



## 1. APPLICABILITY AND OBJECT OF THE CONTRACT

- 1.1. These General Sales Terms and Conditions (the “**Conditions**”) shall be applied to all deliveries of Equipment and/or performance of Services (as defined below) from the Seller to the Buyer following the first time they have been referred to in the Seller’s proposal or order confirmation. These Conditions shall constitute the sole and entire agreement between Buyer and Seller and any other general terms and conditions or terms and conditions of purchase of the Buyer are expressly rejected. No changes, amendments or additions to these Conditions or to the Contract shall apply unless expressly agreed in writing by the Seller and Seller’s acceptance of any offer or order is expressly made in reliance on Buyer’s asset to all Seller’s Conditions herein Failure to object in writing within ten (10) calendar days after placing a purchase order shall conclusively be deemed acceptance of the Conditions. Seller’s failure to object to any term or condition of Buyer shall not constitute acceptance thereof or of waiver. Electronic commerce transactions between Buyer and Seller will be solely governed by this Agreement, and any terms and conditions on Buyer’s internet site will be null and void and of no legal effect on Seller.
- 1.2. Equipment and Services shall be provided in accordance with the quotation of the Seller and Seller’s part numbers. Unless otherwise indicated on the Seller’s quotation, quotations by Seller shall remain valid for thirty (30) days from the date of the quotation.

## 2. DEFINITIONS

“**Buyer**” shall mean the addressee of the Seller’s proposal and the Buyer of the Equipment.

“**Confidential Information**” shall mean any design, drawings, technical documentation, specifications, test results, performance data, business practices, procedures, improvements, know-how, inventions, reports, financial data or other information obtained by the Buyer from the Seller under the Contract.

“**Connectivity Device**” means a connectivity device (also known as a connectivity gateway), remote diagnostics tool or similar sensor-based connectivity capability and related components and hardware (retro)fitted in the Equipment, which is used for generating, collecting, sending and transmitting equipment data and information, such as data related to Equipment’s operation, location, condition, equipment identity, use and performance.

“**Contract**” shall mean the contract between the Seller and the Buyer consisting of (i) the Seller’s quotation and these Conditions or (ii) an order from the Buyer and a written order confirmation of the Seller which necessarily incorporates these Conditions which are nonnegotiable.

“**Contract Price**” shall mean the total price specified in the Contract, with any agreed changes to it.

“**Delivery**” means completion of the delivery of the Equipment as defined in the Seller’s proposal or in the Contract. If the Seller’s proposal or the Contract does not specify the Delivery, the Delivery shall be deemed to have occurred when the risk of loss and damage has passed to the Buyer in accordance with Section 4.1 or as otherwise agreed.

“**Equipment**” shall mean the equipment, spare parts, components, products and/or accessories and related documentation to be delivered to the Buyer under the Contract as specified in the Seller’s proposal or elsewhere in writing and accepted by the Seller.

“**Party**” shall mean the Seller or the Buyer; “**Parties**” shall mean the Seller and the Buyer.

“**Seller**” shall mean Hiab USA Inc., or its affiliates and subsidiaries.

“**Services**” shall mean the services covered under the Contract, such as maintenance, repair work, emergency service work, assembly and installation of the Equipment and/or inspections performed by the Seller or an authorized third party.

“**Warranty Terms**” shall mean the standard warranty terms and conditions of the Seller (or the manufacturer of the Equipment) for the Equipment.

