

## GENERAL TERMS AND CONDITIONS OF SALE (on foreign sales)

### I. Definitions and Interpretation

- 1.1. **"Company"** means APATOR METRIX S.A. (Polish joint-stock company) with its registered office in Tczew (83-110), Poland, ul. Grunwaldzka 14, registered in the registry of entrepreneurs of the National Court Registry, whose registration files are kept by the District Court Gdańsk-Północ in Gdańsk, VII Commercial Department of the National Court Registry, under number 0000046259, NIP (tax identification number) 593-010-00-81, REGON (statistical number) 190558973, BDO (environmental number): 000014774, share capital 903 868,60 PLN fully paid-up;
- 1.2. **"Company Materials"** means all materials, equipment, documents and other property of the Company used to provide the Goods;
- 1.3. **"GTC"** means hereby general terms and conditions of sale;
- 1.4. **"Contract"** means the agreement between the Company and the Purchaser consisting of the Purchase Order, Order Acknowledgement, any special terms and conditions agreed to by both parties in writing, these GTC, the Specification, the Warranty and any other Documents specified in the Purchase Order;
- 1.5. **"Data Protection Legislation"** means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including without limitation,
  - (i) any data protection legislation from time to time in force in the PL including the Act on Personal Data Protection of 10<sup>th</sup> of May 2018 or any successor legislation;
  - (ii) the General Data Protection Regulation ((EU) 2016/679; and
  - (iii) any other directly applicable European Union regulation relating to privacy.
- 1.6. **"Delivery Date"** means the date specified by the Company when the Goods are to be delivered.
- 1.7. **"Document"** means any tangible representation or embodiment of information including but not limited to a document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record in any form;
- 1.8. **"Goods"** means the articles to be supplied to the Purchaser by the Company and may include Products, Services and Software.
- 1.9. **"Intellectual Property Rights"** means all copyright, patents, rights in inventions, rights in confidential information, know-how, trade secrets, trade-marks, service marks, trade names, design rights, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; and (v) wherever existing.
- 1.10. **"Know-how"** means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals,

instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not).

- 1.11. "**Licence Agreement**" means any licence agreement relating to the use of Software.
- 1.12. "**Order Acknowledgment**" means the Company's written acceptance of the Purchase Order.
- 1.13. "**Price**" means:
  - (i) in respect of Products and/or Software, the price of the Products and for Software quoted by the Company; and
  - (ii) in respect of Services, the price of the Services to be calculated on a time and materials basis based on the Company's daily/hourly rates as set out in the Purchase Order or, where no rates are set out in the Purchase Order, in the Company's current price list at the date of the Contract,
  - or such other price as the parties may agree in writing plus such carriage, packing, VAT, insurance or other charges or interest on such as may be quoted by the Company or as may apply in accordance with these GTC. Please note that the Price will always be subject to VAT.
- 1.14. "**Products**" means any gas meter products and any Smart Products agreed in the Contract to be supplied to the Purchaser by the Company (including any part(s) of them).
- 1.15. "**Purchaser**" a legal person, an organisational unit without legal personality and a natural person running a business, having its registered office or place of residence outside the borders of the Republic of Poland.
- 1.16. "**Purchaser Default**" means any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation.
- 1.17. "**Purchase Order**" means any written request for Goods the products and/or services received by the Company from the Purchaser.
- 1.18. "**Services**" means any services (including any in service testing and software-as-a-service) provided to the Purchaser by or on behalf of the Company.
- 1.19. "**Smart Products**" means any gas smart meter products agreed in the Contract to be supplied to the Purchaser by the Company (including any part(s) of them).
- 1.20. "**Software**" means any software (excluding any underlying software as part of the Services) comprised within the Products and/or Services, owned by the Company or a third party and provided to the Purchaser by the Company.
- 1.21. "**Specification**" means any standards, documentation, plans, drawings, data, patterns, samples, raw materials, jigs, tools, fixtures, materials, information in respect of the Goods which are:
  - (i) required in order to comply with national and/or international standards relating to the Goods;
  - (ii) required by the Purchaser; and/or
  - (iii) provided by the Company as part of the Goods,
  - as agreed by the parties in writing.

