

## TERMS AND CONDITIONS OF COMMERCIAL SALE OF PRODUCTS

In these Terms and Conditions of Commercial Sale of Products (the “Terms and Conditions”), “ITEC” shall mean: ITEC B.V., a Dutch corporation incorporated under the laws of the Netherlands.

### 1. OFFER, CONFIRMATION OR AGREEMENT

These Terms and Conditions apply to and form an integral part of:

- a. all quotations and offers (hereinafter both referred to as “Offer”) of ITEC to Buyer,
- b. all acceptances, acknowledgements or confirmations by ITEC (hereinafter all referred to as “Confirmation”) of any order of Buyer, including without limitation orders of Buyer resulting from any pricing or other framework agreement between any Buyer and ITEC, unless explicitly agreed otherwise in writing between ITEC and Buyer,
- c. any agreement resulting from such Offer or Confirmation, and
- d. any agreement incorporating these Terms and Conditions by reference (both types of agreements referred to under 1(c) and 1(d) shall hereinafter be referred to as an “Agreement”),

regarding the sale by ITEC and purchase by Buyer of the equipment (“Products”), unless ITEC explicitly agrees in writing to the exclusion hereof.

These Terms and Conditions shall constitute all of the terms and conditions of any Offer, Confirmation and Agreement between ITEC and Buyer relating to the sale by ITEC and purchase by Buyer of Products. Any terms and conditions set forth on any document or documents issued by Buyer (including “Pull Documents” as defined below), either before or after issuance of any document by ITEC setting forth or referring to these Terms and Conditions, are hereby explicitly rejected and disregarded by ITEC, and any such document shall be wholly inapplicable to any sale made by ITEC and shall not be binding in any way on ITEC. No Offer, Confirmation or Agreement constitutes an acceptance by ITEC of any other terms and conditions, and ITEC does not intend to enter into an agreement other than under these Terms and Conditions.

Any Offer is expressly made conditional on Buyer's assent to all of the terms contained in the Offer, including these Terms and Conditions, without deviation. Acceptance by Buyer of an Offer may be evidenced by (i) Buyer's written or verbal assent or the written or verbal assent of any representative of Buyer, (ii) Buyer's acceptance of delivery of the Products or payment of any part of the purchase price of the Products, or any such acceptance by any representative of Buyer, or (iii) other conduct by Buyer or any representative of Buyer consistent with acceptance of the Offer.

In the event that any Offer or Confirmation is sent in response to Buyer's blanket purchase order, the terms and conditions of that Offer or Confirmation, including these Terms and Conditions, shall apply to any “pull” by Buyer or delivery by ITEC, irrespective of whether Buyer submits additional purchase orders (electronically or otherwise) (“Pull Documents”) and whether ITEC provides a Confirmation to such additional purchase orders. All terms and conditions of such Pull Documents are hereby rejected.

ITEC's Offers are open for acceptance within the period stated by ITEC in the Offer or, when no period is stated, within thirty (30) days from the date of the Offer, but any Offer may be withdrawn or revoked by ITEC at any time prior to the receipt by ITEC of Buyer's acceptance related thereto.

If ITEC receives an order from Buyer for the sale by ITEC and purchase by Buyer of Products and such order is not a response to an Offer by ITEC, or if ITEC receives an order or acceptance by Buyer which deviates from ITEC's Offer, such order or acceptance, respectively, shall be deemed to be a request for an Offer only and shall not be binding on ITEC.

An acceptance by Buyer of any Offer made by an order gatherer, liaison officer, agent or sales representative for ITEC shall constitute an Agreement between ITEC and Buyer upon explicit Confirmation by ITEC itself. Any changes requested by the Buyer to the Product after Confirmation is made by ITEC to Buyer's order shall be requested in writing and subject to written acceptance by ITEC. Any changes requested by Buyer may result in adjustment in pricing and rescheduling of delivery.

In these Terms and Conditions, the term “Affiliate(s)” shall mean any corporation or other legal entity that a party now or hereafter Controls, is Controlled by or is under common Control with; where “Control” means the direct or indirect ownership of more than fifty percent (50%) of the shares or similar interests entitled to vote for the election

of directors or other persons performing similar functions. An entity may be considered an Affiliate only when such Control exists. ITEC and its Affiliates are individually and/or collectively referred to herein as “ITEC”.