## 3. CONTRACT PRICE AND PAYMENT TERMS: SECURITY

- 3.1. The Contract Price shall be invoiced and the Buyer shall pay the Seller the Contract Price in accordance with the payment terms stated in the Contract. In case no payment term is specified in the Contract, payments shall be made by the Buyer within thirty (30) days after the date of invoice. Unless otherwise set forth in the applicable quotation or the Seller’s order confirmation, the Seller may issue its invoice upon shipment (or latest upon delivery) of the Equipment.
- 3.2. The Contract Price is exclusive of any delivery, shipping, freight or transportation costs, insurance premiums or other insurance charges, taxes, customs or duties or other charges or levies of any nature whatsoever and imposed at any time relating to the export, import, transportation, delivery and sale of Equipment or provision of Services (“**Additional Costs**”). The Seller shall be entitled to invoice the Buyer for any Additional Costs incurred by or on behalf of the Buyer in addition to the Contract Price and any such invoiced Additional Costs shall be paid directly by the Buyer to the Seller. For the avoidance of doubt, unless otherwise identified in the Contract, the Contract Price does not include the costs relating to the export, import or special packaging of the Equipment and the Buyer shall assume and be responsible for all such extra costs, which shall be deemed to form part of the Additional Costs.
- 3.3. Delay interest on overdue payments shall be 1.5% of the outstanding balance per month, or the maximum rate permitted by applicable law, whichever is lower (calculated from the due date to the date of payment). Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys’ fees. In addition, the Seller has the right to

suspend, delay, refuse, or cancel any delivery of Equipment, performance of Service or any other performance (including warranty coverage obligations), or require cash or advance payments or other satisfactory security, at any time if the Buyer’s financial condition does not justify delivery or in case the Buyer’s payments under this Contract or any other contract are overdue.

- 3.4. The Seller reserves the right at any time before the Delivery to adjust the Contract Price to take into account any increase in the cost of raw materials or components, labor or transport, or any currency fluctuations, increases of taxes or duties or any other matters affecting the costs of the Seller to produce, manufacture or deliver the Equipment or perform the Services. Furthermore, the Seller shall always have the right to change the Contract Price with immediate effect if such change is due to a modification of the Equipment or Service required to comply with any law, act, regulation or decision by courts or other authorities or for safety reasons.
- 3.5. Buyer hereby grants to Seller a security interest in Equipment sold hereunder together with the proceeds therefrom to secure payment of the Contract Price of such Equipment and agrees, and appoints Seller its agent, to take all such action and to execute and file all such documents and instruments (including, but not limited to, UCC-1 financing statements) as may be necessary or reasonably requested by Seller to perfect and continue Seller’s security interest hereunder. Seller reserves the right to make a credit check for the Buyer and/or request for a credit application (including a personal payment guarantee) from the Buyer prior to accepting any order(s). The Seller may modify, suspend or withdraw the Buyer’s credit limit or payment terms at any time.

## 4. DELIVERY

- 4.1. Unless otherwise agreed (and subject at all times to the provisions of clause 3.2 in respect of costs and charges associated with transport and delivery which shall be deemed to supersede the provisions of the INCOTERMS in the event of any inconsistency), the delivery term for the Equipment shall be EXW, Seller’s site for domestic deliveries within the USA and CIF in case of sea transportation or CIP in case of ground transportation for cross-border deliveries to countries outside the USA (INCOTERMS 2020). Risk of loss and damage shall pass from Seller to Buyer in accordance with the agreed delivery term.
  - 4.2. The Seller endeavors to deliver the Equipment and/or Services in accordance with the time schedule set forth in the Contract. However, all dates of Delivery and periods within which the Delivery of the Equipment and performance of Services shall be made, whether communicated to the Buyer or not, are estimates only and shall not be deemed to represent fixed or guaranteed delivery dates or periods. The Seller shall notify the Buyer if the estimated Delivery time or performance of Services will not be met and if so, when the Delivery or performance of Services can be made. Unless otherwise specifically agreed in the Contract, the Buyer undertakes to accept deliveries after the originally agreed Delivery date and the Buyer shall not have the right to claim for costs or damages for delayed deliveries. If the Buyer fails to take Delivery, the Seller may store the Equipment at the Buyer’s cost and expense.
  - 4.3. In case of changes in the circumstances during the Delivery or performance of Services, which the Seller was unable to take into account when entering into the Contract or in case a matter outside the Seller’s control causes delay or hinders the Seller’s performance, the Delivery time shall be extended accordingly. In such case, the Seller is entitled to charge for additional costs arising from such delay, including, but limited to, any storage costs, together with reasonable overhead.
  - 4.4. If for any reason the Buyer fails to accept delivery of any Equipment on the date fixed pursuant to Seller’s notice that the Equipment has been delivered at the delivery point, or if Seller is unable to deliver the Equipment at the delivery point on such date because the Buyer has not provided the chassis or other property or appropriate instructions, documents, licenses or authorizations: (i) the risk of loss to the Products or Spare Parts shall pass to the Buyer; (ii) the Products or Spare Parts shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Equipment until the Buyer picks them up, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage, container demurrage/detention charges, and insurance). If the Buyer fails to take delivery of the Equipment on the prescribed date, then the Buyer is nevertheless liable to make each and every payment which has been made dependent upon delivery, as if the Equipment in question had been delivered.
  - 4.5. Upon Delivery of Equipment, the Buyer shall carry out an inspection with respect to the conformity with specifications, missing parts and damages of the Equipment. In the event that the Buyer finds any unsatisfactory conditions, the Buyer shall immediately inform the Seller of its claim in writing, however, no later than five (5) days after date of Delivery. The Seller shall not be liable for any claim made by the Buyer after the said time period.
- ## 5. FORCE MAJEURE
- 5.1. Each Party shall be entitled to suspend performance of his obligations under the Contract (other than payment of monies then due) to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: labor disputes and any other circumstances beyond the control of the Parties such as but not limited to fire, epidemic, pandemic, war or warlike actions, piracy, mobilization, requisition, embargo, acts of God, currency restriction, insurrection, government action, restrictions in use of power and defects or delays in deliveries by subcontractors caused by any such circumstance referred to in this clause. The Party affected by an event of Force Majeure shall promptly notify the other Party of the event and its restoration in writing.
  - 5.2. Each Party shall be entitled to terminate the Contract by a notice in writing if the Delivery of Equipment or performance of the Services is or will be delayed for more than six (6) months due to Force Majeure. If the Contract is so terminated,

