



## GENERAL TERMS AND CONDITIONS OF PURCHASE OF THE EBNER GROUP FOR PRODUCT DELIVERIES AND SERVICES, FEBRUARY 2021

### 1. Applicability

These "General Terms and Conditions of Purchase" ("GTCP") shall apply to purchase orders placed by Ebner Furnaces Inc. ("Ebner Furnaces") and/or any affiliate of Ebner Furnaces or of the Ebner Group, or any person controlled directly or indirectly by either one of them, as stated in the contract/purchase order (hereinafter referred to as the "Customer") with his contractors (hereinafter referred to as the "Contractor") as an agreed and integral part of the contract. These GTCP of the Customer shall be deemed accepted on the earliest of (i) acceptance of an Order by the Contractor; or (ii) upon commencement of the execution of the purchase order by the Contractor. In the case of follow-up orders and business relationships that are intended to last for a longer period of time, the applicability of the GTCP shall also extend to future transactions with the relevant Contractor. Irrespective of the concrete contents of the regulations, the Parties agree and the Contractor acknowledges that the validity or inclusion of any general terms and conditions of the Contractor is excluded, even if they have not been expressly contradicted in individual cases. They shall only apply if they have been expressly accepted by the Customer in writing.

The Contract shall include the following documents in order of importance:

1. The order;
2. The GTCP;
3. The specifications and/or descriptions of the supply; and
4. Any other agreed document duly executed by both the Customer and the Contractor.

In case of discrepancy or inconsistency, the Order shall prevail over the GTCP, the GTCP shall prevail over the Specifications, and the Specifications shall prevail over any other agreed document (unless otherwise expressly agreed in writing by the Parties).

### 2. Conclusion of contracts and ordering process

Legally binding purchase orders of the Customer shall exclusively be placed in writing (including via EDI, email or fax) by the respective Customer's purchasing department in charge. In the case of a binding offer of the Contractor, the contract between the Customer and the Contractor shall become effective upon the Customer's purchase order. In all other cases, the agreement shall become effective upon confirmation of the order by the Contractor in compliance with the following regulations. The Contractor shall acknowledge and accept the Customer's purchase orders by means of an acknowledgement and acceptance of order within five (5) working days of submission of the Customer's purchase order (date of receipt by the Contractor) or (except in the case of a binding offer) reject them within the same period. The Customer shall in any case be entitled to withdraw the purchase order free of charge without having to state any reasons before it receives an unconditional acknowledgement and acceptance of the order. The Customer shall notify the Contractor thereof in

writing. The Customer reserves the right to reject acknowledgements and acceptances of orders that it receives after the five-day period.

The Customer may request modifications to the order or the delivery item in terms of design and execution at any time. If, as a result, the agreed delivery deadlines can no longer be met or the agreed prices have to be increased, the Contractor shall notify the Customer within five (5) business days and submit a reasonable proposal in writing with regard to the delivery deadline and/or price increase. The revised proposal will be effective only upon written confirmation and acceptance thereof by the Customer. If the Contractor fails to submit the said proposal within five (5) business days, the originally agreed delivery periods and prices shall also apply to the modified order.

The Contractor may only rely on modifications of, amendments to, additions to or extensions of the purchase order if they were expressly ordered in writing or confirmed in writing by the Customer's purchasing department in charge. Where modifications, amendments and/or additions/extensions are ordered in a different way or by a different department of the Customer and/or where it cannot be seen without doubt that they have been made in agreement with the Customer's purchasing department in charge, the Contractor shall in any case immediately notify the Customer's purchasing department in charge in writing and obtain a written confirmation in this respect. Otherwise, the Customer shall be entitled to consider such modifications, amendments, and addenda/additions as not having been agreed upon in a legally binding manner. In that case all resulting costs shall be borne by the Contractor.

The Contractor confirms that, on his part, only persons who are sufficiently authorised to make legally binding statements on behalf of the Contractor will be used to process the purchase order and to perform the contract.

In the Contractor's correspondence with the Customer, the purchase order number shall always be stated.

### 3. Deliveries/Services, deadlines, and dates

#### 3.1 Significance of the Contractor's Deliveries and Services

The Contractor undertakes to exercise particular care in the fulfilment of his Deliveries/Services. This includes the procurement of all relevant information to be taken into account for the fulfilment of the Deliveries/Services under the concretely prevailing conditions of the transport route and the place of use of the supplies and services as well as for the integration of his supplies and services into the overall system of the Customer. The Contractor, as an expert, has an obligation to advise the Customer and shall use its professional knowledge and techniques to reach the results and expectations stipulated in the Contract. The deliveries and services provided in accordance with the Contract



shall comply with the Customer's specifications. The Contractor shall perform the Contract in accordance with the agreed schedule and costs.

