

# Chart Standard Terms & Conditions of Sale for Goods & Services. V1-0326

## 1. DEFINITIONS

- 1.1 **Buyer** means the purchaser, whose name is set out in Supplier's quote or as shown in Supplier's acceptance of the Buyer's order. **Contract** means the agreement arising as a result of the Buyer's acceptance of Supplier's quote, or Supplier's acceptance of the Buyer's order, incorporating these terms and conditions. **Contract Price** means the total sum payable as specified in the Contract. **Direct Costs** means such direct costs borne and incurred by Supplier associated with the Contract up to and including the date of suspension and/or termination, including but not limited to manufacturing costs, salaries, third party supplier costs and reasonable overhead and profit margin. **Goods** means the equipment, parts or materials as specified in the Contract. **Howden Uptime Hardware** means tangible components of the Howden Uptime Solution installed on or otherwise connected to the Goods, for example, sensors, Edge device and other monitoring hardware. **Howden Uptime Solution** means the Howden Uptime cloud-based web and mobile applications software solution for optimizing rotating equipment performance, offered by Supplier, including the hardware. **Services** means the supervisory and/or technical services required at Site as specified in the Contract. **Site** means the place where the Services are to be performed, as set out in the Contract. **Supplier** means the Chart entity which bids for the Goods and/or Services or accepts an order from the Buyer as set forth on the order acknowledgement for the Goods and/or Services.

## 2. CONDITIONS

- 2.1 The acceptance of Supplier's quote or the acceptance by Supplier of the Buyer's order shall be subject to these terms and conditions and any other terms and conditions (if any) stated in or referred to in Supplier's quote or Supplier's official order acceptance. All other terms and conditions are excluded unless expressly agreed by Supplier in writing.

## 3. PERFORMANCE

- 3.1 Any figures quoted by Supplier for performance are based on Supplier's experience and represent levels the Supplier expects to achieve during testing. Supplier accepts no liability for failing to achieve any such figures unless Supplier has expressly guaranteed them, subject to any tolerances specified or agreed to by Supplier.

## 4. INSPECTION AND TESTS

- 4.1 Supplier products are carefully inspected and, where practicable, subject to Supplier's standard tests before dispatch. If tests other than those specified in Supplier's quote or tests in the presence of the Buyer or the Buyer's representative are required, these will be at additional cost to the Buyer. If the Buyer delays in carrying out any inspection or attending such tests after being given at least forty-eight (48) hours' notice that Supplier is ready to test, the inspection, or tests, will proceed in the Buyer's absence and shall be deemed to have been made in the Buyer's presence and the results accepted by the Buyer.

## 5. TERMS OF PAYMENT

- 5.1 Unless otherwise agreed, payment shall be made within thirty (30) days from the date of Supplier's invoice, without any deduction, retention, withholding or set off. No claim by the Buyer, whether under warranty or otherwise, shall entitle the Buyer to delay or withhold payment of any part of the Contract Price, and all such claims shall be handled separately.
- 5.2 If the Buyer's credit risk increases, or if the Supplier reasonably considers that the Buyer's financial condition may jeopardize full or timely payment, or if any payment becomes overdue, the Supplier may suspend or cancel performance of the Contract in whole or in part. In such cases, the Supplier shall be entitled to immediate payment for all work performed to date and may require alternative payment terms or methods. If a shipment has already been made, the Supplier may also recover Goods from the carrier.
- 5.3 If any payment falls into arrears, Supplier reserves the right to: (i) charge interest on the overdue amount from the due date until the date of actual payment, accruing on a daily basis, at the rate of eight percent (8%) per annum, or at the maximum rate permitted by applicable law, whichever is less; and (ii) require the Buyer to pay all reasonable costs incurred by Supplier in collecting such overdue amounts (including legal fees).
- 5.4 For milestone payments required under the Contract, Supplier may invoice on the original milestone due date if the milestone is not met, due to the Buyer's fault, untimely response or unreasonable delay.

## 6. DELIVERY

- 6.1 Unless otherwise agreed, delivery of any domestic sales shall be EXW, Supplier's plant. For any other sales, delivery shall be FCA, Supplier's plant, in accordance with Incoterms 2020. Part deliveries and invoicing shall be acceptable to the Buyer.
- 6.2 If the Buyer fails to take delivery, nominate a carrier, or provide required delivery instructions in accordance with the agreed Incoterms within fourteen (14) days of notice that the Goods are ready, then: (i) the Goods shall be deemed delivered and the Supplier may invoice and be paid in full; (ii) the Supplier may charge reasonable storage or warehousing costs in accordance with clause 7.1; and (iii) the Supplier is entitled to a reasonable extension of time reflecting the Buyer's delay.

## 7. STORAGE/WAREHOUSING

- 7.1 Where the Supplier arranges storage or warehousing of the Goods pursuant to clause 6.2, such storage shall be at the Buyer's risk and cost. The Buyer shall pay all reasonable storage, warehousing, handling, and insurance charges upon receipt of an invoice or reasonable evidence of such costs from the Supplier or the relevant warehouse provider.

## 8. TITLE AND RISK

- 8.1 Legal and beneficial ownership (title) of the Goods shall remain vested in Supplier until the Buyer has made full payment of the Contract Price.
- 8.2 The Goods will be at the Buyer's risk from the date of delivery, or if the Buyer for any reason delays delivery, risk will transfer to the Buyer from the date that delivery should have taken place in accordance with clause 6.2.
- 8.3 In the event of late payment, Supplier reserves the right to enter Buyer's or its customer's premises to repossess the Goods upon written notice by Supplier. Upon Supplier's request, Buyer shall complete and execute all documents required to effect Supplier's rights under this clause.