the Seller is entitled to receive payment for the work already made and portion of Equipment already delivered and materials ordered but not yet delivered to the Buyer, which the Seller cannot utilize for other customers.

**6. CHANGES; RETURNS AND CANCELLATIONS; TRADE-IN Changes**

- 6.1. The Seller reserves and has the right to make (without giving prior notice to the Buyer) any alterations, modifications or changes in and to the construction and/or design of the Equipment, which is required under any applicable safety or other statutory requirements, codes, laws and/or regulations and also make such alterations, modifications or changes in and to the Equipment that do not materially affect the selected options and functionality or the Equipment and the Buyer shall accept the Equipment as so changed in fulfillment of the Buyers rights under the Contract.
- 6.2. Either of the Parties may request changes in the Equipment and the Parties shall agree upon the adjustments to be made in the Contract Price, time schedule and/or other terms of the Contract accordingly. If no mutually acceptable agreement is reached or implemented within thirty (30) days from receipt by the Buyer of written notice from the Seller of such change in circumstances, then the Seller shall have the right to terminate the Contract with thirty (30) days written notice. The Seller shall not be obliged to carry out any changes before the Parties have agreed, in writing, upon the adjustments to be made in the terms affected by the change.

**Returns and Cancellations**

- 6.3. The Seller may, in its discretion, accept a Buyer's written request for an exchange of the Equipment, a return of the Equipment or a cancellation of a remaining unfilled portion of the Contract upon payment of reasonable cancellation and/or re-stocking charges and other costs invoiced by Seller, which may include the profit that would have been made on the cancelled portion of the Contract.
- 6.4. All cancellations, returns and exchange are subject to applicable cancellation and/or re-stocking fees and other costs in accordance with the Seller's Return and Cancellation Policy in force from time to time. Unless otherwise set forth in the Return and Cancellation Policy, the following applies:
  - (a) **Cancellation Fees.** All standard Equipment are subject to a minimum cancellation fee of (i) twenty-five percent (25%) for complete equipment, and (ii) fifteen percent (15%) for spare parts, components and/or accessories, if the cancellation is made later than three (3) business days after the date of the Contract. For special order or bespoke Equipment, the Buyer is responsible for the full amount of the cancelled portion of the Contract if the cancellation is made later than three (3) business days after the date of the Contract. Further cancellation fees may apply to take into account the Equipment already produced or in process, the expenses incurred and the commitments made by the Seller as a consequence of the Contract.
  - (b) **Return and Re-Stocking fees.** All standard Equipment are subject to a minimum re-stocking fee of (i) twenty-five percent (25%) for complete equipment, and (ii) fifteen percent (15%) for spare parts, components and/or accessories. Return and re-delivery fees and associated freight and transport costs are the responsibility of the Buyer. For the avoidance of doubt, the costs of the initial delivery of the returned Equipment are not refundable. Further fees and charges may apply.