## 2. PRICING

Prices in any Offer, Confirmation or Agreement are, indicated in the Offer or if not specified, in USD. Prices do not include transportation, insurance, import and brokerage fees, license fees, any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. ITEC will add charges, taxes, duties and similar levies to the sales price where ITEC is required by law to pay or collect them and will be paid by Buyer together with the price. If there is any change to such charges, taxes, duties or similar levies which are not directly paid for by Buyer after the ITEC’s Confirmation of Buyer’s order, ITEC shall be entitled to adjust the price and Buyer shall pay accordingly.

## 3. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

Unless provided otherwise in a separate agreement between ITEC and Buyer, the following terms apply to software (including firmware in all references to “software”, unless stated otherwise) and documentation provided or made available to Buyer in connection with Products:

ITEC grants Buyer a limited, nonexclusive, non-assignable, non-transferable personal license to use software in machine-readable form, only in combination with or as part of the Product for which the software has been provided and only one copy for each such Product. No license in the event of resale of the Product. No rights or licenses with respect to any software source code are granted to Buyer. ITEC grants Buyer a limited, nonexclusive, non-assignable, non-transferable personal license to use non-confidential documentation with the Product for which the documentation has been provided and only one copy for each such Product. Buyer will reproduce all of ITEC’s (or its licensor’s) copyright notices and other proprietary legends in the software and on copies thereof. Software upgrades or updates which are necessary to maintain the specifications agreed by both parties for the Product shall be provided without additional charges during the applicable warrant period. However, other revisions to the software, at ITEC’s sole discretion, for enhancement shall be purchased separately from the ITEC.

With respect to Products, software, documentation, and portions thereof, Buyer is not authorized to and agrees that it will not: (i) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code, ideas, technology or algorithms, except to the extent expressly authorized by statutory law; (ii) modify or create derivative works; (iii) remove or alter any proprietary markings or notices; or (iv) merge, link or incorporate software into any other software; or permit others to do so. Should Buyer create any modifications or derivative works of Products, software, documentation or a portion thereof, Buyer irrevocably assigns and agrees to assign all right, title and interest in any such modifications or derivative works to ITEC. Buyer's rights under these Terms and Conditions are conditional upon Buyer not performing any actions that may require any software, Products and/or any derivative work thereof, to be licensed under open source software license terms that may, for example, require disclosing source code, granting a license under intellectual property rights, such as granting a permission to develop derivative works, or granting other rights or assuming responsibilities commonly associated with open source software.

If Buyer is in default of any of the terms herein, Buyer’s license to software and documentation will automatically terminate. Buyer shall indemnify ITEC against and hold ITEC harmless from any damage or costs arising from or in connection with any violation or breach of the provisions of this Section 3 and Buyer shall reimburse all costs and expenses incurred by ITEC in defending any claim, demand, suit or proceeding arising from or in connection with such violation or breach.

To the extent that software and/or documentation is embedded in a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such software and/or documentation, and all references to “sale” or “sold” of any software or documentation shall be deemed to mean a license the scope of which is defined above in this Section 3. Except for those rights specifically granted in this Section 3 in connection with software and documentation: (i) ITEC and its suppliers reserve all right, title and interest, together with all intellectual property rights thereto, in all software and documentation provided or made available to Buyer, and (ii) no other express or implied license, right or interest in or to any patent, patent application, copyright, trade secret, trademark, trade name, service mark or any other intellectual property right is granted hereunder.

Any open source software included in the software is not licensed or warranted under the terms of these Terms and Conditions, but is instead licensed under the terms of applicable open source license(s), such as the BSD License,

Apache License or the Lesser GNU General Public License. In no event will Buyer subject the software to an Excluded License. An Excluded License means any license that requires, as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge. Buyer is solely responsible for obtaining any necessary third party approvals and any licenses for any necessary essential patents for their use in connection with technology that Buyer incorporates into Buyer's system or software (whether as part of the software or not).

Neither the sale of any of the Products, nor these Terms and Conditions, shall be construed as conferring any right, license or immunity:

- a. under any intellectual property rights to any combination, machine, or process in which Products might be used, or to any modifications of Products, software, or documentation;
- b. with respect to any trademark, trade or brand name, corporate name, or any other name or mark, or contraction, abbreviation or simulation thereof;
- c. under any intellectual property rights covering an industry standard set by a standard setting body or agreed to between at least two companies; or
- d. under any intellectual property rights with respect to which ITEC has informed Buyer or has published statement that a separate license has to be obtained or that no license is granted or implied.