- 1.22. **"Warranty"** means the warranties provided by the Company in respect of any Goods as contained in Condition 14 unless otherwise specified in writing by the Company.

## **II. General**

- 2.1. In the event of any discrepancy or conflict between any Documents included in the Contract, the following order of precedence shall apply: (i) the Order Acknowledgment, (ii) special terms and conditions, (iii) these GTC, (iv) the Purchase Order, (v) the Specification, (vi) the Warranty and (vii) all other Documents that form part of the Contract.
- 2.2. These GTC shall apply to all contracts for the sale of Goods by the Company to the Purchaser to the exclusion of all other terms and conditions including any terms or conditions which the Purchaser may seek to apply under any Purchase Order, order confirmation, or similar document.
- 2.3. All Purchase Orders shall be deemed to be an offer by the Purchaser to purchase Goods pursuant to these GTC.
- 2.4. All Purchase Orders are subject to written acceptance by the Company's authorised representatives in the form of an Order Acknowledgement.
- 2.5. Any variation to these GTC (including any special terms and conditions agreed between the parties including without limitation as to discounts) shall be inapplicable unless agreed in writing by the Company.
- 2.6. Any advice, recommendation or representation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods or otherwise which is not confirmed in writing by the Company is followed or acted upon entirely at the Purchaser's own risk, and, accordingly, the Company shall not be liable for any such advice, recommendation or representation which is not so confirmed.
- 2.7. No binding contract shall be deemed to have been effected by the acceptance on the part of the Purchaser of a quotation or offer made by the Company until such contract shall have been confirmed by an Order Acknowledgement.

## **III. Price and Payment**

- 3.1. The Purchaser shall pay the Price in full and in cleared funds to an account nominated by the Company in accordance with the payment term individually agreed between the Company and the Purchaser, as specified in the relevant Purchase Order or invoice. Time for payment of the Price shall be of the essence of the Contract.
- 3.2. The Company reserves the right to raise an invoice for the Price at any time following submission of its Order Acknowledgement to the Purchaser.
- 3.3. All prices quoted are valid for thirty (30) days only or until earlier acceptance by the Purchaser, but the Company may withdraw or vary a quotation at any time by serving written notice on the Purchaser.

- 3.4. The Company reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of export/import duties and/or tariffs, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or Specification for the Goods which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions.
- 3.5. The Company shall be entitled to charge interest on overdue invoices from the date when payment becomes due. Interest charged by the Company shall be in the nature of statutory interest for delay in commercial transactions in accordance with the Act on Prevention of Excessive Delay in Commercial Transactions of March 8<sup>th</sup> 2013.
- 3.6. The Company reserves the right to grant, refuse, restrict, cancel or alter credit terms at its sole discretion at any time.
- 3.7. If payment of the Price or any part thereof is not made by the due date, the Company shall be entitled to:
- (i) require payment in advance of delivery in relation to any Goods not previously delivered,
  - (ii) refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Purchaser for non-delivery or any delay in delivery,
  - (iii) set off any such liability against any liability of the Company to the Purchaser, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract or otherwise. Any exercise by the Company of its rights under this Condition shall not limit or affect any other rights or remedies available to it under the Contract or otherwise,
  - (iv) terminate the Contract (please see Condition 12 of these GTC).

#### **IV. Description Specification**

- 4.1. Unless otherwise specified, Goods which are the subject of the Contract shall comply with the Specification(s). In the event of the Purchaser requiring any modification of the Specification(s) the Company reserves the right to amend the price and delivery date.
- 4.2. The Company reserves the right to make any changes in the Specification of the Goods which are required to conform to any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
- 4.3. No information or expression of opinion contained in any catalogues, technical circulars, pricelists and other literature or material published on the Company's or any other website shall give rise to any liability whatsoever for the Company, whether in contract, tort, misrepresentation or otherwise.

