASE ORDER against SELLER.

24. AUDITS

- 24.1 BUYER shall at all reasonable times have access to SELLER's and SUBSUPPLIER's documents pertaining to work under the PURCHASE ORDER for the purpose of auditing and verifying cost of cost reimbursable items and the quantities both of these and of items chargeable by specific rates of GOODS or for any purpose. BUYER shall have the right to reproduce any of the aforesaid documents. SELLER and SUBSUPPLIERS shall keep all above mentioned information available for a period of three (3) years after delivery of the GOODS.

25. TAXES AND DUTIES

- 25.1 Any and all taxes, levies, duties, dues, stamp taxes, withholdings or other tax assessments of whatever nature levied on or charged to BUYER with the exception of Value Added Tax (VAT), as a result of the PURCHASE ORDER or the performance thereof, shall be for SELLER's account, unless otherwise specifically stated in the PURCHASE ORDER.

26. SEVERABILITY

- 26.1 No provision of the PURCHASE ORDER which may be deemed invalid or unenforceable shall in any way invalidate any other provision thereof, all of which shall remain in full force and effect.

27. EXPORT CONTROL

- 27.1 Pursuant to this PURCHASE ORDER when and where any export authorization, licenses or related government approval are required for delivery of GOODS and/or technology from SELLER to BUYER, SELLER is responsible for obtaining all necessary authorizations prior to export.

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27.2 In cases where delivery from SELLER to BUYER is within the same country, but it is known that the GOODS or technology will ultimately be for export, SELLER has an obligation to provide BUYER, in a timely manner, with the information necessary to determine whether the export of the items concerned will require government authorization.

28. PUBLICITY

28.1 The PURCHASE ORDER is accepted by SELLER with the understanding that the application of the GOODS or the names of BUYER and/or USER of the GOODS shall not be referred to, described or illustrated in publicity of any kind without the previous written consent of BUYER and/or USER.

29. RIGHT OF OFFSET

29.1 Upon written notice, any sum payable to SELLER or BUYER under this PURCHASE ORDER may be set off by BUYER against any sum payable to BUYER or SELLER under this PURCHASE ORDER or any such other agreements between BUYER and SELLER.

30. CONFLICT OF INTEREST

30.1 SELLER and its SUBSUPPLIERS shall conduct their operation in a lawful manner which is consistent with the highest ethical standards of its trade and shall exercise all care and diligence to prevent any actions or conditions which could result in a conflict with BUYER's or SELLER's best interests. This obligation shall apply to the activities of the employees and agents of SELLER in their relations with the employees of BUYER and THIRD PARTIES.

30.2 SELLER shall not enter into any other business relations in connection with the PURCHASE ORDER except as approved by BUYER. SELLER shall inform BUYER of any potential SUBSUPPLIERS having a corporate relationship with SELLER.

30.3 The compensation to be paid to SELLER pursuant to the PURCHASE ORDER shall constitute the only compensation in connection with the PURCHASE ORDER and delivery of GOODS. SELLER shall notify BUYER of any remuneration in connection with the delivery of GOODS (whether by way of gratuity, commission, finder's or agent's fee or otherwise). SELLER shall pay to BUYER all and any such remuneration, compensation or other benefit failing which BUYER shall be entitled to deduct any such amount from any other amount due from BUYER to SELLER.

30.4 In the event BUYER discovers that SELLER or its personnel or SUBSUPPLIERS are contravening the requirements of this article, BUYER shall take what actions it deems appropriate, including termination of the PURCHASE ORDER.

31. WAIVER

31.1 No failure on the part of BUYER at any time or from time to time to enforce or to require the strict adherence and performance of any of the terms or conditions of the PURCHASE ORDER shall constitute a waiver of such terms or conditions and/or affect or impair such terms or conditions in any way or the right of BUYER at any time to avail itself of such remedies as it may have for each and every breach of such terms or conditions.

32. ENTIRE AGREEMENT

32.1 When this PURCHASE ORDER is executed, it shall constitute the entire Agreement between the parties hereto. All figures, proposals and Agreements submitted by SELLER to BUYER prior to the effective date hereof, either orally or written, pertaining to the GOODS covered by this PURCHASE ORDER are hereby cancelled. No oral representations of any officer, agent or employee of SELLER or BUYER, either before or after the execution of this PURCHASE ORDER, shall affect or modify any obligation of either party hereunder.

33. CORRESPONDENCE

33.1 All correspondence and documents in connection with the PURCHASE ORDER shall be in the English language.

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