- 6.5. The Buyer acknowledges that the cancellation and re-stocking charges represents the costs incurred by the Seller in accepting the returned Equipment or Contract cancellation.
- 6.6. All returns and exchanges shall be pre-authorized by the Seller before the Equipment is returned and any unauthorized return will be denied. Returned Equipment, or Equipment requested to be exchanged, must be in clean and re-saleable condition and not been damaged (whether in transit or otherwise) and are subject to an inspection by the Seller. Any Equipment returned in used or damaged condition, if accepted by the Seller to be eligible for return, will be subject to a rework charge that will be paid by the Buyer or, upon Seller's discretion, may be deducted from any credit issued to the Buyer. If the Equipment cannot be reworked, it will either be scrapped or returned to the Buyer at the Buyer's expense. Returns after sixty (60) days from the date of Contract date will not be accepted. Special order or bespoke Equipment cannot be returned or exchanged under any circumstances.

**Trade-In**

- 6.7. The Seller may accept, in its sole discretion, a trade in of an eligible equipment from the Buyer (the "**Trade-in Equipment**") against a credit from the Seller to use toward the purchase of Equipment. The Buyer must own the Trade-in Equipment. The eligibility of the Trade-in Equipment and trade-in value are determined by the Seller in its sole discretion. The trade-in value of the Trade-In Equipment is based on its condition at time of appraisal by the Seller and is subject to change or refusal based on final inspection when the Seller takes possession of the Trade-in Equipment. The Trade-in Equipment must be available for pick up within three (3) days of delivery of the Equipment purchased under the Contract. Title and ownership of the Trade-in Equipment transfer to the Seller upon crediting the trade-in value by the Seller. Unless otherwise approved by the Seller, any and all freight and transport costs of the Trade-in Equipment are the responsibility of the Buyer. Additional conditions and charges may apply.

**7. SPECIFICATION**

- 7.1. Any samples, drawings, descriptive matter (in catalogues, operating manuals or otherwise) or advertising produced by the Seller are produced for the purpose of giving an approximate idea of the Equipment identified in them. They shall not form part of the Contract or have any contractual force.
- 7.2. Notwithstanding any recommendation or suggestions relating to the use of the Equipment, whether contained in the Seller's catalogue, operating manuals or

elsewhere, or made by the Seller in response to an enquiry from the Buyer, it is the Buyer's responsibility (unless otherwise specifically agreed by the Seller in writing) to satisfy himself of the suitability of the Equipment for his own particular purpose and he shall be deemed to have done so. To the extent permissible by law, the Seller shall have no responsibility for the accuracy of any drawings, particulars or specification supplied by the Buyer or for any defect or failure of the Equipment to comply with any specifications arising as a result of the same.

- 7.3. The Equipment requires professional installation to work safely and according to the specifications. The Equipment are not intended for any personnel or passenger transport, unless specifically approved. The Buyer is responsible for ensuring that the Equipment is used for its intended purpose only, and will be operated and maintained in accordance with the issued instructions and manuals. The Buyer shall follow all applicable laws and regulations and shall pay special attention that proper and sufficient training and instruction is provided to such individuals making use of the Equipment, especially if the Buyer intends to lease, rent or otherwise make the Equipment available to nonprofessional, personal or consumer use.
- 7.4. If the Buyer intends to deliver the Equipment to a third party, resell the Equipment, or if the Buyer is otherwise not the end-user of the Equipment, the Buyer shall ensure that the end-user of the Equipment receives all required user, operator, maintenance and safety instructions and manuals for the Equipment. The Buyer shall properly inform and instruct the end-users of the Equipment of the contents of any manuals, instructions and warranty conditions for the use, operation and maintenance of the Equipment as may be issued by the Seller from time to time.