## **V. Sample(s)**

Unless otherwise expressly agreed in writing by the Company, any samples provided and/or technical details issued by the Company are merely indicative of the type of Goods or Services to be supplied and shall not constitute any representation, warranty or condition of the contract as to colour, composition, quality, fitness for any purpose, or compliance with such sample or technical details.

## **VI. Tests**

- 6.1. The Products are carefully inspected and submitted to 'standard' or 'routine' production tests in accordance with the mutually agreed Contract Specification between Company and Purchaser and prior to dispatch of the Goods.
- 6.2. From time to time the parties may agree to arrange 'special' tests which may be:
  - (i) fault finding or triage tests relating to the Goods,
  - (ii) additional tests to those specified in Condition 6.1,
  - (iii) any non-standard tests,
  - (iv) tests to be carried out in the presence of the Purchaser or its representative, and/or
  - (v) tests which will have an adverse impact on the Company's production capacity,
- 6.3. Such 'special' tests as described in Condition 6.2 shall be carried out:
  - (i) at the Company's premises (unless otherwise agreed in writing),
  - (ii) at the cost of the Purchaser, unless, in respect of fault finding or triage tests relating to the Goods (as specified in Condition 6.2. (i)), such tests reveal faults for which the Company is directly responsible in which case the Company will bear the cost of such tests.

## **VII. Delivery**

- 7.1. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address confirmed in the Order Acknowledgement on the Delivery Date. The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 7.2. Where Goods are delivered to the Purchaser, the Purchaser shall be responsible for unloading unless the Company has expressly agreed to unload the Goods. Where Goods are collected by the Purchaser at the Company's premises, the Company will load the Purchaser's vehicle.

- 7.3. The Delivery Date specified by the Company is an estimate only. Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Purchaser shall have no right to damages or to cancel the order for failure for any cause to meet any delivery date stated.
- 7.4. If the Purchaser fails to (as applicable) accept or take delivery of the Goods within three days of the Company notifying the Purchaser that the Goods are ready, then except where such failure or delay is caused by reasons beyond the Purchaser's control (as set out in Condition 18) or by the Company's failure to comply with its obligations under the Contract, then:
- (i) delivery of the Goods shall be deemed to have been completed at 9:00am on the third day following the day on which the Company notified the Purchaser that the Goods were ready;
  - (ii) the Purchaser shall be liable for all carriage and freight costs incurred by the Company in delivering the Goods to the delivery location; and
  - (iii) the Company shall be entitled to place the Goods in storage until such time as delivery may be effected and the Purchaser shall be liable for any expense associated with such storage (including but not limited to insurance).
- 7.5. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:
- (i) reasons beyond its control (as set out in Condition 18);
  - (ii) the Purchaser's failure to comply with any of its obligations under the Contract; or
  - (iii) the Purchaser's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 7.6. Where the Goods are to be delivered in instalments, each delivery constitutes a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.
- 7.7. Carriage is chargeable on all dispatches where the Company undertakes delivery. When the Purchaser requests delivery by a specific carrier any difference in cost between the Company's normal method of carriage and that requested will be payable by the Purchaser.
- 7.8. All deliveries and transport arrangements shall be organised in accordance with the latest version of Incoterms® issued by the International Chamber of Commerce (ICC), as specified in the Contract or Order Acknowledgement.