### **3.2 Scope of deliveries and services ("Deliveries/Services")**

The Customer's contractual duties to collaborate and/or to provide material/staff are listed exhaustively in the contractual documents forming the Contract. Accordingly, the Contractor shall provide the agreed Deliveries/Services (including a complete documentation in accordance with these GTCP and the Contract) properly, at the agreed time, completely and for the agreed, fixed lump sum (= guaranteed maximum price, including all taxes and charges; reductions and savings shall be deducted for the benefit of the Customer). To perform the agreed Deliveries/Services, the related duties/obligations and, in particular, to ensure smooth processing of the purchase order, proper and quick assembly/putting into operation, as well as trouble-free, continuous industrial operation, the Contractor shall, among other things, carefully check the contents of the documents underlying the purchase order and the Contract, including but not limited to the technical specifications, for completeness, suitability and absence of errors, and immediately point out any problems to the Customer. Complete fulfilment of the agreed Deliveries/Services includes effective transfer of unrestricted, unencumbered title to all parts of the Deliveries/Services and obtaining unrestricted power to dispose of the same, including all records/documentation that are/is necessary for putting into operation, for continuous operation or regular maintenance of the same and/or any records/documentations that may have been agreed in addition. Insofar as existing industrial property rights or other rights of the Contractor or of third parties exist that could prevent the Customer or his customers from using the Deliveries/Services, the Contractor shall grant the Customer an appropriate, non-exclusive right of co-use, which is unlimited in terms of time, place, and content, free of charge and freely transferable within the group association of the Customer and of the **EBNER GROUP** and extendable and sub-licensable to their respective customers and suppliers or shall ensure that such a right is granted by third parties. The Contractor guarantees that worldwide there are no restrictions of whatsoever kind, such as, e.g. claims or rights of third parties (in particular, trademark rights or registered design rights, patents or territorial protection) and no rights of third parties shall be infringed, neither through the Deliveries/Services nor through the operation and/or use of the delivered items, materials or services. In the case of a violation of this obligation, the Customer shall completely indemnify and hold harmless the Customer from and against all claims and costs (e.g. third-party claims). This obligation shall also extend

to the reimbursement of lawyers' fees and other legal defense costs incurred by the Customer. The rights and license hereby granted include the right to use, operate, maintain, adjust, modify or repair the Deliveries/Services. Such license shall be an irrevocable, worldwide, free of royalty or any other payment and without limit in time.

### **3.3 Periods and deadlines of Deliveries/Services**

As a matter of principle, the time at which all contractual and statutory duties/obligations of the Contractor in connection with the Deliveries/Services in accordance with the Contract (purchase order, binding offer, technical specifications, and the present GTCP) have been completely fulfilled shall be deemed the time of complete fulfilment. All agreed periods and deadlines of Deliveries/Services are binding and must be strictly adhered to by the Contractor. Unless otherwise agreed in writing, any delivery periods that may have been fixed in the Contract shall commence on the date the purchase order is sent by the Customer. If the Contractor notices that observance of the agreed periods and deadlines of Deliveries/Services or other deadlines that may have been agreed might be jeopardised, the Contractor shall immediately notify the Customer thereof in writing and state the reasons and the expected duration of the default. Concurrently he shall advise the Customer of necessary and suitable measures to prevent or reduce the imminent defaults and implement the same.

If the Contractor is already late in fulfilment of his contractual obligations (in particular with respect to agreed periods/dates of delivery/service and other agreed deadlines that may have been agreed) or if occurrence of such default is already foreseeable due to the actual course of the project, the Customer shall be entitled to carry out a reasonable concurrent check of the Contractor's activities related to performance of the Deliveries/Services and to enter the relevant production sites and other premises of the Contractor for that purpose if and to the extent necessary and upon prior notice and to demand that the Contractor take necessary, appropriate measures to prevent/reduce any (further) defaults/delays in the performance of the agreed Deliveries/Services. Both the default and the failure to take the requested necessary and appropriate measures to reduce/prevent any (further) defaults by the Contractor shall each constitute a material breach of the Contract due, which entitles the Customer, irrespective of all other rights and claims to which he is legally entitled, to exercise the rights in accordance with Clause 8.1 hereof.

### **3.4 Provision of Deliveries/Services**

The Deliveries/Services to be provided by the Contractor shall be able to be used as cost-effectively and permanently as possible. Ongoing expenses for repair/maintenance/replacement within the scope of the Contract agreed shall be carried out according to the then current state of the art.

Subsequent modifications of or amendments to the agreed Deliveries/Services (e.g. modified technical designs, etc.) which

(i) are not attributable to the Customer's sphere of responsibility or



(ii) have not been expressly ordered by the Customer shall in any case require express written consent of the Customer and, unless agreed otherwise, shall not lead to any additional costs for the Customer, in particular with respect to continuous industrial operation and regular repair/maintenance and replacement. Any administrative or statutory changes that lead to a subsequent modification of or amendment to the Deliveries/Services shall be attributed to the Contractor's sphere of responsibility and any additional costs caused by such changes may not be charged to the Customer. The Contractor may claim defaults in the provision of his Deliveries/Services for which the Customer is solely responsible only if he has asked the Customer to observe its deadlines/comply with its duties to collaborate in writing in due time and has granted the Customer a reasonable grace period to do so. In the case of defaults for which the Customer is responsible as defined above, the agreed periods and deadlines of Deliveries/Services shall be extended/postponed for not more than the period of the defaults for which the Customer is demonstrably and solely responsible, with the Contractor at the same time being obliged to reasonably minimize the impact of such defaults.