In the event that the Buyer wishes to resell or transfer the Products to a third party not party to this agreement, the Buyer shall obtain the consent of the ITEC prior to such resale or transfer. For the avoidance of doubt such third party will not be licensed under this Section 3.

#### 4. PAYMENT

- a. Unless agreed otherwise between ITEC and Buyer in writing, ITEC may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable Incoterm. Services or parts not included therein will be invoiced additionally. Payment is due within thirty (30) days of date of invoice unless agreed otherwise between ITEC and Buyer in writing. All payments shall be made to the designated ITEC's account. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. ITEC is also entitled to make partial delivery and to invoice separately upon partial delivery. Each invoice shall be paid when due regardless of following deliveries. No discount is allowed for any payment unless agreed to in writing by ITEC. Interest will accrue on all late payments, at the rate of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is lower, from the due date until payment in full.
- b. All deliveries and performance of work agreed to by ITEC shall at all times be subject to credit approval of ITEC. If, in ITEC's judgment, Buyer's financial condition at any time does not justify production, performance of work or delivery on the above payment terms, ITEC may require full or partial payment in advance or other payment terms as condition for delivery, and ITEC may suspend, delay or cancel any credit, delivery or any other performance by ITEC.
- c. Payment by Buyer of non-recurring charges (as may be made to ITEC for special design, engineering work or production materials) shall not convey title to any design, engineering work or production materials, and title shall remain in ITEC.
- d. Buyer shall not offset, withhold or reduce any payment(s) due by it to ITEC. The payment of fees and charges is a covenant of Buyer that is independent of the other covenants made by the parties hereunder.
- e. If ITEC incurs exchange rate losses due to Buyer's failure to pay when payments are due, ITEC shall be entitled to equivalent compensation from Buyer for such losses.
- f. In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, ITEC shall have the right to refuse performance of any work and delivery of any Products until payments are brought current and ITEC may suspend, delay or cancel any credit, delivery or any other performance by ITEC. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under

these Terms and Conditions or at law or in equity.

## 5. DELIVERY AND QUANTITIES

- a. Unless indicated otherwise, Products shall be delivered Ex Works (EXW) Incoterms® 2020 at the facility designated by ITEC.
- b. Products shall be packed as ITEC may deem necessary or appropriate. Freight and insurance charges are collected and to be borne by Buyer at all times. Carriers and methods of transportation shall be requested by the Buyer. But ITEC shall be entitled to decide conclusively, at its sole discretion, whether the carriers and the methods are suitable. Delivery dates communicated or acknowledged by ITEC are approximate only, and ITEC shall not be liable for, nor shall ITEC be in breach of its obligations to Buyer, because of any delivery made within a reasonable time before or after the stated delivery date. ITEC agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the agreed delivery date. In the case of partial delivery, delay in any delivery shall not relieve Buyer's obligations to take remaining deliveries.
- c. If Parties agree, Buyer shall verify the state and quality of the Product and accept the Product during the Factory Acceptance Test ("FAT") at ITEC's or ITEC's subcontractors premises. In the event Buyer does not accept the Product, Buyer must make such claim in writing during the factory acceptance test with all necessary proof and keep them at the disposal of the ITEC, otherwise delivery shall be deemed completed and accepted and Buyer waives all such claims. In no circumstance shall ITEC be liable for the loss and damages in any transportation.
- d. If applicable, after delivery or acceptance at the FAT, ITEC will install the Product at Buyer's premise. The Product will be installed - in general according to ITEC's standard process - at Buyer's premises as indicated in the Confirmation. The Buyer will provide all required documents, facilities, access to the premises and safe working environment for ITEC's personnel as required to assure the installation. Installation shall be provided within normal business hours. Buyer shall be liable for the labor cost and other reasonable costs incurred by the delays of the installation that are not due to ITEC's fault. If installation is not completed within ninety (90) days after the finalization of the FAT because of reasons other than ITEC's fault, the installation service shall be deemed completed. Any installation services provided by any third party not designated by ITEC are at Buyer's risk. Buyer will provide prior to the date of arrival of the Product at its premise, all necessary supplies (e.g. power, air, vacuum etc.) and enough component samples as per Product and component specifications to assure a smooth and fast as possible installation.
- e. Title in the Products shall pass to Buyer upon payment in full of the purchase price in respect thereof. Risk of loss and damage in the Products shall pass to Buyer upon ITEC's delivery in accordance with the applicable Incoterm. Risk of loss and damage of Products in transit from delivery point to final installation location shall be borne by the Buyer.
- f. If Buyer fails to take delivery, as a breach of Buyer's obligation to ITEC, then ITEC may, at ITEC's discretion, take the Products back to ITEC's facility for temporary storage at Buyer's costs and expenses or deliver the Products in consignment at Buyer's costs and expenses. Buyer shall pay off all the costs and expenses together with the payment of the purchase price. In the event that the payment of purchase price is agreed by ITEC to be made in installments, all the costs and expenses shall be paid together with the first installment. Notwithstanding paragraph d above, risk to the Products shall pass to Buyer upon ITEC's delivery for the first time despite of Buyer's failure to take the delivery.
- g. In the event of shortages, ITEC may allocate its available production and Products, in its sole discretion, among its customers and as a result may sell and deliver to Buyer fewer Products than specified in ITEC's Offer, Confirmation or Agreement, as the case may be.