**8. WARRANTY**

- 8.1. The Seller warrants that the Equipment at the time of Delivery shall be free from defects in materials and workmanship, as specified in the standard Warranty Terms of the Seller, as revised from time to time by the Seller and made available to the Buyer. Unless otherwise stipulated in the Warranty Terms, the warranty period for the Equipment shall be twelve (12) months from the date of Delivery. The warranty period for Services performed under the Contract is three (3) months from the performance of the Services. Unless specifically agreed otherwise in writing, used and second hand Equipment is provide "AS IS" and the Seller makes NO WARRANTIES with respect to used or second hand Equipment or to any non-genuine parts or components used in the Equipment or in connection with the Services ("**Third Party Parts**"). The Seller's sole obligation with respect to Third Party Parts shall be to transfer to the Buyer the manufacturer's warranty for such parts, to the extent transferable.
  - 8.2. Under the above warranty, the Seller agrees to, at its option and as Buyer's sole and exclusive remedy, either repair or replace a defective Equipment (or part thereof) or, in case of defective Service, to reperform the Service, or credit or refund the price of such Equipment or Service at the pro rata Contract rate. Any defective parts that are replaced shall become the property of the Seller.
  - 8.3. The Buyer shall without undue delay and at latest within fourteen (14) days from the discovery of a defect, notify the Seller in writing of any defect appearing under the above warranty. If the Buyer fails to give notice of such defect within the warranty period, the Buyer shall lose its rights in respect of the defect.
  - 8.4. Seller's liability shall apply only to defects that appear under the conditions of normal operation and in proper use. In particular, the warranty does not cover defects arising from (i) the Buyer's faulty or improper maintenance, installation, handling, service or inspection, (ii) non-compliance with manufacturer's or operator's manual, operating or maintenance instructions or other instructions relating to the Equipment, or (iii) from repairs, alterations or adjustments carried out by the Buyer. Furthermore, the warranty does not cover defects arising from an accident, misuse (for example, extremely heavy use or exceeding load limits defined in the operating instructions and manuals) or negligence, nor does it cover normal deterioration or wear and tear. Travel costs are not covered by the warranty. Further exclusions and requirements for the warranty coverage may be included and specified in the Warranty Terms.
  - 8.5. If defects in Equipment or Service may cause damage or danger, the Buyer shall take all immediate measures, which are necessary to prevent or reduce such damage or danger.
  - 8.6. EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 8, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, WHATSOEVER EXPRESS OR IMPLIED THROUGH COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE WITH RESPECT TO THE SERVICE OR ANY EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; SELLER'S LIABILITY UNDER THIS WARRANTY SHALL BE LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE EQUIPMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY THIRD PARTIES.
  - 8.7. In the event of any inconsistency between this Section 8 and the Warranty Terms, the Warranty Terms shall prevail.
- 9. LIMITATION OF LIABILITY; INDEMNITY**
- 9.1. NOTWITHSTANDING ANY OTHER PROVISION HEREIN OR IN ANY OTHER DOCUMENT OR COMMUNICATION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER'S LIABILITY AND OBLIGATIONS WITH RESPECT TO ANY CLAIM(S) RESULTING FROM OR ARISING FROM OR

RELATED TO THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE CONTRACT PRICE WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL THE SELLER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES.

9.2. THE REMEDIES OF THE BUYER SET FORTH IN THE CONTRACT ARE EXCLUSIVE.

9.3. Unless otherwise agreed, the Buyer is responsible for the installation and assembly of the Equipment and the Seller shall not have any responsibility or liability nor will it be liable in case of damage, loss or malfunction of the Equipment or the product to which the Equipment was installed to due to defects or problems in the installation or assembly or its delay. The Buyer shall follow the instructions given by the Seller to ensure a correct installation and assembly of the Equipment.

9.4. The Buyer hereby agrees to defend, indemnify and keep the Seller and Seller's group companies harmless from and against any injuries, losses, damages, costs, fees, judgment, settlement or other expenses caused by, related to or arising from Buyer's operations, use, sale or ownership of the Equipment or Services, or other claims however arising in connection with the use or operation of the Equipment, unless caused by the gross negligence of the Seller.