## 9. PRICING AND CONTRACT VARIATIONS

- 9.1 Unless otherwise agreed: (i) the Contract Price is exclusive of any sales, use, value-added or similar taxes ("Sales Taxes") and any import, export, customs duties, tariffs, fees and similar charges ("Duties"); and (ii) the Buyer shall be responsible for payment of all Sales Taxes and Duties.
- 9.2 Supplier shall be entitled to an equitable adjustment of the Contract Price and/or an adequate extension of time as required if: (i) the price of any raw material, labour or any other costs increase, which is beyond Supplier's control, including cost increases due to imposition of new or changes in existing tariffs; (ii) due to changes or delays caused by the Buyer; and/or (iii) Supplier deems it necessary to vary any aspect of the Goods and/or Services due to an unforeseen change in any applicable law, local regulation or standard

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becoming effective or taking place after the conclusion of the Contract. Supplier shall inform the Buyer in writing defining the changes deemed necessary in order to complete the Goods and/or Services in accordance with the Contract and any applicable law, local regulation or standard.

**9.3** In the event of a variation to the Contract ("Variation Order" or "VO"), resulting in an extension to the delivery date(s), which will impact Supplier's invoice schedule, Supplier reserves the right to invoice the Buyer for the original Contract Price, in accordance with the most recent project plan, prior to the VO. Previous invoice milestones will be adjusted pro-rata and invoiced upon Supplier's acceptance of the VO.

### **10. SUBCONTRACTING**

**10.1** At its option, Supplier may arrange for the manufacture of proprietary and subcontracted Goods and/or assembly, testing or any Site related Services to be carried out by Supplier (Supplier manufacturing facilities operate Quality Management Systems compliant with EN ISO 9001), and/or Supplier's choice of approved subcontractor. Supplier shall give the Buyer advance notice of its intention to exercise this option.

### **11. LIABILITY FOR DELAY**

**11.1** Any lead times quoted by Supplier shall run from the later of (i) Supplier's acceptance of the Buyer's order; or (ii) Supplier's receipt of all necessary information to enable Supplier to commence work under the Contract and shall be conditional on the Buyer's continued and timely performance of its obligations under the Contract.

**11.2** In the event of a delay in the supply of the Goods or Services, which is solely attributable to the fault of Supplier, Supplier shall be liable to pay liquidated damages in a sum equal to half of one percent (0.5%) of the value of the delayed Goods or Services per week, subject to a maximum of five percent (5%) of the value of the delayed Goods or Services. Such liquidated damages shall be the Buyer's sole and exclusive remedy in the event of Supplier's delay.

**11.3** If Supplier is delayed in its performance of the Contract, which is solely attributable to the Buyer, the Buyer's agents and/or Buyer's contractors, Supplier is entitled to receive payment at the time Supplier was originally scheduled to be paid notwithstanding the delay. Any shipments held or delayed beyond the scheduled delivery date at the request or fault of the Buyer may be invoiced to the Buyer immediately including all reasonable expenses incident to such delay, and risk in the relevant Goods shall pass to the Buyer in accordance with clause 8.2.

### **12. SERVICE PROVISIONS**

**12.1** Unless otherwise agreed, the following provisions shall apply where the Contract includes supervision by Supplier's engineers of erection, installation and/or commissioning at Site as specified in the Contract:

- (a) Buyer shall be responsible for furnishing all fully qualified labour, equipment, materials, tools and supplies for implementation of such Services required.
- (b) Supplier's sole responsibility in providing Services shall be to provide suitably qualified supervisor(s) who shall give the Buyer the benefit of their technical expertise with the Goods or similar installations and who shall advise the Buyer's personnel as to the installation in an efficient manner. It shall be the Buyer's sole responsibility to carry out installation and to achieve the desired work schedules, timescales and quality of workmanship for installation using appropriately qualified workmen in sufficient numbers to achieve the task.
- (c) Supplier shall not be responsible for any overruns in the work programme, and the Buyer shall not be entitled to instruct Supplier's supervisor(s) to undertake any work in addition to supervision, whether or not necessary to achieve such programme; and
- (d) If the work is suspended by the Buyer or for any reason beyond Supplier's control for more than two (2) working days Supplier shall be entitled to withdraw its supervisor(s) from Site. If the Buyer requires Supplier's attendance on Site thereafter, the Buyer will pay the supervisor(s) return travel fares (business class) and any other reasonable costs Supplier incurs due to the withdrawal from, and the return to, Site.

**12.2** Unless specified in the Contract, Supplier is only the supplier of the Goods and shall have no responsibility for the assembly and/or installation of the Goods.

**12.3** For all Services provided by Supplier, the Buyer agrees to the following:

- (a) Where the Site is offshore or otherwise inaccessible or is located overseas, provide all necessary transportation facilities to and from Site;
- (b) Obtain all necessary statutory and other consents, approvals, licences and permissions for Services, for the work to proceed, and for Supplier personnel to travel to and from the Site.
- (c) Provide all health, welfare and security facilities (including, but not limited to, medical, messing, accommodation, toilet and like facilities as appropriate) as required by law and otherwise reasonably necessary for personnel working on Site; and
- (d) Provide any necessary office, telephone and like facilities on Site.

**12.4** The Buyer shall indemnify Supplier against any loss, damage or injury including death suffered by the person or property of Supplier, its subcontractor, the Buyer, or respective personnel or any third party and against any claims, liability, costs or expenses associated therewith or arising out of the Buyer's performance or the Buyer's failure to perform or otherwise, including, but not limited to, that which was caused by faulty lifting tackle, scaffolding, equipment and/or other facilities provided by the Buyer.