## 6. CUSTOM PRODUCT

ITEC shall have exclusive rights to products designed and manufactured for the unique needs of Buyer, to Buyer's

specifications or requirements (“Custom Product”). ITEC shall retain title to the Custom Products. The Custom Products may be used by ITEC in other designs for other customers of ITEC and may not be used by Buyer except as a part of Custom Product designed or manufactured by ITEC. Buyer shall precisely and completely define the specifications that the Custom Product shall respect, the objectives to be attained as well as all conditions of use. Buyer shall include all stator, legal, security, health and other specifications governing the design, construction, installation, commissioning, use, etc. of the Custom Product and the services applicable to the place where it will be used. In case such specification of Custom Product is not or only partially provided by the Buyer, and unless otherwise specified in writing, ITEC’s standard specifications will be applicable. Buyer shall be responsible for the consequences of any errors or omissions it may make. Prices and/or schedules for Custom Products are subject to change by ITEC if any specifications are revised or supplemented or there are unforeseen difficulties with the design.

## 7. CHANGES

ITEC reserves the right to make at any time Product and/or production changes. Details of design and manufacture process proposed by ITEC are approximately only and might be revised by ITEC when revisions are required, at ITEC’s sole discretion, based on the conditions unforeseeable or unaware to the ITEC at the time of providing such details. The price is subject to such revision. In the event that any material (1) is no longer obtainable by ITEC due to governmental order or other reasons; or (2) is no longer available upon commercial reasonable terms and conditions, ITEC is entitled to use substitutes for such material. Buyer will be notified for such changes or revisions and Buyer shall bear the additional cost incurred by the revisions and/or substitutes and expect all delays hereby.

## 8. SUPPORT AND INSTALLATION

ITEC will supply equipment and/or automation technologies related support to Buyer upon Buyer’s request and at Buyer’s cost.

ITEC is not responsible for the reliability or performance during or after the warranty period if Buyer does not have sufficient service staff. Unless otherwise agreed by the ITEC, the cost of installation support, technical support to Buyer and the training of Buyer’s staff, as provided by ITEC on the request of the Buyer, in relation to the use, performance and maintenance, etc. of the Products, will be invoiced to the Buyer and provided subsequently according to the terms and conditions further agreed by ITEC and Buyer.

The Product will be installed - in general according to ITEC’s standard process – at normal installation cost by ITEC’s personnel at Buyer’s premises as indicated in the Confirmation. The Buyer will provide all required documents, facilities, access to the premises and safe working environment for ITEC’s personnel as required to assure the installation. Installation shall be provided within normal business hours. Buyer shall be liable for the labor cost and other reasonable costs incurred by the delays of the installation that are not due to ITEC’s fault. If installation is not completed within ninety (90) days of the delivery because of the reasons other than ITEC’s fault, the installation service shall be deemed completed. Any installation services provided by any third party not designated by ITEC are at Buyer’s risk.

Buyer will provide prior to the date of arrival of the Product at its premise, all necessary supplies (e.g. power, air, vacuum, sufficient component samples, component specifications, etc.).