If, for reasons not attributable to the Contractor, deadlines are postponed in the fulfilment of the Deliveries/Services, the Contractor shall, upon Customer's request, arrange for proper storage for up to 6 months at the expense and risk of the Contractor.

### **3.5 Suspension, cancellation, storage**

(i) Suspension: The Contractor agrees to suspend performance/provision of the Deliveries/Services temporarily (in whole or in part) for a total period of up to 12 months at the Customer's request, with the first six (6) months of suspension being free of charge and the Contractor not being entitled to assert any claims whatsoever against the Customer. For the period of suspension that exceeds six months, the Customer shall reimburse direct additional costs of the Contractor (but no lost profit or actual loss suffered in the form of lost earnings or any other consequential damages or claims) exclusively caused by the suspension. The Contractor shall provide the Customer with sufficient evidence of such costs no later than 4 weeks after the suspension has ended. The Contractor shall keep the costs resulting from the suspension as low as possible and continue performance of the Deliveries/Services immediately after termination of the suspension. Suspension related costs may only be claimed after the termination of the suspension or of the order, in each case within the aforementioned 4 week delay.

(ii) Cancellation: The Customer shall be entitled to cancel the purchase order/the agreed Deliveries/Services in whole or in part at any time and no reasons need to be stated. In the case of cancellation, the Customer shall pay the Contractor a reasonable portion of the agreed contract price for the Deliveries/Services already provided and delivered prior to the cancellation by the Customer. The Deliveries/Services ready for handover are to be settled concurrently against handover and transfer of the unrestricted title. Any other claims of the Contractor shall be excluded, including any claims for

indirect and/or consequential damages, including lost profits or interests.

### **4. Packaging, shipment, and delivery**

The shipment conditions and packaging guidelines of the Customer shall apply. If the Contractor does not have them, they must be requested from the Customer.

Unless otherwise provided in the purchase order, delivery shall be effected DDP in accordance with the Incoterms® 2020 at the agreed lump-sum price (Clauses 3.1 and 6) and during normal business hours – unloaded at the stated place of destination. Every delivery shall be accompanied by appropriate, customary shipping documents (including but not limited to a delivery note and a commercial invoice in accordance with Clause 6) stating in particular the quantity delivered, the actual recipient of the shipment at the Customer and the purchase order number. Contractor shall provide appropriate valid preference certificates and/or information concerning export control permit regulations (e.g. ECCN/AL number, etc.). Any and all damage/additional costs resulting from non-compliance with the stated or otherwise agreed packaging/shipment/documentation or delivery terms shall be the responsibility of the Contractor.

### **5. Passing of risk and transfer of title**

Subject to the following provisions, the risk shall, in principle, pass in accordance with the agreed Incoterms® 2020 clause. Unless otherwise agreed, the transfer of title with regard to the Deliveries/Services (in particular also with regard to documentation, including the transfer of the corresponding rights to use the work in accordance with Clause 3) shall in principle take place simultaneously with the passing of risk. If partial payments have been agreed, the transfer of title for the relevant part of the Deliveries/Services shall take place at the latest upon corresponding payment (if necessary also by means of setoff) of the payment installment agreed for this part provided that the time of payment is before that of the passing of risk in accordance with the respective agreed Incoterms® 2020 clause.

Where the Deliveries/Services to be provided by the Contractor also include setting up, installation, assembly, and/or putting into operation, title shall, unless otherwise agreed, in any case be transferred upon delivery of the relevant shipment (part) according to the agreed Incoterms® 2020 clause, whereas the risk shall pass not earlier than upon unconditional acceptance of all Deliveries/Services as agreed in the Contract.

### **6. Prices, terms of payment, invoicing, and setoff**

Unless otherwise agreed, all prices for Deliveries/Services shall be deemed fixed lump-sum prices (Clause 3.1), inclusive of all taxes, fees and charges, exclusive of value added tax (or similar excise taxes), DDP Incoterms® 2020 Customer's premises (see Clause 4), inclusive of all costs of packaging, shipment, transportation, customs clearance, documentation, licences, CE marking (where applicable), technical inspections, appropriate coating and corrosion protection, labelling/signage and assembly, putting into operation and acceptance. The agreed price basis



and the terms and conditions for the Deliveries/Services (e.g. project discount) agreed in this connection shall, at the Customer's request, also apply to follow-up orders/supplements/amendments to the purchase order and to orders for spare parts/wearing parts and change parts for the Deliveries/Services. Incidental costs associated with the execution of the order that are regulated neither in agreements nor in INCOTERMS 2020 shall be the responsibility of the Contractor.