**12.5** Supplier's on-Site personnel, subcontractors and/or representatives shall be given unobstructed access to the Site and the work as required. If there are delays caused by anyone other than Supplier, the time and expense of the same shall be charged to the Buyer.

**12.6** Supplier is an independent contractor and is not responsible for any oversight, for completion of the work, or the property or employees of the Buyer or others, including, without limitation, matters such as health and safety, or security.

**12.7** Supplier shall comply with all provincial/territorial/state statutes, acts, ordinances, regulations, codes, and laws that apply to Supplier's performance of the Services. Supplier shall comply with job/Site requirements as mutually agreed upon by the parties in writing and in advance of any Services commencing.

**12.8** The Buyer shall advise Supplier's personnel in advance of all known and/or suspected hazardous/unsafe conditions and risks that may be encountered while on-Site, including providing proper Material Safety Data Sheets (MSDS). Supplier's personnel shall not be required to take any action or to enter or remain in any area where Supplier reasonably determines that it would be unsafe. Furthermore, if Supplier has substantive travel and/or security concerns regarding the Buyer's Site, general region and/or country, Supplier shall be excused from Site attendance, and the event will be considered a Force Majeure.

**12.9** The maximum continuous period during which any Supplier personnel shall attend a Buyer's premises will comply with all relevant labour and tax laws and regulations. If any Supplier personnel reach the maximum period permitted under such laws, Supplier shall use its best endeavours to provide an adequate replacement on the same conditions to ensure that the Services continue uninterrupted. Travelling and other additional expenses incurred in connection with such replacement shall be payable by the Buyer.

**12.10** Any associated Goods shall be considered accepted at the earlier of:

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- (a) When Services are complete and the Goods have completed such tests as specified in the Contract or otherwise are to Supplier's reasonable satisfaction; or
  - (b) Forty-five (45) days after the Goods have been delivered by Supplier, although not installed or successfully commissioned or tested due to reasons attributable to the Buyer, industrial action or anything beyond Supplier's reasonable control.
- Goods acceptance shall not be delayed due to additions, minor omissions or defects that do not materially affect the use of the Goods. The Buyer shall sign Supplier's acceptance certificate upon request.

### 13. SUSPENSION

- 13.1 The Buyer shall have the right to suspend the Contract. Upon resumption of performance, Supplier has the right to equitable relief as necessary in accordance with clause 9.
- 13.2 If the suspension period should exceed thirty (30) days, Supplier has the right to consider the Contract terminated for convenience and be compensated in accordance with clause 14.1.

### 14. TERMINATION

- 14.1 Buyer may terminate this Contract, in whole or in part, upon at least seven (7) calendar days advanced written notice to Supplier. In the event of termination for Buyer's convenience, Supplier shall be reimbursed for the reasonable Direct Costs incurred by Supplier in performing the Contract until termination and for its costs in effecting such termination, notwithstanding any other provision of the Contract.
- 14.2 If Supplier fails to cure a material breach within a reasonable time after receipt of notice of the breach from Buyer, and on Supplier's acceptance of such breach, Buyer shall have the right, at its option, to terminate the Contract upon payment to Supplier for work properly performed until the effective date of termination.
- 14.3 Any Goods or Services sold by Supplier that are incomplete shall be deemed sold 'AS-IS' and without warranty or guarantee of any kind.
- 14.4 Supplier shall be entitled to suspend performance or terminate the Contract immediately if Buyer (i) becomes insolvent or bankrupt; or (ii) materially breaches the Contract, including (without limitation), any breach of clauses 22 and/or 23, failure to make any payment when due, or comply with payment conditions; and, in each case the Supplier shall be compensated in accordance with clause 14.1.

### 15. WARRANTY

- 15.1 Supplier warrants that: (i) any Goods provided hereunder will be of good material and workmanship; (ii) any Services provided by Supplier shall be performed by competent and qualified personnel in a professional and workmanlike manner in accordance with generally established industry standards; and (iii) the Goods and/or Services supplied by Supplier hereunder will conform to any applicable technical specifications and/or drawings that have been agreed upon between the parties in writing.
- 15.2 In the event that defects appear in the Goods under proper use, Buyer's sole and exclusive remedy thereof shall be that Supplier will repair or replace, such Goods at Supplier's option and cost (excluding transportation, removal, reinstallation and/or decontamination costs if so necessary) within the warranty period set forth:  
Unless otherwise expressly agreed, the warranty for Goods shall be whichever period expires earlier: (i) twelve (12) months from first operation of any such Goods; or (ii) eighteen (18) months from Supplier's delivery date (at the applicable Incoterms point of delivery quoted by Supplier).
- 15.3 Supplier's warranty on any Services performed by Supplier will be in effect until ninety (90) days after the date of the performance of any such Services. The Buyer's sole and exclusive remedy for breach thereof shall be the reperformance of such Services by Supplier.
- 15.4 Supplier's warranty shall exclude liability for defects arising from: (i) installation, commissioning and/or operation, not in accordance with Supplier's O&M manual or good industry practice; (ii) use of unapproved spares, unauthorized modification or alteration of the Goods; (iii) normal wear and tear; (iv) the failure of Buyer and/or the end-user to provide adequate storage; or (v) use of the equipment otherwise than in accordance with the agreed operational parameters (including composition, pressure and temperature of the feed gas).  
**SUPPLIER DOES NOT WARRANT THAT THE GOODS WILL RESIST THE ACTION OF EROSION OR CORROSIVE GASES, LIQUIDS, OR SOLIDS, OR PRODUCE RESULTS IN COMPLIANCE WITH ANY OTHER STANDARDS.**
- 15.5 Any warranty repair or replacement of Goods or re-performance of Services shall be warranted by Supplier for the remainder of the original warranty period.
- 15.6 Supplier shall have the sole right to specify the manner and timeframe for such repair/replacement/re-performance of any Goods and/Services. Any defective/non-conforming Goods must be returned to Supplier free of all contaminants and, in the event of replacement, will become the property of Supplier unless Supplier instructs otherwise. If Supplier opts to perform any warranty obligations in-place, Buyer shall, without cost to Supplier, during a specified period agreed upon by the parties in writing, provide access by disassembling, removing, replacing, and reinstalling any equipment, structures, or other obstructions to the extent necessary to permit Supplier to perform its warranty obligations.
- 15.7. The warranties set forth in this Contract are exclusive and in lieu of all other warranties and guarantees, whether express or implied, including any warranty of merchantability or fitness for use for the purpose intended.