9.5. The limitations of the Seller's liability shall not apply to claims caused by or resulting from the willful misconduct or gross negligence of the Seller.

#### **10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

10.1. The Buyer shall be entitled to use the Confidential Information, drawings, documents and other information furnished by the Seller only for the purpose, which they were provided for. The Buyer shall take all necessary precautions to prevent an unauthorized disclosure or use of Confidential Information by the Buyer's employees, subagents or other intermediaries. The confidentiality obligation shall survive the termination or expiry of the Contract.

10.2. Any and all intellectual property rights related to the Equipment and Services delivered by the Seller, including, without limitation, any and all patents, trademarks, copyright, know-how, Confidential Information, software, drawings and/or documentation or data included in, with or comprising the Equipment or Services ("**IPR**"), and all ownership rights in and to the IPR shall remain solely and exclusively with the Seller or its licensor(s), as applicable. The IPR shall not, without the consent of the Seller, be used for any other purpose than that for which they were provided for and may not be copied, reproduced, transmitted or communicated to a third party. The Seller shall not be obligated to provide any manufacturing drawings of the Equipment to the Buyer or any information to the extent that it is considered by the Seller to be commercially sensitive.

10.3. Seller agrees to settle or defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any Equipment constitutes direct infringement of any issued United States patent. Seller shall pay all damages and costs finally awarded therein against Buyer, provided Seller is informed by Buyer in writing within ten (10) calendar days after receipt by Buyer and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to settle or defend such suit or proceeding. In the event such Equipment or any part thereof is, in such suit, held to constitute infringement and the use of such Equipment or part thereof is enjoined, Seller shall, by its own election and at its own expense, either (a) procure for Buyer the right to continue using such Equipment, or modify it so that it becomes non-infringing, or (b) remove such Equipment, or part thereof, and grant Buyer a credit thereon and accept its return. Seller shall not be obligated to settle or defend any suit or proceeding, or be liable for any costs or damages, if the Buyer is in breach of any term herein or the alleged infringement arises out of compliance with Buyer's specifications or any addition to or modification of the Equipment after delivery thereof or from use of the Equipment or any part thereof in conjunction with other goods or in the practice of a process. Seller's obligations hereunder shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged infringement unless Seller thereafter gives Buyer express written consent for such continuing alleged infringement. Seller shall not be bound in any manner by any settlement hereunder made without its prior express written consent, **NOR SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF PATENT INFRINGEMENT.** Seller's liability hereunder shall not exceed the purchase price paid by Buyer for the allegedly infringing Equipment. If infringement is alleged prior to completion of delivery of an Equipment, Seller may decline to make further shipments without being in breach of this Agreement. **THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ANY AND ALL REPRESENTATIONS, WARRANTIES, OR CONDITIONS EXPRESS OR IMPLIED, IN REGARD THERETO.** Buyer agrees, at its expense, to settle or defend and to pay costs and damages finally awarded in any suit or proceeding against Seller based on an allegation that any Equipment furnished hereunder according to designs or specifications furnished by Buyer infringes any patent, provided Buyer is promptly notified in writing of such suit or proceeding and is given all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to defend or settle any such suit or proceeding.

#### **11. CONNECTIVITY**

11.1. The Seller, or a third party designated by the Seller, shall at all times have the right to (i) install, maintain and dismantle a Connectivity Device in and from the Equipment; and (ii) access, send, receive, collect, store, copy, aggregate, combine with other information, process, make available, further develop, and use any and all information and data gathered through the Connectivity Device, including but not limited to, information concerning equipment identity, efficiency, availability, downtime, operation, operating environment, movement, condition, logon, location and similar information relating to the Equipment (the "**Information**"). Such Information may be used for providing, delivering, optimizing, developing, servicing and offering the Equipment and Services or any related products, equipment, and services. The Information may also be used for example for sales and marketing, Seller's internal business and/or operating purposes as well as for regulatory, warranty and contract compliance and for proactive maintenance and diagnostics. The Information may be shared to Seller's affiliates, dealers, subcontractors and service providers for the above described purposes. The Buyer shall not remove, disable, or interfere with the Connectivity without the Seller's prior written consent.