## 9. RESCHEDULING AND CANCELLATION

No order, Agreement or any part thereof may be rescheduled or cancelled without ITEC’s prior written consent. If the Buyer:

- (i) Cancels the order as confirmed or suspends the performance thereof for a reason not imputable to ITEC, ITEC will invoice the Buyer the following part of the total price that will be payable in 30 days:
  - If ITEC receives the written decision from the Buyer 0-2 weeks before the scheduled shipment date: 100% of the total price,
  - If ITEC receives the written decision from the Buyer 2-4 weeks before the scheduled shipment date: 90% of the total price,
  - If ITEC receives the written decision from the Buyer 4-8 weeks before the scheduled shipment date: 80% of the total price,

- If ITEC receives the written decision from the Buyer over 8 weeks before the scheduled shipment date: 50% of the total price,
- (ii) Reduce the order as confirmed, ITEC may invoice the Buyer a surcharge on the unit price resulting from this reduction.

Buyer shall also indemnify all the costs suffered by the ITEC arising from the cancellation or reduction.

#### 10. FORCE MAJEURE

ITEC shall not be liable for any failure or delay in performance if:

- a. such failure or delay results from the fact that ITEC's manufacturing volume of the Products concerned is lower than anticipated due to interruptions in the manufacturing process; or
- b. such failure or delay does not result from its fault; or
- c. such failure or delay is caused by Force Majeure as defined below or by law.

In case of such a non-attributable failure, the performance of the relevant part(s) of the Agreement will be suspended for the period such non-attributable failure continues, without ITEC being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond ITEC's reasonable control (whether or not foreseeable at the time of the Offer, Confirmation or Agreement) as a result of which ITEC cannot reasonably be required to execute its obligations. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, terrorism, insurrections, strikes, fires, floods, earthquakes, labor disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labor, materials or components. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by ITEC to extend for a period of three (3) consecutive months), ITEC shall be entitled to cancel all or any part of the Agreement without any liability of ITEC towards Buyer. In the event ITEC's production is curtailed, for any reason, ITEC shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in ITEC's Offer, Confirmation or Agreement, as the case may be.

#### 11. LIMITED WARRANTY AND DISCLAIMER

- a. ITEC warrants that under normal use and specified operating conditions the Products (excluding any Excluded Products (as defined below)) shall, at the time of delivery to Buyer and for a period of twelve (12) months thereafter, be free from defects in material or workmanship and shall substantially conform to ITEC's specifications for such Products, or such other specifications as ITEC has agreed to in writing, as applicable.
- b. ITEC's sole and exclusive obligation and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at ITEC's option, either to the replacement or repair of a defective or non-conforming Product. ITEC will have a reasonable time to repair or replace. The non-conforming or defective Products shall become ITEC's property as soon as they have been replaced. Such defects shall be proven to be identifiable to and accepted by the ITEC. Repairs or adjustments to Products may be done, at ITEC's discretion, on Buyer's premise or returned to ITEC. Warranty service will be provided during normal business hours and other times requested by the Buyer shall be charged additionally. Buyer shall provide full and free access to the Product in its usual and normal working environment and provide safe working environment for and out of warranty service.
- c. As used in these Terms and Conditions, "Excluded Products" mean: (i) software that is (a) licensed under open source software license terms, (b) provided by Buyer or any of its designees to ITEC, (c) modified by Buyer or any third party, other than at ITEC's request, and/or (d) not embedded in a Product by ITEC; (ii) prototypes; (iii) Custom Products manufactured and/or delivered prior to both parties' written acceptance of the prototypes thereof; (iv) experimental Products; (v) beta testing Products; and/or (vi) samples of newly developed Products. All Excluded Products shall be AS IS WITHOUT WARRANTY OF ANY KIND.
- d. Notwithstanding the foregoing, ITEC will not be responsible for and shall have no obligations for breach of

warranty if the alleged defect or non-conformance is found to have occurred as a result of: environmental or stress testing, misuse, neglect, improper installation, accident, improper repair (including but not limited to unauthorized consumable component or spare or unqualified personnel), alteration, modification, improper storage, improper transportation, improper handling of the Products (including but not limited to the failure of performing the maintenance procedures in their entirety as specified in maintenance manual or equivalent document and any updates) or any damages resulting from the circumstances beyond ITEC's control, after the risk of loss in the Products has passed to Buyer. At ITEC's discretion, all non-authorized material may be required to be replaced with ITEC's authorized material and to be paid prior to any warranty service performed by ITEC.