### 16. HOWDEN UPTIME

- 16.1 For Goods equipped with Howden Uptime Hardware as part of a digitally-enabled warranty offering provided by Supplier, the Goods will be connected to the Howden Uptime Solution during commissioning of the Goods and will receive the benefit of the Howden Uptime Solution from completion of the calibration following connection of the Goods to the Howden Uptime Solution by Howden until the expiry of the warranty period under the Contract ("Digitally-Enabled Warranty Period"). The Howden Uptime Hardware shall remain the property solely of Supplier and shall be deemed loaned to the Buyer for the purposes of the digitally-enabled warranty offering.
- 16.2 The scope and specific features of the Howden Uptime Solution that will be made available to the Buyer will be agreed by the Parties in the Contract, and the Buyer shall agree to Supplier's standard licence agreement for the Howden Uptime Solution to govern the Buyer's access to and use of the Howden Uptime Solution during the Digitally-Enabled Warranty Period.
- 16.3 If, upon expiry of the Digitally-Enabled Warranty Period, the Buyer does not wish to continue to receive the benefit of the Howden Uptime Solution, it shall make the Howden Uptime Solution available to Supplier personnel for the purposes of taking the Howden Uptime Solution offline and removal of the Howden Uptime Hardware from the Goods by Supplier personnel.

### 17. INSURANCE

- 17.1 Supplier will maintain the following insurance coverage: (1) Public and Products Liability with a limit of one million dollars (\$1,000,000) in the aggregate; and (2) Employers' liability or Workers' compensation as required by applicable law. The Supplier shall have no further obligations related to insurance coverage.

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### 18. LIMITATION OF LIABILITY AND EXCLUSION OF CONSEQUENTIAL DAMAGES

18.1 Notwithstanding anything to the contrary contained herein or elsewhere in the Contract and save to the extent this limitation is prohibited by law:

- (a) Supplier's total liability pursuant to this Contract whether by way of indemnity, for breach of Contract, warranty or guarantee obligations or by reason of any tort, statute or otherwise shall in no event exceed the Contract Price.
- (b) Supplier shall not be liable to Buyer, end-user or any third party, for any indirect, punitive or consequential damages of any kind or nature whatsoever, or for loss of profits/revenue or loss of production, regardless of whether such damages are based upon Contract, tort, strict liability in tort, negligence or indemnity.

18.2 **For sales from a German Chart entity:** Supplier shall be liable to Buyer only for damages caused by intent or gross negligence. The foregoing limitation shall, however, not apply to damages arising from: (i) injuries to a person's life, body, or health; and (ii) violations of material contractual duties (i.e., duties which allow the proper performance of the agreement in the first place and which, in terms of fulfillment of such duty, Buyer can regularly rely on. Buyer shall indemnify Supplier from, and hold Supplier harmless against, any claims by third parties based upon product liability unless these are resulting from damages or injuries caused exclusively by defects of Goods.

### 19. INTELLECTUAL PROPERTY

19.1 Supplier will indemnify the Buyer against any claim for infringement of copyright, letters patent, registered design or trade mark (published at the date of the Contract) by the use or sale of any article or material supplied by Supplier to the Buyer and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. This indemnity shall not apply to any infringement which is due to: (i) Supplier having followed a design, process or instruction furnished or given by the Buyer; (ii) the use of such article or material in a manner, or for a purpose, or in a country, not specified or disclosed to Supplier; or (iii) the use of such article or material in association or combination with any other article or material not supplied by Supplier. The Buyer warrants that any design or instruction furnished or given by the Buyer shall not cause Supplier to infringe any copyright, letters patent, registered design or trademark in the execution of the Contract.

19.2 In the event it is determined that there is an infringement for which Supplier is responsible, Supplier shall, at its sole discretion, either (i) procure the right for the Buyer to continue to operate the Goods; (ii) modify or replace the infringing Goods with Goods that do not infringe; or (iii) refund the purchase price of the affected Goods.

19.3 All patents, copyright and other intellectual property rights in or relating to the Goods or their design or the specifications, drawings, manuals or information prepared or supplied by Supplier, or which arise under or in the course of Supplier's performance of the Contract, are, shall be and shall remain Supplier's absolute property and shall not be used or reproduced without Supplier's consent in writing. Supplier shall grant the Buyer a royalty free licence to use such intellectual property rights for the sole purpose of operating and maintaining the Goods.

19.4 Notwithstanding any other provisions or requirements of this Contract, except as set out in clause 19.3, no intellectual property or proprietary information is being sold, granted, transferred, licensed, or assigned. There are no works-made-for-hire or unrestricted use (any government rights shall be "limited rights").