Unless agreed otherwise, the Customer shall make payments upon complete and proper fulfilment of all contractual and statutory duties/obligations of the Contractor (see in particular Clause 3) within 45 days of receipt of a proper invoice less a 3 % cash discount or within 90 days of invoicing with no cash discount. If late payment occurs due to the Customer's fault, late payment interest of 4% p.a. shall be deemed agreed. Invoices shall be submitted to the Customer in electronic form, including any proof of performance of Services or the delivery note. Invoices of the Contractor must state a valid VAT number of the Customer. Invoices that have not been properly submitted may be rejected by the Customer. The Customer is entitled to offset claims to which the Contractor is entitled vis-à-vis the Customer or any of his affiliates of the **EBNER** group of enterprises against claims to which the Customer or any of his affiliates is entitled vis-à-vis the Contractor or any of his affiliates and which have been assigned to the Customer, even if they are not of the same kind and due. This shall apply independent of the legal basis of the relevant accounts payable/receivable. The Contractor shall not offset his own claims against counter-claims out of the same transaction or other transactions, unless such counter-claims have been ascertained by court in a non-appealable manner or expressly acknowledged by the Customer in writing. Agreed prices and/or fees are fixed and irrevocable. A price or fee (including costs and disbursements) accepted by Customer may not be modified or increased without Customer's prior written approval. Unless otherwise agreed in writing in the Purchase Order, Contractor shall bear all of its third-party costs and expenses (including accommodation and travel costs) incurred in connection with its performance. Contractor shall be responsible for the payment of all these costs and expenses to third parties. Any right of the Contractor to retain the Deliveries/Services is expressly excluded.

## 7. Collateral and insurance

Insofar as a retention/security deposit is agreed between the Contractor and the Customer, this will be retained for the duration of the agreed or subsequently extended warranty or guarantee period (and at least for a period of two (2) years from unconditional taking of delivery or unconditional acceptance) plus 45 calendar days, bear no interest and may be replaced by the Contractor by a free, irrevocable and letter of credit issued by a first-class bank that is acceptable to the Customer. Letters of credit shall be issued in the form of the Customer's templates. The Contractor shall take out appropriate insurance as necessary for the relevant transaction and maintain the same until the end of the warranty or guarantee period and provide the Customer with adequate confirmations by the insurance company (in particular with respect to coverage/the sum insured

and exclusions from coverage) upon the Customer's request before commencement of performance of the contract; otherwise the Contractor shall be in culpable delay and the Customer shall, at his option and independent of any other claims and rights vis-à-vis the Contractor, be entitled to prohibit the Contractor from providing the Deliveries/Services until he presents an acceptable confirmation by the insurance company at the Contractor's cost and risk, or may take out appropriate insurance at the Contractor's cost or rescind the Contract.. In such cases, the Customer shall be indemnified and held harmless by the Contractor. Existing insurance contracts shall, however, in no case limit any liabilities/other obligations of the Contractor.

## 8. Defaults in performance – delay in delivery, warranty

### 8.1 Delay in delivery

If the Contractor is in default in the fulfilment of his contractual obligations (including without limitation with respect to agreed periods and deadlines of Deliveries/Services or other agreed deadlines), the Customer shall, at his option, be entitled to rescind the Contract in whole or in part, to claim damages for the damage/additional costs caused thereby and to bring about substitute performance at the Contractor's cost and risk through third parties or himself after setting or granting a reasonable grace period, irrespective of any and all other rights and claims to which the Customer may be entitled. The Customer shall also be entitled to these rights if the Contractor has actually had a reasonable grace period at his disposal or if the Customer already has justified reason to assume prior to the respective contract date that the Contractor is not willing or able to fulfil essential contractual obligations on time or will not be able to do so. In this respect the Contractor shall provide any materials, information, parts of documentation (including but not limited to workshop drawings, calculations), licences, etc. that are necessary for substitute/self-performance and to achieve the purpose of the Contract, free of charge.

### 8.2 Contractually modified warranty

The Contractor ensures that the Deliveries/Services will be provided as agreed in the Contract and will be free from defects in quality and/or title of any kind both at the time of delivery and throughout the warranty period and will have the usually expected and the specifically agreed properties and are intended for continuous industrial operation in the overall system of the Customer. Moreover, the Contractor expressly warrants that his Deliveries/Services will fulfil all agreed requirements in accordance with the Contract throughout the warranty period. In addition, for the above purposes, the Contractor warrants accuracy and completeness of his engineering, consultancy and documentation work and, in the case of dispatched personnel, for the accuracy and completeness of oral and/or written instructions. Accordingly, the Contractor shall be liable for the actions of the Customer and/or third parties carried out on the basis of such instructions. If the place of designated use/provision of the Deliveries/Services should be outside the United States, the Deliveries/Services shall also fulfill the standards and regulations applicable at the place of execution of the purchase order/designated use.