## **VIII. Purchaser Obligations**

- 8.1. Purchaser shall:
- (i) ensure the accuracy of the terms of any Purchase Order (including any applicable Specification) submitted by the Purchaser;
  - (ii) give the Company any necessary information and materials relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms;

- (iii) co-operate with the Company in all matters relating to the Goods;
- (iv) provide the Company, its employees, agents, consultants and subcontractors, with access to the Purchaser's premises, office accommodation and other facilities as reasonably required by the Company to provide the Goods;
- (v) (where applicable) prepare the Purchaser's premises for the supply of the Goods and ensure that the Goods are kept in the correct storage conditions, as defined within the relevant product approvals or Specification;
- (vi) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods before the date on which the Goods are to be provided;
- (vii) comply with all applicable laws, including health and safety laws;
- (viii) keep all Company Materials at the Purchaser's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; [and]
- (ix) comply with any additional obligations as set out in the Specification.

8.2. If the Company's performance of any of its obligations under the Contract is prevented or delayed by any Purchaser Default:

- (i) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend provision of the Goods until the Purchaser remedies the Purchaser Default, and to rely on the Purchaser Default to relieve it from the performance of any of its obligations in each case to the extent the Purchaser Default prevents or delays the Company's performance of any of its obligations;
- (ii) the Company shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Condition 8.2; and
- (iii) the Purchaser shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Purchaser Default.

## **IX. Acceptance**

- 9.1. The Company shall have no liability for any damage or shortages that would be apparent on careful inspection by the Purchaser unless a written complaint is delivered to the Company within seven days of delivery detailing the alleged damage or shortage and the Company is allowed access to inspect the affected Goods before any use is made of them.
- 9.2. Subject to Condition 9.1, the Company shall make good any shortage in the Goods for which it is responsible and where appropriate repair or at its option replace any Goods damaged during loading or unloading by the Company, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

## **X. Risk and Title**

- 10.1. Risk of damage or loss of the Goods shall pass to the Purchaser in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Purchaser that the Goods are available for collection, or in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery and specifically when the goods are offloaded by the Purchaser from the Company's designated road transport.
- 10.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the title in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the Price of the Goods and of all other Goods agreed to be sold by the Company to the Purchaser for which payment is then due.
- 10.3. Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property.
- 10.4. Until payment of the Price, the Purchaser shall be entitled to resell or use the Goods in the course of its business but shall be liable to account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 10.5. Until title in the Goods passes to the Purchaser (and provided that the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and if the Purchaser fails to do so forthwith to enter upon any premises of the Purchaser or of any third party where the Goods are stored and repossess the Goods.
- 10.6. The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 10.7. The Company shall be entitled to recover the Price notwithstanding that title in any of the Goods has not passed from the Company.

## **XI. Cancellation of Orders by the Purchaser**

No Purchase Order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in writing of the Company and on terms that the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, liabilities, charges and expenses incurred by the Company because of cancellation.

## **XII. Termination of Contract**

- 12.1. Either party (the "**Terminating Party**") shall have the right at any time by giving notice in writing to the other party to terminate the Contract immediately if:
- (i) the other party commits a material or persistent breach of the Contract which, if capable of remedy, is not rectified within a period of thirty (30) days after the date of the Terminating Party's notice to remedy such breach; or
  - (ii) the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstructions); or
  - (iii) an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the other party; or
  - (iv) the other party ceases or threatens to cease, to carry on business; or
  - (v) the other party breaches or is alleged to have breached any laws, rules or regulations related to bribery, corruption or money laundering, whether in the Republic of Poland or anywhere else in the world; or
  - (vi) the Terminating Party reasonably considers that any of the events mentioned above is about to occur in relation to the other party and notifies the other party accordingly.
- 12.2. Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the due date for payment. The above mentioned Company's right to terminate the Contract with immediate effect may be executed in a thirty (30) days period counting from the first day of delay in payment.
- 12.3. Where the Company is the Terminating Party under Condition 12.1 or where Condition 12.2 applies, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to suspend any further deliveries under the Contract without any liability to the Purchaser, and if the Goods have been delivered or performed but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12.4. The Company may, in the circumstances set out in Condition 12.1, also in its absolute discretion, and without prejudice to any other rights which it may have, exercise any of its rights pursuant to Condition 10.