19.5 The Buyer shall not, and shall not permit any third party to, reverse engineer, decompile, disassemble, copy, modify, create derivative works from, or otherwise derive or reproduce the Goods and/or Services, in whole or in part.

### 20. CONFIDENTIALITY

20.1 Any specifications, drawings, manuals, information or particulars supplied with Supplier's tender or under the Contract are supplied by Supplier in confidence. They shall not be used by the Buyer except for the purposes of the Contract and for the proper use of the Goods and shall not be disclosed by the Buyer to any third party (except the Buyer's employees having a need to know for the aforesaid purposes) for any other purpose whatsoever without Supplier's prior written agreement. The foregoing shall not apply to information which is or becomes public knowledge without fault or failure by the Buyer or its employees.

### 21. NO HAZARDOUS SUBSTANCES

21.1 Supplier warrants to the Buyer that no Hazardous Substance will be used or is contained in the manufacture and supply of the Goods. For the purpose of the clause, a "Hazardous Substance" means asbestos or any material containing asbestos that is capable of causing harm to the natural and man-made environment including all or any of the following media: air (including air within buildings and other natural or man-made structures above or below the ground), water, land, and any ecological systems and living organisms (including man) supported by those media, and in the case of people, this includes offence caused to any of their senses or harm to their property.

### 22. EXPORT CONTROL

22.1 The Buyer agrees that it will not participate directly or indirectly in the sale, resale, export, transfer or disposal of Supplier products or technology ("Products") to any entity, to the Russian Federation, Belarus or to any other country in breach of applicable export control and sanctions laws including but not limited to those of the US, the EU, member states of the EU or the United Kingdom (together "Export Control and Sanctions Rules") and the Buyer will not sell, resell, export, transfer, dispose or otherwise deal with the Products to any country, destination or person without first obtaining any required export licence or other governmental approval, and completing such formalities as may be required by Export Control and Sanctions Rules. The Buyer shall (i) undertake its best efforts to ensure that the purpose of this clause is not frustrated by any third parties further down the commercial chain, including by possible resellers and (ii) set-up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including possible resellers, that would frustrate the purpose of this clause. The Buyer shall immediately inform Supplier about any problems in complying with this clause or applying obligations (i) and (ii) detailed above, including any relevant activities by third parties that could frustrate the purpose of this clause, and shall make available to Supplier information concerning compliance stated herein within five (5) business days of the request of such information. The Buyer shall not put the Products in their entirety or in part to any use in connection with any prohibited or illicit end use including, but not limited to, use in nuclear, chemical or biological weapons, rocket, or missile applications. Upon Supplier's request, the Buyer shall provide information in response to any reasonable request (including a written certification) regarding compliance with applicable laws, rules or regulations and/or in connection with any applications made by Supplier to the authorities in connection with the export or supply of the Products. Failure by the Buyer to comply with the terms of this clause shall constitute a material breach of the Contract and Supplier shall be entitled to seek appropriate remedies, including, but not limited to: (i) termination of the Contract, and (ii) reimbursement of and indemnification for all fines, penalties, costs, damages, claims, liabilities, losses, settlements, lawsuits, actions and expenses due to Buyer's violation of this clause. Supplier reserves the right to refuse to enter into or to perform any order, to cancel any order, or to void any warranty concerning the Products, if Supplier determines, at its sole discretion, that the entry into such order or the performance of the transaction to which such order relates would be unlawful or be at risk of prohibition by any Export Control and Sanctions Rules. Supplier shall be excused from performance, and not be liable for damages or costs of any kind including, but not limited to, liquidated damages and/or penalties for late delivery, for failure to deliver or

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delay in delivering the Products, or for delay or refusal to repair or replace under any warranty, resulting from Supplier's exercise of its rights pursuant to this clause.

**22.2** Buyer warrants that it or any ultimate end user does not intend to use the Goods and/or Services in an atomic/nuclear installation or activity. If such use is intended, Buyer shall notify Supplier before entering into any Contract with Supplier and shall agree to standard nuclear indemnity obligations related thereto, if required by Supplier. Any breach of this warranty shall release Supplier from performance and liabilities of any nature under the Contract and may obligate Buyer to execute an amendment to the Contract incorporating such nuclear indemnity obligations prior to any performance as required by Supplier.

### **23. COMPLIANCE**

**23.1** Both parties shall comply with all applicable laws in respect of activities contemplated by this Contract including, without limitation, laws and regulations relating to taxation, labour, competition, exchange controls, and custom requirements as well as with any anti-corruption, anti-trust, anti-money laundering, sanctions or other applicable criminal law, rule, or regulation.

**23.2** In particular, without limitation, each party represents, warrants and undertakes that: (i) it shall not, directly or indirectly, offer, give, request or accept any bribe, facilitation payment, kickback or other improper payment or advantage in connection with this Contract; (ii) it will maintain and enforce adequate policies, procedures and controls designed to ensure compliance with applicable anti-corruption, anti-money laundering and sanctions laws; and (iii) all funds used in connection with this Contract are derived from legitimate sources and not from criminal conduct.

**23.3** Each party shall promptly notify the other of any actual or suspected breach of this clause and shall provide reasonable cooperation and information to demonstrate compliance upon written request.

**23.4** Either party may suspend or terminate this Contract with immediate effect upon written notice in the event of a material breach of this clause.

### **24. FORCE MAJEURE**

**24.1** Neither party shall be considered in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented or delayed by any circumstances outside its reasonable control including, without limitation: strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, embargoes, economic or trade sanctions, including any amendments to such embargoes, economic and/or trade sanctions, accidental breakdown of plant or machinery, fire, flood, storm, disease outbreak or epidemic and/or any resulting quarantine restrictions ("Force Majeure").