Seller warrants that it has the right to supply the Deliveries/Services to the Customer and that the Deliveries/Services are free and clear of all liens, claims and encumbrances. Contractor also expressly warrants that all Deliveries/Services strictly meet all Customer provided or other applicable specifications, are devoid of defects, are of merchantable quality and fit for the purpose intended and meet all applicable federal, provincial and local requirements, including without limitation all applicable safety standards. Customer shall not be liable for, and shall be indemnified by Contractor from, any nonconforming Deliveries/Services, including, without limitation, any late or early delivery, any greater or lesser quantity than that ordered, improper packaging or labelling, etc. and without limitation, Contractor agrees to promptly provide at Contractor's own expense (including expedited shipping charges as necessary), replacement Deliveries/Services or a credit or refund, at Customer's option. Customer may also seek to replace non-conforming Deliveries/Services with another supplier at Contractor's expense in the event a replacement from Contractor cannot be timely provided. Contractor must issue return merchandise authorization within 24 hours of Customer's notice that any Deliveries/Services are non-conforming or Customer may return such Deliveries/Services freight collect. Contractor warrants that all services will be provided in a workmanlike manner in accordance with highest industry standards. The burden to prove non-existence of a defect that occurs/arises during the warranty period shall be borne by the Contractor. The Customer shall have no duty to inspect/object to the Deliveries/Services at the time of delivery/acceptance of the Deliveries/Services of the Contractor the Contractor thus also waives the objection of late notice of defects.

With respect to assertion of warranty claims in court that have arisen during the warranty period, a period of limitation of 36 months from the time the claims arose shall apply. The Contractor shall remedy defects arising during the warranty period free of charge within a short but reasonable period of time, either by improvement, replacement, or subsequent delivery, at the Customer's choice. When remedying defects, the Contractor shall safeguard the legitimate interests of the Customer, in particular in connection with the requirements of production. Irrespective of the fact that improvement/replacement shall have priority, there shall also be the possibilities/remedies of price reduction and cancellation at the Customer's sole discretion. The Customer shall be entitled to immediately remedy/eliminate defects/deficiencies himself at the expense and risk of the Contractor (in particular in emergency circumstances) or to have them remedied/eliminated by third parties, whereby warranty claims shall remain unaffected by these actions insofar as the relevant remedy of defects has been carried out in a fundamentally professional manner.

The warranty period shall be 24 months for movable items from the time of complete fulfilment of all contractual and statutory duties/obligations of the Contractor and unconditional taking delivery of or, if agreed in the Contract, unconditional acceptance of the Deliveries/Services by the Customer, and 36 months after the aforementioned dates for immovable items. For latent defects and defects in title, the warranty period shall start to run not earlier than from

the time they are noticed. In the case of improvement/replacement/repair or subsequent delivery, the warranty period for the Deliveries/Services concerned shall start to run anew after successful completion of improvement. Furthermore, the warranty period for the entire Deliveries/Services shall start to run anew if the defect considerably reduces or prevents the functionality or use of the Delivery/Services. The warranty periods shall be interrupted by downtimes/times during which the entire Delivery and/or Service cannot be used that have been caused by the Contractor and/or are due to the defect. Any other rights to which the Customer may be entitled due to defectiveness of Deliveries/Services shall remain unaffected hereby.

## **9. Damages and product liability**

The Contractor shall be liable according to statutory provisions (including product liability provisions) for damage caused by him (and/or contractor's employees and/or agents). Limitations of liability are not agreed. To the extent that the Customer is held liable by third parties under national/international product liability laws on the ground of faulty Deliveries/Services of the Contractor, the Contractor shall indemnify and hold harmless the Customer from and against such claims. This shall, in principle, also apply if and when the Customer is held liable by third parties on the ground of actions and/or omissions by the Contractor or persons attributable to him.

The Contractor shall be liable for any damages (including loss of value or of profits, loss of products), losses, claims, liabilities, costs and expenses (including reasonable attorney fees and other costs and expenses related thereto), whether direct or indirect or incidental, foreseeable or unforeseeable, special, exemplary, consequential, punitive or other, of whatever nature, of any kind, which the Customer or any third party may incur (the "Damages") to the extent caused by the Contractor and for any Damages resulting from the use of the Deliveries/Services after delivery and more particularly for loss of products. Notwithstanding any provision to the contrary, the Contractor shall always be liable for any Damages caused by gross negligence or wilful misconduct or injury to persons. The Contractor shall defend, indemnify and hold the Customer harmless against any Damages experienced in connection with the Deliveries/Services or otherwise arising from (i) Contractor's performance or non-performance of its obligations hereunder; and/or (ii) Contractor's wilful or negligent acts or omissions in the performance or non-performance of the Contract. Contractor shall defend, indemnify and hold Customer harmless against all Damages arising from : (i) Seller's failure to perform timely or properly, (ii) any flawed or defective Deliveries/Services that fail to meet the specifications or applicable laws and regulations (iii) any allegations that any Deliveries/Services infringe upon a third party's rights, including without limitation patent, trademark, trade secret, copyright or title rights; and /or (iv) any breach of warranty or Contractor's other obligations under the Contract. These rights and remedies shall be deemed non-exclusive and shall include without limitation all rights under applicable laws.