## **XIII. Consequences of Termination**

- 13.1. On termination of the Contract:
- (i) the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has

been submitted, the Company shall submit an invoice, which shall be payable by the Purchaser immediately on receipt;

- (ii) the Purchaser shall return all of the Company Materials and any Goods which have not been fully paid for. If the Purchaser fails to do so, then the Company may enter the Purchaser's premises and take possession of them. Until they have been returned, the Purchaser shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

#### **XIV. Warranty**

14.1. Products are supplied subject to the following warranty unless otherwise specified in writing by the Company. Products shall be delivered free from defects in design, materials and workmanship if installed, operated, maintained and used in accordance with the Company's published guidelines which include, but are not limited to information contained in these GTC, the Specification(s) and other supporting documentation, including but not limited to installation instructions and user and maintenance manual(s).

14.2. Services are supplied subject to the following warranty unless otherwise specified in writing by the Company. Services shall be performed in a competent, diligent manner and shall correspond with their relevant Specification or any mutually agreed specification.

14.3. Software supplied and licensed by the Company is subject to the following warranties unless otherwise specified in writing by the Company. Software shall substantially conform to and be capable of functioning in all material respects in accordance with the relevant Specification for a period of ninety (90) days after the date of shipment but the Company does not warrant that the Software shall be free of errors, or interruptions.

14.4. Condition 14.1, Condition 14.2 and Condition 14.3 are subject to the following exceptions:

- (i) the Company is under no liability in respect of any defect in the Products or non-conformity of the Software or Services arising from any Specification supplied by the Purchaser;
- (ii) the Company is under no liability in respect of:
  - a. consumable parts, such as protective coatings that are designed to diminish over time, unless failure has occurred due to a defect in materials or workmanship;
  - b. cosmetic damage, including but not limited to scratches, dents and broken plastic on ports;
  - c. any failure, non-conformity, interference or defect arising from or caused by any particles in the gas which affect their function outside the norms or standards

generally accepted in the industry, or by aggressive gas or environmental conditions;

- d. damage caused by use with another product or exposure to soldering fluxes and other equally corrosive elements;
- e. damage caused by accident, abuse, vandalism, deliberate tampering, theft, mishandling, misapplication, misuse, fire, earthquake or other external cause;
- f. including but not limited to failing to comply with BSEN6400 and/or damage caused by operating the Product and/or Software outside these GTC, the Company's installation instructions, user and maintenance manual and the Specification;
- g. damage caused by services (including but not limited to upgrades, maintenance, repairs and expansions) performed by anyone who is not a representative of the Company or authorised by the Company to undertake such work;
- h. Products and/or Software which have been modified to alter functionality or capability without the written permission of the Company;
- i. defects caused by normal wear and tear or otherwise due to normal aging of the Products;
- j. negligent acts or omissions or malfeasance of the Purchaser or any third party;
- k. damage to the Products and/or Software caused by the Purchaser or any third party or other conditions beyond the control of the Company;
- l. where any serial number or security seals have been removed or defaced (in whole or part) from the Products and/or Software;
- m. the Goods differing from their description or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- n. the Purchaser making any further use of any Goods after giving a notice to the Company that they are in breach of warranty;
- o. cracked pressure test points caused by (i) excessive mechanical tightening of the pressure test point screw, (ii) exposure to corrosive substances, or (iii) pressure test points that have been replaced by anyone other than Company personnel;
- p. any failure of a primary battery which after investigation by the Company is proven to be due to negligent acts or omissions or malfeasance of the Purchaser or any third party;
- q. if any gas meter metrology exceeds 30,000m3;
- r. if the number of operations of opening and closing the valve exceeds the number of operations accepted by the valve manufacturer.

(iii) the Company is under no liability if any payments due and owing to the Company for the Goods have not been paid by the Purchaser by the due date for payment.