**24.2** Either party shall be entitled to terminate the Contract if the Force Majeure situation continues, or it is obvious that it will continue, for more than one hundred and eighty (180) days without liability to the other party. Notwithstanding the 180-day period being reached, should both parties want to continue the Contract, where reasonably practicable to do so, the parties will renegotiate in good faith to agree any necessary Contract amendment(s) in writing to allow the Contract to continue.

### **25. LAW AND JURISDICTION**

**25.1** **For sales from a U.S.A Chart entity:** This Contract and any claim, controversy or dispute arising under or related to the Contract, the relationship of the parties, and the interpretation and enforcement of the rights and duties of the parties is exclusively governed by the laws of the State of Delaware, excluding its conflicts of law. Buyer waives all causes of action arising under this Contract after one year from the date of the occurrence of the event giving rise to any such claim, waives any sovereign immunity claims or defenses, and consents to and will not contest personal jurisdiction in the local and federal courts of Wilmington, Delaware. Except for account collection disputes, any disputes, controversies or claims arising out of or relating to this Contract, or the breach thereof which cannot be resolved amicably within 60 days, shall be settled by binding arbitration. This Contract to submit to binding arbitration shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrator shall be final, and a judgment may be entered upon it by any court having jurisdiction. A party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so and the name of an impartial individual who is knowledgeable in matters pertaining to Supplier's industry to serve as an arbitrator. If the other party objects within 15 days to the proposed arbitrator, and the parties fail to agree on an arbitrator within 30 days thereafter, then the arbitrator shall be appointed by the arbitration tribunal. For domestic sales, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then prevailing. For international sales, the arbitration shall be conducted in accordance with the International Arbitration Rules then prevailing of the International Centre for Dispute Resolution. Unless the parties agree otherwise, all arbitrations shall be conducted, and all related documents submitted shall be in the English language in Wilmington, Delaware, and the arbitrator shall apply the substantive governing laws as specified above. All awards granted by the arbitrator shall be final and binding on the parties and shall include interest from the date of any breach or default and from the date of the award until paid in full. Judgment may be entered on any award or decision of the arbitration panel by either party in a court of competent jurisdiction. The arbitrator may grant emergency interim relief according to the applicable arbitration rules. The prevailing party shall be entitled to recover, in addition to all other amounts and relief, its costs, fees and other expenses of the arbitration, including reasonable attorney's fees, as may be awarded by the arbitrator. If Buyer fails to promptly assume Supplier's defense when requested to do so as required under this Contract, then Supplier may defend with counsel of its own choice at the expense of Buyer.

**25.2** **For sales from a Canadian Chart entity:** The Contract shall in all respects operate and be governed by the laws of Ontario. The official language of this Contract is English. It is the express wish of the parties that this Contract and any related documents be drafted and executed in English. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais. All disputes arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration conducted in accordance with the Ontario Arbitration Act, S.O. 1991, c.17 and the rules and procedures of the Canadian Arbitration Association then in effect. The award or adjudication rendered by the Arbitrator shall be final and binding upon the parties, with no right of appeal. The language to be used in the arbitral proceedings shall be the English language. The arbitration shall take place in the City of Toronto in the Province of Ontario.

**25.3** **For sales from a German Chart entity:** This Contract shall be governed by and construed in accordance with the laws of Switzerland. If any dispute arises out of this Contract (including any dispute as to its validity, meaning, effect or termination), the parties shall attempt to come to a reasonable settlement of the matter but should such dispute not be settled within three (3) months of the original written notification of dispute, the dispute shall be exclusively and finally settled under the Rules of Conciliation and Arbitration of the ICC by three (3) arbitrators appointed in accordance with the Rules. The place of arbitration shall be Geneva, Switzerland, the language of the proceedings shall be English, and the arbitration award shall be final and binding on the parties. The procedural law of the place of arbitration shall apply where the Rules are silent.

**25.4** **For sales from any other Chart entity:** The Contract shall in all respects operate and be construed as an English Contract governed by the laws of England and Wales. All notices and other communications and dealings between the parties including legal proceedings shall be in the English Language. If at any time a dispute should arise between the Buyer and Supplier in relation to or in connection with the Contract, either party may give written notice to the other of the existence of such dispute and the same shall be referred to the

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arbitration of a person to be mutually agreed upon or, failing agreement within thirty (30) days of the receipt of written notice, such dispute shall be finally settled in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) without recourse to the ordinary courts of law. Arbitration to take place in London, England. The number of arbitrators is one. The language of the arbitration proceedings is English.

**25.5** The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any case.

**25.6** The Buyer agrees all causes of action under this Contract shall expire unless brought within one year of the date of the occurrence of the event giving rise to any such claim.

### **26. GENERAL**

**26.1** The Buyer agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimise any damages it may incur as a result of Supplier's performance or non-performance of this Contract.

**26.2** Any duty to indemnify under this Contract is conditioned upon the Buyer: (i) making no statement prejudicial to Supplier; (ii) providing prompt and detailed notice to Supplier of any such claim; (iii) tendering the defence/settlement to Supplier with sole control over the same; and (iv) providing full cooperation, authority and assistance to Supplier.

**26.3** Buyer's rights and remedies shall be deemed sole, exclusive in lieu of those otherwise available at law and/or equity.

**26.4** The exclusions and limitations set out in these terms and conditions shall prevail at all times and survive any breach or termination of the Contract.