**10. Compliance; Code of Conduct; Foreign trade law**

The Contractor shall comply with all applicable laws and regulations and orders that are relevant to its contractual obligations, including without limitation, the manufacture, assembly, handling, transport, storage, packaging and delivery of the Deliveries/Services, as well as laws and regulations relating to health, safety and environment. In addition, Contractor represents and warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age, physical or mental disability, veteran status, genetic characteristic or any other unlawful criteria and that it shall comply with all applicable laws against discrimination and all applicable rules, regulations and orders issued thereunder or in implementation thereof.

The Contractor shall provide all Deliveries/Services in compliance with the requirements of applicable national and international import, export, customs and foreign trade law applicable from time to time (hereinafter jointly referred to as "Foreign Trade Law"). This shall accordingly apply to purchasing and use of goods, products or services (including purchasing and use of software and technical support) by the Contractor for the production or other preparation of Deliveries/Services or actual provision of the same to the Customer (hereinafter referred to as "Primary Material"). Prior to the provision of Deliveries/Services the Contractor shall inform the Customer in writing without request in the case that the Deliveries/Services, the primary material, its components or constituents (in whole or in part) originate from countries that are on a relevant sanctions list or are the subject of other restrictive measures according to the applicable Foreign Trade Law (hereinafter jointly referred to as "Restrictions"), including with regard to intended future use by the Customer or the place of use, to the extent that the Contractor is aware of the same. In such a case the Customer shall be entitled to ask the Contractor for Deliveries/Services that are subject to no Restrictions at the Contractor's cost. In particular the Contractor may only use natural or legal persons (including sub-contractors) for the provision of Deliveries/Services who are not listed in relevant national or international sanctions lists or may not be used for provision of Deliveries/Services to the Customer due to the Foreign Trade Law that is applicable.

The Contractor acknowledges the necessity to immediately provide the Customer with all information and data required by the Customer for compliance with the applicable Foreign Trade Law in writing for his handling and use as well as in the event of resale, export, or transfer of the Deliveries/Services prior to the provision of the Deliveries/Services and, in the event of a permanent business relationship, correspondingly on a regular basis; this includes, among other things: Restriction information; Export Control Classification Number in accordance with US Commerce Control List (ECCN); export list numbers; commodity code and HS (Harmonized System) codes; country of origin (non-preferential origin); Supplier's declarations of preferential origin (for European suppliers) or certificates of preference (for non-

European suppliers) as well as any data and information requested by the Customer from time to time. The Contractor shall immediately notify the Customer in writing if and when he becomes aware of any violations (his own or those of the parties instructed by him) of the provisions of this Clause or the applicable Foreign Trade Law.

**10.1 Export licences**

The Contractor shall be obliged to procure any export licences required in connection with its Deliveries/Services, in particular for export to the country of the Customer's end customer, at his own expense. The Contractor ensures that, at the time of placing the order, all Deliveries/Services are secured and that no official or other restrictions prevent the complete Delivery and Service. The Contractor shall be fully liable for any damage incurred by the Customer as a result.

**11. Quality and environmental management; REACH/RoHS 2/conflict minerals**

The Contractor shall apply the quality principles and environmental management principles of the relevant standards, ISO 9001, ISO TS 16949 (relevant to automobile-relevant sub-contractors) and/or ISO 14001 or EMAS in providing his Deliveries/Services. ISO 45001 (management systems for safety and health at work) must also be applied. The Contractor shall ensure in an appropriate manner that the said obligations will also be complied with at the level of his agents/sub-contractors.

**12. Intellectual property rights and copyright**

The Customer shall have the exclusive right to file applications for industrial property rights such as patents, design patents, utility patents, and trademarks in respect of the Deliveries/Services. Inventions that arise during and for the performance of the Deliveries/Services shall be immediately reported to the Customer and shall belong to the Customer. The Customer shall also receive the exclusive, unrestricted, worldwide, and free-of-charge right of use with the right to grant sub-rights to third parties, to the copyrights or works and creations protected by copyright created in the course of the project.

**13. Confidentiality, advertising, data protection, secrecy**

The title and exclusive right of use of the drawings, plans, documents, trade secrets, specifications, projects, information and expertise provided by the Customer to the Contractor, or developed by the Contractor for the benefit of the Customer, shall remain exclusively the property of the Customer. They may be used by the Contractor only for the purpose of performing the Contract and may be disclosed to third parties subject to (i) the Customer's prior written consent and (ii) such third parties having agreed to a confidentiality undertaking in respect of the information disclosed to them. Upon completion of the Contract, the Contractor shall promptly return to the Customer the documentation and confidential information in any media or format supplied to it. No public statement, promotion, press release or any



kind of disclosure to third parties shall be made by the Contractor regarding the Contract without the Customer's prior written consent. The Contractor acknowledges that the confidential information are protected by copyright and other intellectual property rights exclusively for the Customer. Material provided by or developed for the Customer, shall remain the property of the Customer and shall be marked as such and stored separately. In the event of loss and/or damage, the Contractor shall be liable even if not at fault. After completion of the order, any material provided shall be immediately forwarded to the Customer at the expense of the Contractor.