14.5. Conditions 14.1 and 14.3 do not extend to products, parts, materials, equipment or software not manufactured or produced by the Company, in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer, supplier,

or (in the case of Software) licensor to the Company (which may be less than twelve (12) months), and only the remedies, if any, provided by the manufacturer or supplier to the Company will be allowed.

- 14.6. The Warranty for Products shall expire twelve (12) months from date of delivery. The Warranty for Software supplied and licensed by the Company shall expire ninety (90) days from date of delivery. The Warranty for Services (including but not limited to testing carried out in accordance with Condition 6.1) shall expire ninety (90) days from date of completion of the Service (such respective periods being jointly referred to as the "Warranty Period"). The Warranty Period will not be extended or renewed or otherwise affected due to replacement of Products. No Company reseller, agent, or employee is authorised to make any extension to this Warranty Period.
- 14.7. If any Goods are discovered after the date of delivery but within the Warranty Period to be defective or otherwise not in accordance with Conditions 14.1, 14.2 and 14.3 above, then the Company shall at its option and without additional charge to the Purchaser: (i) repair or replace the Products and/or Software; (ii) refund the price of the Products and/or Services (or a proportionate part of the price); and/or (iii) re-perform the Services, provided that the Purchaser shall notify the Company in writing within seven (7) days of becoming aware or when it ought to have been aware of the defect or non-conformity.
- 14.8. The terms of Condition 14 shall apply to any repaired or replaced Goods supplied by the Supplier for the remainder of the original Warranty Period.
- 14.9. The cost for installation and/or removal of proven (as mutually agreed by the Company and the Purchaser) defective Products, including any shipping costs to a service centre designated by the Company shall be the responsibility of the Company.
- 14.10. Where the Purchaser alleges some of all of the Products are defective, and they are established as not being defective by the Company, the costs of return, installation and/or removal of the alleged defective Product(s) shall be the sole responsibility of the Purchaser.
- 14.11. No claim of breach of Condition 14.1, Condition 14.2, Condition 14.3 or the Standard Warranty shall constitute a cause for cancellation of the Contract between the Company and the Purchaser.
- 14.12. Except as expressly provided in these GTC, all warranties, representations, terms, conditions, remedies or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 14.13. For the avoidance of doubt, the warranties provided by the Company under this Condition 14 are only enforceable by the Purchaser and the Purchaser may not transfer the benefit of these warranties to its own customers.
- 14.14. Where the Company supplies Smart Products to the Purchaser, the battery support warranty policy set out in the Schedule attached to these GTC shall be applicable.
- 14.15. Any claims or complaints shall be governed by and resolved in accordance with the General Warranty Conditions, which shall prevail over any other documents.

## **XV. Limitation of Liability**

- 15.1. Nothing in the Contract shall limit, restrict, modify or exclude the liability of the Company for (i) death or personal injury resulting from its negligence; or (ii) fraud or fraudulent misrepresentation; or any other type of liability the limitation or exclusion of which is prohibited by the applicable law.
- 15.2. Without prejudice to Condition 15.1 and to the maximum extent permitted by law, the Company shall not be liable for (i) any loss of actual or anticipated profits; (ii) loss of business; (iii) loss of revenue; (iv) loss of business opportunity; (v) loss of contract; (vi) depletion of goodwill; (vii) loss of anticipated savings (viii) loss and/or corruption of data or information; (ix) loss of use or pure economic loss, suffered or incurred by the Purchaser that arises under or in connection with these GTC or the Contract, regardless of whether such loss is direct, indirect, special or consequential and howsoever caused.
- 15.3. Without prejudice to Condition 15.1 or Condition 15.2, the Company's total liability arising under or in connection with these GTC, whether in contract, tort (including negligence, breach of statutory duty or otherwise) regardless of whether the supply of Goods is made in instalments or under separate Contracts, shall in no circumstances exceed the total Price.
- 15.4. Notwithstanding anything else stated in these GTC, but without prejudice to Condition 15.1, any claim by the Purchaser must be made within three (3) months of the event giving rise to the claim (and within the Warranty Period in respect of any claim made under Condition 13); otherwise the Company shall have no liability to the Purchaser whatsoever.