#### **12. TERMINATION**

12.1. In addition to the other termination rights provided for in these Conditions, either Party may terminate this Contract with immediate effects if (i) the other Party commits a material breach of the Contract and has not remedied the situation within thirty (30) days (five (5) days in the case of a payment default) from the receipt of written notice thereof; or (ii) to the extent permitted by applicable law, the other Party becomes insolvent, bankrupt, enters into reorganization or a threat thereof is evident; or (iii) to the extent permitted by applicable law, the other Party suspends, or threatens to suspend, payment of its debts as they fall due or is deemed or declared to be unable to pay its debts under applicable law.

12.2. In case of termination due to the Seller's default, the Seller shall be paid for the value of the work completed to such date and Equipment already delivered as well as materials ordered but not delivered to the Buyer, which the Seller cannot utilize for other customers.

12.3. If the Seller terminates the Contract, in whole or in part, due to the Buyer's fault (which includes cancellation of the order at any time), without prejudice to any other remedies which may be available to the Seller: (i) the Buyer shall compensate the Seller for the loss it suffers as a result of or in connection with the Buyer's default (including, but not limited to, and loss of profits, and any indirect or consequential losses); and (ii) any invoices relating to the provision of Equipment or Services which are outstanding and unpaid as at the date of termination of the Contract shall become immediately due and payable with effect from such date.

#### **13. PRODUCT RECALL**

13.1. The Buyer acknowledges that the Seller has obligations pursuant to applicable legal requirements in respect of product safety. The Buyer undertakes not to take any actions or do anything which may hinder or restrict the Seller's ability to comply with such legal requirements. The Buyer undertakes to provide such assistance as may reasonably be requested by the Seller in order to effect any preventive or corrective action, such as field correction, safety campaign or product recall process and in connection with contacting customers or end-users of Equipment for the same.

13.2. If the Buyer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Equipment from the market it shall immediately notify the Seller in writing enclosing a copy of the request, court order or other directive. Unless required by law, the Buyer may not undertake any recall or withdrawal without the written permission of the Seller and only then in strict compliance with the Seller's instructions as to the process of implementing the withdrawal.

#### **14. MISCELLANEOUS**

14.1. In case any provision or any part of a provision of the Contract is held invalid or unenforceable, the validity of the remaining provisions of the Contract shall not be affected thereby and each remaining provision or part thereof will be valid and enforceable to full extent permitted by law. Where any provision is held invalid or unenforceable, the parties endeavor to negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.2. The Contract states the entire agreement between the Parties relating to the subject matter thereof and supersedes all prior communications, whether written or oral, between the Parties.

14.3. The Parties hereto shall not without the prior written consent of the other Party assign any of their rights or obligations arising out of the Contract to a third party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, the Seller shall, however, be entitled to assign the Contract to any of its group companies.

14.4. Any failure of either Party to enforce, at any time or for any period of time, any of the provisions of the Contract shall not be construed as a waiver of such provisions or of the right of the Party thereafter to enforce each and every such provision.

#### **15. COMPLIANCE WITH LAWS; SANCTIONS AND EXPORT CONTROL**

15.1. Each Party shall comply with and shall conduct its business at all times in accordance with all applicable laws and regulations pertaining to, without limitation, sanction requirements and (re-)export control regulations, anti-money laundering, bribery and anti-corruption, as well as the US Foreign Corrupt Practices Act and the UK Bribery Act.