The Contractor is informed about the fact that the Customer will process personal data required for the purposes of soliciting and handling contractual relationships as well as maintaining business relationships and transmit the same to all group entities of the **EBNER GROUP** worldwide or third parties involved in performance of the contract to the extent necessary to achieve the said objectives.

**The Contractor agrees that the personal data concerning himself or the person/entity represented by him transmitted will be processed by the group entities of the **EBNER GROUP** with whom he maintains a business relationship for marketing purposes and transmitted to all group entities of the **EBNER GROUP** worldwide. Recipients of such data may also be located in countries with a lower level of data protection. This consent may be revoked at any time, in particular by a written request to the **EBNER GROUP** entity with whom he maintains a business relationship**

The Contractor undertakes to treat as confidential all data of the Customer of which he becomes aware as a result of the Contract or of the business relationship with group companies of the Customer, irrespective of whether this information can be attributed to the Customer or one of his employees.

The Contractor shall be prohibited from handling the Customer's data that is not absolutely necessary to fulfil statutory or contractual obligations. This shall apply in particular to transmission of the data of the Customer to third parties or use of the same for marketing purposes.

To the extent that transmission of the Customer's data is absolutely necessary for performance of the contract, the Contractor may transmit the Customer's data only to third parties he has bound by contract to comply with the duties to which he is subject according to the Contract. The Contractor shall be liable vis-à-vis the group entity of the **EBNER GROUP** with whom he maintains a business relationship for compliance with the duties under the Contract and these GTCs by the recipient of the transmission.

### 13.1 Secrecy

All drawings, documents, information, etc. that are made available to the Contractor for the fulfilment of his Deliveries/Services as well as all empirical values

and all expertise that are developed in the course of the fulfilment of the Deliveries/Services (confidential information) shall remain or become the exclusive property of the **EBNER GROUP**. These are to be treated confidentially and neither be utilized, reproduced, analysed, nor used in any other way nor communicated or made available to third parties without the written consent of the Customer. After fulfilment of the Contract, the confidential information that the Customer has handed over shall be returned to the Customer. A disclosure of confidential information to third parties, in particular to builders and operators of the same or similar systems, is expressly prohibited. A breach of the duty to maintain secrecy entitles the Customer to withhold the payments due for the order concerned and to assert claims for damages. The duty to maintain secrecy shall continue to exist even after completion of the order in question and shall apply to all employees, sub-suppliers, and agents of the Contractor.

### 14. Spare parts, Wear parts and change parts

To the extent that for use of the Deliveries/Services for their designated purpose in continuous industrial operation, an adequate supply of spare parts and wear parts is necessary, the Contractor shall submit an adequate offer for sufficient spare parts/wear parts at least for the duration of the warranty period to the Customer upon his request. Any additional agreements shall remain unaffected by this regulation. Independent of the above, all offers for spare parts/wear parts shall in any case include relevant information about delivery periods for the parts concerned (including but not limited to system-critical components) and the OEM specifications (exact name of the OEM, including address, type/name of part, standards, specifications of material, measurements, layout drawings, detailed drawings, etc.) in a format that can be edited electronically so that the Customer will be able to order the relevant spare parts/wearing parts directly from the OEM. Spare parts and wear parts shall in any case be offered by the Contractor at market and competitive prices.

### 15. Safety guidelines and foreign labor

The Contractor and all persons used by him to provide services for the Customer or the Customer's end customer shall attend safety trainings of the Customer of the Customer's end customer on risks related to health, the environment, operations and construction sites and on the safety and visitor regulations applicable on the premises of the Customer or the Customer's end customer and shall comply with all applicable provisions. The Contractor shall ensure the safety of all persons used by him within the framework of the performance of Deliveries/Services at the premises of the Customer or the Customer's end customer as well as of all employees of the Customer or of the Customer's end customer or of third parties through his conduct and the measures taken by him or by persons attributable to him (e.g. use of appropriate items for safety and health at work; safety precautions).

Furthermore, the Contractor undertakes to comply with all statutory provisions on safety and health at work and foreign labor. In the case of violations of the above laws that lead to liability of the Customer,



the Contractor shall assume responsibility for and completely indemnify and hold harmless the Customer from and against the same and in particular assume the costs of the Customer's legal counsel.