## **XVI. Indemnity**

In the event of any action for infringement or other proceedings being taken against the Company in respect of (i) any Products manufactured by the Company or (ii) any Services provided by the Company; in accordance with any Specification provided by the Purchaser, the Purchaser shall indemnify the Company against all losses, damages, liabilities, costs and expenses awarded against them or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or Intellectual Property of any other person, as well as the Company's costs (including reasonable legal fees) incurred in defending such action or proceeding, or any other action, or proceedings which result from the Company's use of the Specification provided by the Purchaser.

## **XVII. Software and Intellectual Property**

- 17.1. If any Goods comprise Software, the Company, subject to these GTC, grants to the Purchaser a non-exclusive, non-transferable, non-sub-licensable licence to make use of the Software and/or

supplied Intellectual Property in object code only solely for the purposes of using or operating the Products or receiving the Services, or allowing its customers to do so where the Purchaser is a distributor of the Company. In respect of any third party Intellectual Property and/or Software, such shall be supplied on the terms of an accompanying Licence Agreement. Nothing herein shall be construed to grant any rights or license to use any Software or other Intellectual Property in any manner or for any purpose not expressly permitted by such Licence Agreement.

- 17.2. Unless specifically authorised, the Purchaser undertakes that it shall not employ nor permit any third party outside the scope of the licence granted to it by Condition 17.1:
- (i) to disclose or make available any part or parts of the Software to any third party without the prior consent of the Company; and
  - (ii) except as permitted by law, to reverse engineer, de-compile, disassemble, modify, enhance, convert, copy or reproduce the Software.

The Purchaser further acknowledges that Software and all accompanying Documents are confidential and subject to the terms of Condition 20.

- 17.3. In the event that the Goods or the use thereof are held to constitute an infringement of any intellectual property rights and the use is thereby prevented, the Company will, at its own expense and option, either procure for the Purchaser the right to continue using the Goods or replace the same with a non-infringing product, or modify the Goods so that they become non-infringing, or may elect to retake possession of the Goods and refund the Price. Subject to the foregoing, the Company shall be under no liability to the Purchaser for any loss, damage or enquiry, whether direct or indirect, resulting from any intellectual property right infringement of the Goods.

## **XVIII. Data Protection**

- 18.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Condition 18, "**Applicable Laws**" means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or Domestic Law of Poland, and "**Domestic Law Poland**" means any Data Protection Legislation from time to time in force in the Republic of Poland including the Act on Personal Data Protection of 10<sup>th</sup> of May 2018 or any successor legislation.
- 18.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the Data Controller and the Company is the Data Processor (where "**Data Controller**" and "**Data Processor**" have the meanings as defined in the Data Protection Legislation).
- 18.3. Without prejudice to the generality of Condition 18.1, the Purchaser will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Company for the duration and purposes of the Contract.

18.4. Without prejudice to the generality of Condition 18.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under the Contract:

- (i) process that Personal Data only on the written instructions of the Purchaser unless the Company is required by Applicable Laws to otherwise process that Personal Data. Where the Company is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Company shall promptly notify the Purchaser of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Purchaser;
- (ii) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Purchaser, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Purchaser has been obtained;
- (v) assist the Purchaser, at the Purchaser's cost, in responding to any request from a Data Subject (where "**Data Subject**" has the meaning as defined in the Data Protection Legislation) and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify the Purchaser without undue delay on becoming aware of a Personal Data Breach (where "**Personal Data Breach**" has the meaning as defined in the Data Protection Legislation);
- (vii) at the written direction of the Purchaser, delete or return Personal Data and copies thereof to the Purchaser on termination of the Contract unless required by Applicable Law to store the Personal Data; and
- (viii) maintain complete and accurate records and information to demonstrate its compliance with this Condition 18.