**26.5** If any provision of this Contract or part thereof shall be held by judicial determination to be invalid or unenforceable they shall be severed from this Contract and the valid or enforceable parts of this Contract shall continue in full force and effect.

**26.6** This Contract may not be transferred or assigned by Buyer by operation of law or otherwise without the prior express written consent of Supplier. A change in the majority ownership or control of Buyer shall be deemed a transfer or assignment for purposes of this clause. Any transfer or assignment by Buyer of any rights, duties or obligations without Supplier's consent shall be void.

**26.7** No term or condition of this Contract is intended for the benefit of any third party, and no such term or condition shall be enforceable by any third party (for orders where English law applies only, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise), including any end user of the Goods or Services.

**26.8** No party can assign the Contract or any associated rights or obligations without the prior written consent of the other party; such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Supplier may assign any or all of its rights or obligations under the Contract to a subsidiary or affiliated company without the Buyer's prior consent, provided that the Supplier gives the Buyer reasonable notice in the event of exercising this option.

### **27. ENTIRE AGREEMENT**

**27.1** This Contract contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, contracts, commitments, and writings with respect thereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Contract.

### **28. DATA PROTECTION**

**28.1** The personal data disclosed by a party under the course of the Contract does not belong to the recipient of such data. The data must be protected and shall not be disclosed to any third party, or altered, violated or used except for the purposes of the Contract. Either party may require the destruction of this data upon the end of the relationship between the parties. The parties undertake to comply with all applicable laws on the protection of personal data.

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## VentSim Supplemental Terms & Conditions

In connection with the purchase of any goods, services and/or software sold by Howden Canada Inc. doing business as Howden VentSim Solutions (VentSim), the following supplemental terms and conditions shall apply to all quotes/proposals, orders and acknowledgements by VentSim. In the event of any inconsistency between these VentSim Supplement Terms and the Chart Standard Terms & Conditions, the inconsistency shall be resolved by giving precedence to these VentSim Supplemental Terms.

### 1. DEFINITIONS

**1.1 Sensors:** means a unit capable of measuring ambient conditions such as but not limited to: gases, dust, air speed, Diesel Particulate Matter (DPM), temperature, humidity, pressure as well as protective measurement devices such as but not limited to vibration sensors, bearing temperature sensors.

### 2. GENERAL

**2.1** The Contract shall be subject to these terms and conditions, and acceptance is made expressly subject to and conditioned upon acceptance of these terms and the Howden Canada Software License Agreement located at <https://www.chartindustries.com/Terms-Conditions>.

### 3. DELIVERY

**3.1** When the Contract requires installation of the Goods, delivery of the Goods shall be deemed accepted by Buyer when installation is completed by VentSim on Buyer's Site. On completion of the installation by VentSim, in accordance with the specifications contained in the Contract, Buyer shall have a period of fifteen (15) days to accept delivery. Any rejection will have to be duly evidenced and presented to VentSim. In the absence of such evidence provided within the said fifteen (15) day period, VentSim will be deemed entitled to consider delivery of the Goods as accepted.

### 4. STORAGE

**4.1** Any hardware equipment should be stored in dry, heated, air-conditioned environment, free of dust at temperature between 15-25°C.

### 5. VENTSIM SERVICES

**5.1** VentSim shall supply services ("VentSim Services") to the Buyer in relation to (i) the ongoing maintenance of the Goods, including remote diagnosis and, where possible, correction of faults using the management software, more specifically to correct all errors, bugs and failures of the embedded software to comply with any warranty or term of the agreement, for a period of twelve (12) months following delivery of the Goods and/or (ii) the provision of general technical advice, information documentation or any other assistance not relating to the purchase of Goods or solely relating to the provision of software services.

**5.2** If the VentSim Services are either wholly or in part of a research and/or development nature, or form part of a research and/or development program, the results of the work undertaken under the Contract will be given in good faith, but as with all development work, the certainty of achieving absolute results cannot be guaranteed.

**5.3** Without prejudice to clause 5.1(i), Buyer shall provide VentSim and all other persons duly authorized by VentSim with full, safe and uninterrupted access, including remote access, to Buyer's, systems, servers, facilities and the software as may reasonably be required for the purpose of performing the VentSim Services. Where the VentSim Services are to be performed at any of Buyer's premises, Buyer shall provide adequate working space, transportation, lift and office facilities (including telephone) for use by VentSim employees and

representatives and take reasonable care to ensure their health and safety.

**5.4** Buyer shall ensure that appropriate environmental conditions are maintained for the software and shall take all reasonable steps to ensure that the software is operated in a proper manner by Buyer's employees.

**5.5** Buyer shall:

- undertake that it will comply with the end user terms of use of the software licensor in relation to the software required to perform the VentSim Services prior to the software being delivered to Buyer;
- co-operate with VentSim in performing the VentSim Services and provide any assistance or information as may be reasonably required by VentSim, including in relation to the diagnosis of any faults;
- report faults promptly to Howden; and
- keep full backup copies of all of its data.

Any delays in the delivery of the VentSim Services due either to Buyer's instructions or lack of instructions or to circumstances outside the control of or not reasonably foreseeable by VentSim, VentSim shall invoke an adjustment to the price if VentSim's costs in providing the Services are thereby affected.

**5.6** If Buyer defaults on any payment or if circumstances arise, making it probable that a future payment will not be paid when due, VentSim may suspend the VentSim Services and/or terminate the Contract on giving ten (10) days' notice to Buyer in writing.

**5.7** Buyer shall not make any changes in the scope of the VentSim Services without obtaining VentSim's prior written approval. Any such change shall invoke an adjustment to the price of the VentSim Services if the VentSim's costs are thereby affected.