## 16. Exclusive supply agreement

By transmitting confidential information, the Contractor is provided with essential expertise of the Customer that the Contractor needs to fulfil the Deliveries/Services and which the Contractor was unable to obtain before. The Contractor shall be obliged to maintain secrecy in accordance with Clause 12.1. The Contractor and his affiliated companies are furthermore obliged to offer, sell, or supply the manufactured products as well as any spare parts, parts subject to wear and tear, or replacement parts exclusively to the Customer. An offer or sale to other companies as well as a direct sale to the end customer is prohibited without the express prior written consent of the Customer.

## 17. Customer's rights to rescind/dissolve the contract

Apart from the regulations of rescission explicitly resulting from these GTCP, the Customer expressly reserves all rights to rescind or dissolve the Contract, to which the Customer may be entitled by law or contract in connection with specific transactions or continuous supply relationships with the Contractor. In addition, the Customer shall, in particular, be entitled to dissolve existing contracts with the Contractor for important reason (cause) without notice or having to comply with formal requirements (notice of default, granting of a grace period, etc.), i.e. with immediate effect. An important reason/cause exists, inter alia, if the Contractor violates material (in particular contractual) obligations, if reorganisation or insolvency proceedings or proceedings having similar effects are opened over the Contractor's assets or petitioned for or if the opening of such proceedings is dismissed for lack of sufficient assets, in the case of a material change in the Contractor's shareholder structure due to which it is unacceptable for the Customer to adhere to the relevant contract for understandable reasons (e.g. an imminent loss of or harm to reputation or image) or in the case of violations of the regulations of Clause 10 or Clause 12 of these GTCP. In the case of rescission or dissolution by the Customer it shall be entitled to all statutory and additional contractually agreed rights and claims vis-à-vis the Contractor. In addition, the Contractor shall indemnify and hold harmless the Customer in the case of a justified rescission/dissolution of contract by the Customer.

## 18. Force majeure

The parties shall be released from timely performance of the contract in whole or in part if they are hindered by events of force majeure. Events of force majeure shall exclusively be war, strike organised by a union, natural catastrophes, and epidemics. However, the Contractor who is hindered by an event of force majeure may only claim force majeure if he notifies the Customer about the start and the

expected end of the disruption immediately and not later than five (5) calendar days after the event occurred. The parties shall use all efforts to eliminate and/or minimise the difficulties and expected damage caused by the event of force majeure and shall keep the other party informed on a regular basis. Deadlines or periods that cannot be observed because of the impact of such force majeure shall be extended by the duration of the effects of force majeure. If an event of force majeure lasts longer than four (4) weeks, the Contractor and the Customer shall discuss a regulation of the procedural effects by way of negotiation.

If an event of force majeure lasts longer than six (6) months, the Customer may terminate the Contract in whole or in part.

Disruptions or delays in the contractual and, in particular, timely performance of Deliveries/Services by the Contractor caused by the effects of the Corona pandemic (e.g. mandatory official or sovereign measures/restrictions such as plant closures, travel restrictions, etc.) are expressly deemed to be "events of force majeure" within the meaning of these regulations insofar as these effects were unforeseeable for the Contractor at the time of the conclusion of the Contract and cannot/could not be prevented or eliminated by economically reasonable means. It is therefore clarified that official/sovereign measures or other effects already known at the time of the conclusion of the Contract that prevent or delay the Contractor's contractual and, in particular, timely performance of Deliveries/Services do not constitute "events of force majeure" within the meaning of this regulation.

## 19. Miscellaneous

The Customer reserves the right for himself and other inspection bodies to carry out deadline checks as well as technical interim and final inspections (including packaging inspections) in the offices, manufacturing facilities, and storage rooms of the Contractor and his sub-contractors at any time during design, planning, production, and delivery preparation and to reject faulty documentation as well as defective material. These checks and tests do not relieve the Contractor of his responsibility.

Any sub-suppliers, except for standard parts, shall be notified to the Customer in due time and approved by the Customer in writing.

If any provisions of these GTCP are or become void or ineffective in whole or in part, the effectiveness of the remaining regulations shall, in principle, not be affected thereby. In that case, the void or ineffective regulation shall automatically be replaced by a valid, effective, lawful and enforceable regulation that comes as close as possible in a legally admissible form to the business purpose of the regulation to be replaced.

The Contractor may not assign all or part of his rights and obligations under the Contract, nor subcontract all or part of its performance (except where stated in the order), without the prior written agreement of the Customer.

The Contractor shall in any event remain responsible to the Customer for the performance by





its assignees and subcontractors of all its obligations under the Contract.

The failure of the Customer in any one or more instances to insist upon performance of any of the terms and conditions contained herein, or to exercise any right or privilege hereunder, shall not be construed as a waiver of any Customer's rights or privileges hereunder.

## **20. Place of jurisdiction, choice of law**

The purchase order, the Contract and these GTCPs shall be governed by the laws of the State of Ohio, USA. Any disputes arising out of or relating thereto or the breach thereof shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with these Rules. Place of arbitration shall be Akron, OH and proceedings shall be held in the English language. Judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction.

## **21. Language**

The Parties acknowledge that it is their express wish that these GTCPs and all related documents be prepared in English.