## **XIX. Force Majeure**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and shall be entitled to a reasonable extension of its obligations. If the delay persists for three (3) months, then the party not affected by the delay may, without liability on its part, immediately terminate the Contract or any part of it by providing written notice to the other party.

## **XX. Confidentiality**

All specifications, drawings, technical descriptions and details of processes (hereinafter called "Information") submitted by the Company to the Purchaser (in whatever format) shall be kept confidential by the Purchaser and the Purchaser shall not (save as required by law or unless the Information is already in the public domain other than as a result of the default of the Purchaser) disclose the Information to any third party without the Company's prior written consent, and the Purchaser shall use the Information only for the purposes of the Contract.

The obligation of confidentiality shall remain in force during the term of the Contract and thereafter:

(i) in accordance with the provisions of a separate Non-Disclosure Agreement (NDA) entered into between \_\_\_\_\_ the \_\_\_\_\_ Parties, \_\_\_\_\_ or

(ii) in the absence of such NDA, for a period of ten (10) years from the termination or expiry of the Contract,

unless the Information becomes publicly available in a lawful manner or the Company gives prior written consent to its disclosure.

## **XXI. Relationship of Parties**

21.1. Nothing contained in these GTC shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these GTC shall be deemed to construe either of the parties as the agent of the other.

21.2. Any notice required or permitted to be given by either party to the other under these GTC shall be in writing addressed to that other party at its registered office or principal place of business or

such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice.

## **XXII. Assignment and Sub-Contracting**

The Purchaser may not assign, sub-contract, charge or otherwise transfer any of its rights, benefits or obligations under these GTC to a third party without the prior written consent of the Company. The Company may assign, transfer or subcontract any of its rights or obligations under the Contract without the prior written consent of the Purchaser.

## **XXIII. Waiver**

Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of that or any of its other rights or remedies under the Contract nor shall it preclude or restrict any further exercise of that or any other right or remedy.

## **XXIV. Severability**

If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.

## **XXV. No set off**

The Purchaser may not withhold payment of any invoice or other amount due to the Company by reason of any right of set-off or counterclaim which the Purchaser may have or allege to have for any reason whatsoever.

## **XXVI. Entire Agreement**

The Contract constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. Each party acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in the Contract.

## **XXVII. Notices**

- 27.1. Any notice or other communication given to a party under or in connection with Contract shall be in writing and shall be sent by email to the address specified in the Order Acknowledgement.
- 27.2. Any notice or communication shall be deemed to have been received at the time of email transmission, or, if this time falls outside business hours in the place of receipt, when business

hours resume. In this Condition 27.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt

- 27.3. This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **XXVIII. Variation**

Except as set out in these GTC, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

## **XXIX. Miscellaneous**

- 29.1. The Company declares that it has the status of a large entrepreneur within the meaning of Annex I to the Commission Regulation (EU) No. 651/2014 of June 17, 2014 declaring certain types of aid compatible with the internal market in application of Article 107 and 108 of the Treaty, Official Journal of the EU of 26.6.2014, L 187/1.
- 29.2. Any amendment to, modification of or supplement to these GTC or the Contract shall be made in writing, otherwise it shall be null and void
- 29.3. The parties declare that, in accordance with Article 6 of the United Nations Convention on Contracts for the International Sale of Goods, done at Vienna on April 11, 1980 (Journal of Laws of 1997, No. 45, item 286), they exclude its application to Contracts concluded between them under these GTC.

## **XXX. Governing Law and Jurisdiction**

- 29.4. This Agreement shall be governed by and construed in accordance with the law of Republic of Poland and the parties hereby submit to the exclusive jurisdiction of the Polish courts.
- 29.5. Any claims arising from the Contract shall be governed and resolved by competent court for the registered office of Company subject to Condition 14.15.