- e. Any non-consumable components or spares that are provided by ITEC to replace those of the Products under the warranty specified herein shall perform to material specifications under normal use and specified operating conditions for the remaining length of the warranty period of the Products. During the warranty period, replacement will be made on a no charge basis on the condition that all defective non-consumable components or spares are returned, with ITEC's prior written consent, to ITEC's requested destination within ten (10) business days from Buyer's receipt of the replacement. Failure to return the defective non-consumable components or spares within said period will result in an invoice for the full sales price of the replacement.
- f. For consumable components or spares, ITEC only warrants that they can perform material specifications under normal use and specified operating conditions at the time of delivery.
- g. Buyer may ship Products returned under warranty claims after ITEC's written consent to ITEC's designated facility only so long as the returns are in conformance with ITEC's then-current return material authorization policy and are accompanied by a duly completed return material authorization form issued by ITEC. Unauthorized returned Product will not be accepted by ITEC. Any Products returned to ITEC shall become the property of ITEC upon acceptance of ITEC. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith. Unless specifically agreed in writing, return of the Product constitute Buyer's authorization for ITEC to repair such items and to invoice Buyer for any and all reasonable costs of repair, labor, parts, handling and freight on items not covered by the terms of warranty. Product returned to ITEC by Buyer shall be decontaminated by Buyer from hazardous materials and in any event to the standards required by applicable laws or regulations and certify in writing its compliance with such requirement.
- h. THE EXPRESS WARRANTY GRANTED ABOVE SHALL EXTEND DIRECTLY TO BUYER AT THE ORIGINAL "SHIP TO" DESTINATION AND NOT TO BUYER'S CUSTOMERS, AGENTS, REPRESENTATIVES OR ANY OTHER PARTY. THE EXPRESS WARRANTY GRANTED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ALL OTHER WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED BY ITEC.
- i. Any breach of the warranties in this section shall not cause any extension of the duration of the applicable warranty period. Continued use or possession of the Products after expiration of the applicable warranty period shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of the Buyer.
- j. Subject to the exclusions and limitations set forth in Section 12 of these Terms and Conditions, the foregoing states the entire liability of ITEC in connection with defective or non-conforming Products supplied hereunder.

## 12. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- a. ITEC, at its expense, shall: (i) defend against a claim in a legal proceeding brought by a third party against Buyer that any Product as furnished by ITEC hereunder directly infringes the claimant's patent; and (ii) hold Buyer harmless against damages and costs awarded by final judgment in such proceeding (or agreed upon in a settlement to which ITEC consents) to the extent directly and solely attributable to infringement by the Product.

- b. ITEC shall have no obligation or liability to Buyer under Section 13(a): (1) if ITEC is not: (i) promptly notified by the Buyer in writing of the claim, (ii) given the sole right to control the defense and settlement of such claim, including the selection of counsel, and (iii) given full reasonable assistance and cooperation by Buyer in such defense and settlement; (2) if the claim is made more than three (3) years after the date of delivery of the Product; (3) to the extent that any such claim arises from: (i) modification of the Product, (ii) design, specifications or instructions furnished by Buyer, or (iii) the combination or use of the Product with any product, software, service or technology; (4) for unauthorized use or distribution of the Product or use beyond the specifications of the Product; (5) to the extent that any such claim arises from Buyer's use, sale, offer for sale or importation of the Product after ITEC's notice to Buyer that Buyer should cease any such activity because the Product is, or is reasonably likely to become, the subject of a claim of infringement; (6) for any costs or expenses incurred by Buyer without ITEC's prior written consent; (7) to the extent that the claim is based on any Excluded Products; (8) to the extent that any such claim arises from any infringement or alleged infringement of third party's intellectual property rights covering an industry standard set by a standard setting body or agreed to between at least two companies; (9) for infringement of any third party's intellectual property rights with respect to which ITEC has informed Buyer or has published a statement that a separate license has to be obtained or that no license is granted or implied; or (10) to the extent that patent infringement damages are computed using a royalty base that exceeds the cost of the Product.
- c. If any claim of infringement is brought against ITEC as a result of Buyer's actions in connection with this Agreement, Buyer shall indemnify ITEC against and hold ITEC harmless from any damages or costs arising from or connected with such claim of infringement and shall reimburse all costs incurred by ITEC in defending any claim, demand, suit or proceeding for such infringement, provided ITEC gives Buyer prompt notice in writing of any such suit or proceeding for infringement.
- d. If any Product is, or in ITEC's opinion is likely to become, the subject of a claim of infringement, ITEC shall have the right, without obligation and at its sole option, to: (i) procure for Buyer the right to continue to use or sell such Product, (ii) replace or modify such Product in such a way as to make the modified Product non-infringing, or (iii) terminate any Agreement to the extent related to such Product. In the event of any such termination, Buyer may return to ITEC all such Products in Buyer's possession at the time of such termination, which are then subject to the claimant's continuing claim of infringement; and upon such return ITEC shall credit Buyer the sum paid to ITEC by Buyer for such Products, less appropriate depreciation.
- e. The foregoing indemnity is personal to Buyer and is not assignable, transferable or subject to pass-through to any third party including Buyer's customers.
- f. ITEC's liability for damages under this Section 12 will not exceed a reasonable royalty rate as applied solely to the Product that is the subject of the indemnified claim.
- g. SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET FORTH IN SECTION 12 OF THESE TERMS AND CONDITIONS, THE FOREGOING STATES ITEC'S ENTIRE LIABILITY AND OBLIGATION TO BUYER OR ITS MEDIATE OR IMMEDIATE CUSTOMERS AND BUYER'S SOLE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