- 15.2. Buyer acknowledges that Equipment, Services and related technical information provided under the Contract may be subject to U.S. and other export laws and regulations. Buyer agrees not to export, reexport, transfer or transmit Equipment (including related technical information) except in compliance with all such laws and regulations, and none of the Equipment provided by Seller can be sold, exported, re-exported, or otherwise diverted to a prohibited end-user, destination, or end-use. When reselling Equipment, Buyer shall comply with export control and sanction requirements imposed, administrated or enforced from time to time by the USA, European Union, the United Nations Security Council and any other applicable sanctions authority.
- 15.3. The Buyer shall obtain and provide to the Seller, in a timely manner, all such information, documentation and assistance as may be requested by the Seller in order for the Seller to fulfill its obligations under the Contract and applicable laws and regulations.
- 15.4. The Buyer confirms that it, and the end-customer, is not listed on, or owned or controlled by a person or entity listed on, any sanctions list or program of any authority. The Buyer will immediately notify the Seller if it, or its end-customer, any of its shareholders, or any of its or their respective directors, officers, agents, or employees, or any party acting on behalf of any of them becomes identified on any sanctions list or program or in case of prohibited destination or end-use of the Equipment or Services. Without prejudice to any other rights or remedies that Seller may have, the Seller shall have the right to terminate or suspend the delivery of Equipment or Services with immediate effect if the Buyer or any party acting on Buyer's behalf violates or causes the Seller to violate this section or if the Seller, in its reasonable judgement, becomes exposed to the risk of being sanctioned, or where a relevant authority may consider the delivery of Equipment or Services to be prohibited or sanctionable. If the Seller does not fulfill its contractual obligations due to the circumstances mentioned herein, the Seller shall not, in any way, be liable towards the Buyer.
- 16. US GOVERNMENT CONTRACTS**
- 16.1. Seller supplies "commercial items" within the meaning of the Federal Acquisition Regulation (FAR), 48 CFR Parts 1-53. Seller accepts only the mandatory flowdowns for subcontracts for commercial items in accordance with FAR 52.244-6(c)(1). Seller also will accept the clauses listed in Defense FAR Supplement (48 CFR Parts 201-299) (DFARS) 252.244-7000, and other agency specific mandatory flowdowns for commercial items specifically identified by the Buyer. Any FAR, DFARS or other U.S. Federal government agency acquisition regulations additional to or different from such mandatory flowdowns shall not become a part of the contract.
- 17. CONTROLLING TERMS**
- 17.1. If the Contract is deemed an acceptance of a prior offer by the Buyer, such acceptance is limited to the express terms contained in these Conditions. Otherwise, the Buyer's acceptance of the Contract is limited to the terms contained in these Conditions, and Seller hereby objects to and rejects any additional, different or varying terms proposed by the Buyer (including, without limitation, any terms attached to or referenced in the Buyer's purchase order), unless Seller expressly assents to such terms in a mutually executed writing. Such proposal of additional, different or varying terms by the Buyer will not operate as a rejection of Seller's offer, and Seller's offer will be deemed accepted without such additional, different or varying terms. These Conditions constitute the final expression of the terms between Seller and the Buyer and is the complete statement of those terms. Any terms, conditions, negotiations or understandings not contained in the contract will have no force or effect unless made in writing and signed by Seller and the Buyer.
- 18. GOVERNING LAW AND DISPUTE RESOLUTION**
- 18.1. **Governing Law.** The Contract is governed by, and shall be construed in accordance with, the laws of the state of Ohio, USA, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 18.2. **Informal Dispute Resolution.** Except for claims covered by Section 18.4 below and except for claims for equitable relief, if a Party has a dispute under the Contract, such Party shall notify the other Party in writing of the dispute (a "Dispute Notice") and the Parties shall then attempt in good faith to resolve the dispute informally by negotiation between the Parties. If the Parties cannot resolve the dispute within thirty (30) days after delivery of the Dispute Notice, then either Party may pursue available remedies.
- 18.3. **Dispute resolution.** Except as provided in Section 18.4 below and subject to the requirements of Section 18.2 above, any action, claim, suit or proceeding between the Parties, whether based on federal, state, statutory, or common law, shall be litigated solely and exclusively before the United States District Court for the Northern District of Ohio or the courts of the State of Ohio sitting in Wood County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the United States District Court for the Northern District of Ohio or the courts of the State of Ohio sitting in Wood County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- 18.4. **Collection of overdue payments.** Notwithstanding Sections 18.2 and 18.3 above, any action by the Seller to collect overdue payments related to Service performed and/or Equipment sold under this Contract may, at Seller's sole discretion, be initiated and pursued by the Seller in any a court of competent jurisdiction.