**5.8** The appointment of VentSim to provide the VentSim Services shall be deemed to have commenced from the time VentSim began to perform any of the VentSim Services or the date of this Contract, whichever is the earlier.

**5.9** Buyer shall indemnify VentSim against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against VentSim as a result of Buyer's breach of these terms contained in this clause 5 howsoever arising or any negligent or wrongful act of Buyer, its officers, employees, contractors or agents.

### 6. WARRANTY – VENTSIM SERVICES

**6.1** VentSim warrants to Buyer that: (i) the VentSim Services shall be performed in accordance with all applicable laws and regulations; with all reasonable skill and care; and to the best of its knowledge and belief, the VentSim Services will not infringe the intellectual property rights of any third party; (ii) the VentSim Services shall under normal conditions operate according to the technical specification as stated in the Contract for a period of twelve (12) months from when the VentSim Services are completed; and (iii) at the date of Contract, VentSim has obtained and will maintain for the duration of the Contract term all permissions, licenses and consents necessary for VentSim to perform the VentSim Services.

**6.2** If, during the term of the Contract, VentSim receives written notice from Buyer of any breach by VentSim of the representations and warranties contained in clause 6, VentSim shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice. Buyer shall provide all information reasonably necessary to enable VentSim to comply with its obligations under this clause 6.

### 7. WARRANTY – GOODS

**7.1** In the event the Goods contain sensors, and the sensors become defective under proper use and maintenance, VentSim will repair or replace the sensors, at VentSim's option and cost (excluding removal and/or reinstallation if so necessary) within six (6) months from delivery of the sensors.

**8. WARRANTY – SOFTWARE (embedded or not)**

**8.1** In the event that the Goods require the use of software, the following apply: (i) VentSim warrants that to its actual knowledge, and if and only if (1) the software is unaltered and unmodified by Buyer or any third party; and (2) properly installed, used solely with the Goods and as set forth in the documentation, the software will not infringe on the intellectual property rights of a third party; and (ii) If a defect in the software is reported to VentSim within (i) a three (3) month period following delivery of the Goods to Buyer for VentSim developed by VentSim and (ii) a twelve (12) month period following delivery of the Goods to Buyer for embedded software, VentSim may, at its sole discretion, either repair or replace software or provide Buyer with a refund of the portion of the applicable price paid by Buyer to VentSim. The foregoing shall be Buyer's sole and exclusive remedies and the entire liability of VentSim and its licensors for any breach of the limited warranties contained in respect of the software. No VentSim contractor, consultant, reseller, agent or employee is authorized to make any modifications, extensions or additions to these limited warranties. Howden's embedded software is provided "as is", and all other express or implied conditions, representations, and warranties including, without limitation, any implied warranty of merchantability, fitness for a particular purpose (even if informed of such purpose), or arising from a course of dealing, usage, or trade practice, are hereby excluded to the fullest extent allowed by applicable law. No warranty is made that VentSim's software functionality or services will meet Buyer's requirements, or that the operation of VentSim's software will be uninterrupted or error-free

**9. EMBEDDED SOFTWARE**

**9.1 Grant of License.** In the event that the Goods contain embedded software ("Embedded Intellectual Property"), VentSim hereby grants to Buyer, a non-transferable, non-exclusive license ("License") to use solely, for so long as the Goods are owned by Buyer and its successors and permitted assigns (without any right to sublicense, make, make derivative work out of, alter, modify, improve, develop, upgrade, provide support and maintenance on, distribute, market, offer to distribute, or import), the Embedded Intellectual Property, and solely in relation to the exercise of the specific rights granted herein. Buyer shall not: (i) make copies of the Embedded Intellectual Property; (ii) provide access to the Embedded Intellectual Property to anyone other than Buyer's employees, agents, contractors, or consultants who are bound with Buyer by terms to the same standard, as a minimum, of these terms and conditions contained herein; (iii) license, sublicense, distribute, pledge, lease, rent, assign, sell or commercially share the Embedded Intellectual Property or any of Buyer's rights herein; (iv) use the Embedded Intellectual Property for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application provider-type services, or for any similar services; (v) use the Embedded Intellectual Property in connection with any hazardous activity, or any other activity for which the Embedded Intellectual Property use, improper use or malfunctioning might result in serious property damage, death or serious bodily injury; or (vi) except as otherwise required by applicable law for the purposes of interoperability, modify, translate, reverse engineer, decrypt, decompile, disassemble, create derivative works based on or otherwise attempt to decode the Embedded Intellectual Property source code or its related underlying ideas or algorithms.

**9.2 Ownership.** Buyer acknowledges and agrees that, as between VentSim and Buyer, VentSim solely and exclusively owns all rights, title and interest in and to the Embedded Intellectual Property. Buyer shall not contest, either directly or indirectly by assisting a third party,

VentSim's sole and exclusive rights, including ownership rights, in and to the Embedded Intellectual Property. Furthermore, Buyer shall not do or cause to be done anything inconsistent with such sole and exclusive ownership of VentSim, including, without limitation, challenge the title or validity of the Embedded Intellectual Property. Except as expressly provided herein, nothing in these terms and conditions shall be deemed to confer upon Buyer any right, title or interest in any of the Embedded Intellectual Property.

**9.3 Protection of Embedded Intellectual Property Rights.**

Buyer shall promptly give notice of (i) any conduct which comes to its attention, and which may infringe or constitute a conflicting use of the Embedded Intellectual Property and (ii) any claim or assertion by any person, whether or not made in a legal action, that any of the Embedded Intellectual Property infringes any rights of a third party.