### 13. LIMITATION OF LIABILITY

- a. EXCEPT FOR BUYER'S LIABILITY UNDER SECTIONS 3 OR 12(C) HEREOF, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR LOST SAVINGS, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ITEC BE LIABLE FOR ANY DAMAGE, COSTS OR EXPENSES ASSOCIATED WITH WARRANTY OR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS, WHETHER FOR THE REPLACEMENT OR REPAIR OF PRODUCTS, INCLUDING LABOR, INSTALLATION OR OTHER COSTS INCURRED BY BUYER AND, IN PARTICULAR, ANY COSTS RELATED TO THE REMOVAL OR REPLACEMENT OF ANY PRODUCTS, EXCESS PROCUREMENT COSTS, OR REWORK CHARGES.



- b. The aggregate liability of ITEC, for all Buyer claims arising out of or in connection with the sale or use of any Product, shall not exceed 10% of the purchase price of the Product concerned. Notwithstanding the above, the aggregate liability of ITEC for all Buyer claims in a calendar year for all Products shall not exceed 10% of the amount that Buyer has paid ITEC for such Products concerned during the twelve (12) months immediately preceding Buyer's notification to ITEC of the applicable Buyer claim. The existence of more than one Buyer claim, or Buyer claims involving more than one Product, shall not enlarge or extend the above specified limits.
- c. In some cases, ITEC may promote certain Products for use in safety-related applications. ITEC's goal is to educate customers so that they can design their own end-product solutions to meet applicable functional safety standards and requirements. Buyer makes the ultimate design decisions regarding its products and is solely responsible for compliance with all legal, regulatory, safety, and security related requirements concerning its products, regardless of any information or support that may be provided by ITEC. Accordingly, Buyer will indemnify and hold ITEC harmless from any claims, liabilities, damages and associated costs and expenses (including attorneys' fees) that ITEC may incur related to Buyer's incorporation of any Product in a safety-critical application or system.
- d. Buyer must provide notice to ITEC of any claim that Buyer has under these Terms and Conditions within ninety (90) days of the date that the claim arises, and any lawsuit relative to any claim must be filed within one (1) year of the date of notice to ITEC of the claim. Buyer agrees that any claim noticed or filed outside of the deadlines set forth in the preceding sentence are deemed waived.
- e. The limitations and exclusions set forth above in this Section 13 shall only apply to the extent permitted by applicable mandatory law.

#### 14. CONFIDENTIALITY

Except for non-confidential documentation specifically marked and indicated by ITEC, Buyer acknowledges that all technical, commercial, and financial information (including without limitation any source code and maintenance manual) disclosed to Buyer by ITEC is the confidential information of ITEC. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transactions contemplated herein.

#### 15. COMPLIANCE WITH LAWS

Each party hereto represents that it is duly authorized to enter into these Terms and Conditions and represents that with respect to its performance hereunder, it will comply with all applicable federal, state and local laws, including, but not limited to those pertaining to U.S. Export Administration or the export or import controls or restrictions of other applicable jurisdictions.

If the delivery of Products under these Terms and Conditions is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, ITEC may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and ITEC may even terminate any Agreement related to such Products, without incurring any liability towards Buyer.

Furthermore, if an end-user statement is required, ITEC shall inform Buyer immediately thereof and Buyer shall provide ITEC with such document upon ITEC's first written request; if an import license is required, Buyer shall inform ITEC immediately thereof and Buyer shall provide ITEC with such document as soon as it is available.

By accepting ITEC's Offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations and shall indemnify ITEC against any and all loss, damages, costs and liabilities arising from Buyer's or its customers' breach or non-compliance with such laws and regulations.

#### 16. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under these Terms and Conditions or any Agreement without the prior written consent of ITEC.

Buyer hereby waives any and all rights to offset existing and future claims against any payments due for Products sold under these Terms and Conditions or under any other agreement that Buyer and ITEC may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf. ITEC is allowed to assign any rights or obligations under these Terms and Conditions and any Agreement to its Affiliates or to any third party in connection with a merger or a change of control.

#### 17. GOVERNING LAW AND FORUM

These Terms and Conditions, and all Offers, Confirmations and Agreements, are governed by and construed in accordance with the laws of the Netherlands. All disputes arising out of or in connection with these Terms and Conditions, or any Offer, Confirmation or Agreement, shall first be attempted by Buyer and ITEC to be settled through consultation and negotiation in good faith and a spirit of cooperation. All disputes that are not so settled within a period of thirty (30) days from the date the relevant dispute first arose may be submitted to the courts of Amsterdam, The Netherlands, provided that ITEC shall always be permitted to bring any action or proceedings against Buyer in any other court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions, or any Offer, Confirmation or Agreement. Nothing in this Section 17 shall be construed or interpreted as a limitation on either ITEC's or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

#### 18. BREACH AND TERMINATION

Without prejudice to any rights or remedies ITEC may have under these Terms and Conditions or the Agreement or at law, ITEC may, by written notice to Buyer, terminate with immediate effect any Agreement, or any part thereof, without any liability whatsoever, if:

- a. Buyer fails to make payment for any Products to ITEC when due;
- b. Buyer fails to accept conforming Products supplied hereunder;
- c. any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or
- d. Buyer violates or breaches any of the provisions of these Terms and Conditions and/or the Agreement.

Upon occurrence of any of the events referred to under 18(a) through 18(d) above, all payments to be made by Buyer under the Agreement shall become immediately due and payable. If ITEC terminates the Agreement or any part thereof on account of any of the grounds above, Buyer shall be liable for all costs and damages suffered by ITEC.

In the event of cancellation, termination or expiration of any Agreement the terms and conditions destined to survive such cancellation, termination or expiration shall survive.

#### 19. DISCONTINUATION OF PRODUCT

ITEC reserves the right to discontinue manufacturing and sale of Products at any time. If however at any time during the term of an Agreement under which ITEC sells and Buyer purchases Products on a regular basis, such regularly sold and purchased Products and Spare Parts are to be permanently discontinued ("Discontinued Product"), ITEC shall use its reasonable commercial efforts to give Buyer prior written notice of such discontinuance and shall use reasonable commercial efforts to accept last-time-buy orders for such Discontinued Product all in accordance with ITEC's product discontinuation process and general information related thereto as published on ITEC's website.

#### 20. SEVERABILITY

In the event that any provision(s) of the Agreement or these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof.

21. WAIVER

The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from any Offer, Confirmation or Agreement, or these Terms and Conditions, shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from any Offer, Confirmation or Agreement, or these Terms and Conditions or by law.

22. NOTICES

All notices and communications to be given under these Terms and Conditions shall be in writing and shall be deemed delivered upon hand delivery, confirmed facsimile communication, or three (3) days after deposit in the mail of the home country of the party, postage prepaid, by certified, registered, first class or equivalent mail, addressed to the parties at their addresses set forth on the Offer, Confirmations and/or Agreement.

23. ATTORNEYS' FEES

Should a dispute arise from the subject matter of any Offer, Confirmation or Agreement, or these Terms and Conditions, the prevailing party in any resulting litigation shall be reimbursed by the other party for any and all reasonable attorneys' fees and expenses incurred.

24. RELATIONSHIP OF PARTIES

The parties hereto intend to establish a relationship of buyer and ITEC and as such are independent contractors with neither party having authority as an agent or legal representative of the other to create any obligation, express or implied, on behalf of the other.

25. MODIFICATIONS AND CHANGES

ITEC reserves the right to make any amendments or modifications to these Terms and Conditions at any time. Such amendments and modifications shall have effect (1) on all Offers, Confirmations and Agreements referring to such amended or modified Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (2) on any existing Agreement thirty (30) days from notification of such amendments or modifications by ITEC to Buyer, unless Buyer has notified ITEC within such thirty (30) days period that it objects thereto via publication of the updated version of the Terms and Conditions on ITEC's website.

26. LANGUAGE

These Terms and Conditions are entered into in the English language.