

## 1. DEFINITIONS

**Buyer:** means the purchaser, whose name is set out in Howden's quote or as shown in Howden's acceptance of Buyer's order.

**Contract:** means the agreement arising as a result of Buyer's acceptance of Howden's quote, or Howden's acceptance of 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 Howden 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:** means the Howden Canada Inc.

**Services:** means, as set forth in the Contract: (i) Construction Services: the supply of equipment, subcontracted craft labor supplied by and under the direct supervision of Howden, including on-site technical support in a variety of applicable trades and disciplines, to accomplish equipment installation and maintenance service; and/or (ii) Technical Services: supervisory and/or on-site technical support services supplied by Howden.

**Ventsim Supplement Terms:** means those supplement terms set forth below which shall apply to all quotes/proposals, orders and acknowledgements by Howden Canada Inc. doing business as Howden VentSim Solutions.

## 2. GENERAL

- 2.1 The Contract shall be subject to these terms and conditions as stated in or referred to in Howden's quote/proposal. Acceptance is made expressly subject to and conditioned upon acceptance of these North Howden Canada/Ventsim Standard Terms and Conditions for Goods and Services as may be supplemented by the Ventsim Supplement Terms. Any conflicting or additional terms submitted by Buyer in any request for quote, inquiry, purchase order or other contract document are expressly objected to without the need of any further notice of objection and they shall not, under any circumstances, be binding upon Howden unless expressly accepted in writing by Howden. In the event of any conflict with Buyer's order terms, these terms shall in all cases prevail. Acceptance shall not be delayed due to additions, minor omissions or defects that do not materially affect the use of the Goods.

## 3. PERFORMANCE

- 3.1 Any figures quoted by Howden for performance are based on Howden's experience and are such as Howden expects to attain on test. Howden will accept no liability for failure to attain any such figures unless Howden has specifically guaranteed them, subject to any tolerances specified or agreed to by Howden. If Howden specifically agrees in writing to guarantee performance, Howden is only responsible for proven performance deficiencies after Howden has been given notice and a reasonable opportunity to correct the deficiencies, and only if, and to the extent, Howden has agreed in writing to a liquidated damage clause which shall not in any event result in Howden incurring liability in excess of the Contract Price.

## 4. INSPECTIONS AND TESTS

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

## 5. DELIVERY

- 5.1 Unless otherwise agreed, delivery shall be Ex-Works in accordance with Incoterms 2020, and partial deliveries shall be acceptable to Buyer.
- 5.2 In the event that Howden is unable to achieve the agreed Incoterms for reasons attributable to Buyer within fourteen (14) days from notification of Goods readiness, Howden shall be entitled to invoice Buyer and receive payment. Furthermore, after this fourteen (14) day period, storage costs will be chargeable to Buyer in accordance with Section 6.1.

## 6. STORAGE

- 6.1 If Buyer, for reasons not attributable to or beyond the control of Howden, is unable to: (i) take delivery of the Goods; (ii) arrange storage; or (iii) where applicable, give Howden its forwarding instructions to enable the dispatch of the Goods within fourteen (14) days from notification of Goods readiness, Howden may provide for storage of the Goods or arrange warehousing on Buyer's behalf, in each instance at Buyer's risk and cost. All such charges shall be due and payable by Buyer on receipt of a simple receipt from Howden or the warehouse keeper as evidence of such storage or warehousing.

## 7. TITLE AND RISK

- 7.1 Legal and beneficial ownership (title) of the Goods shall remain vested in Howden until full payment of the Contract Price has been made by Buyer.
- 7.2 The Goods will be at Buyer's risk from the date of delivery, or if delivery is delayed by Buyer for any reason, risk will transfer to Buyer from the date that delivery should have taken place.

## 8. SUBCONTRACTING

- 8.1 At its option, Howden may arrange for the manufacture of proprietary and subcontracted Goods and/or assembly, testing or any site related Services to be carried out by Howden (Howden manufacturing facilities operate Quality Management Systems compliant with EN ISO 9001), and/or Howden's choice of approved subcontractor. Any assignment by Buyer of the Contract without the express written permission of Howden shall be null and void.

## 9. TERMS OF PAYMENT

- 9.1 Unless otherwise agreed, payment shall be made within thirty (30) days from the date of Howden's invoice by electronic funds transfer (EFT) or automated clearing house (ACH) transaction.

- 9.2** Should any payment fall into arrears, Howden is entitled to postpone or cancel performance of the Contract wholly or in part and to be paid immediately for performance of the Contract to date (without obligation for liquidated damages, if applicable, incurred due to such termination).
- 9.3** Howden reserves the right to charge late fees at the lesser of the rate of 1.5% per month (18% per annum) or the maximum amount permitted by law, and require Buyer to pay all of Howden's collection costs.
- 9.4** No claim by Buyer under warranty or otherwise shall entitle Buyer to any deduction, retention or withholding of any part of the Contract Price. The terms of payment must be adhered to and any such claims handled separately.
- 9.5** For milestone payments required under this Contract, Howden may invoice on the original milestone completion date if the milestone is not met due to Buyer's fault, untimely response or unreasonable delay. In the event that Buyer seeks to modify the Contract, Buyer agrees to make payments in accordance with the original contract terms until such time as modification is mutually agreed upon. Howden only waives claims for payment to the extent that such payments have been received by Howden. If, in Howden's reasonable opinion, Buyer's financial condition may jeopardize full or timely payment, Howden may: (i) require full or partial payment as a condition to commencing or continuing its performance (including in advance of any shipment); or (ii) recover Goods from the carrier, if shipment has been made.
- 9.6** Buyer shall be responsible for all sales, use, value added and similar taxes ("Sales Taxes") required on the Goods and Services, which shall be in addition to the consideration payable for such Goods and Services. If Howden invoices Buyer for such Sales Taxes, then Buyer shall pay such amounts to Howden concurrent with the payment of the consideration upon which such Sales Taxes are calculated. If Howden does not invoice Buyer for such Sales Taxes, Buyer shall report and remit such Sales Taxes directly to the appropriate taxing authority within the time period required by law and shall provide evidence of such remittance to Howden upon request. Buyer shall be responsible for all import, export, customs duties, fees and similar charges ("Duties") in respect of the Goods and Services, and if Howden is required to pay any amount of Duties in respect of the Goods and Services, then Buyer shall reimburse Howden for such amount upon request.
- 9.7** Howden reserves the right to adjust the Contract Price if Howden incurs extra costs due to changes or delays caused by Buyer. If, during the performance of this Contract, the price of raw materials significantly increases through no fault of Howden, the price of the Goods shall be equitably adjusted by an amount reasonably necessary to cover any such significant price increases. As used herein, a significant price increase shall mean any raw material increase in price exceeding 5% experienced by Howden from the date of the Contract. Where the delivery of Goods is delayed through no fault of Howden, as a result of the shortage or unavailability of raw materials, Howden shall not be liable for any additional costs or damages associated with such delay(s). If a supplier increases the price of its equipment incorporated into the Goods during production, Buyer acknowledges that Howden may increase the price of the Goods accordingly. Such price increases shall be documented through quotes, invoices, or receipts.

## **10. CONTRACT CHANGES**

- 10.1** In the event of a change to the Contract ("CO") resulting in an extension to the delivery date(s) which will impact Howden's invoice schedule, Howden reserve the right to invoice Buyer for the original Contract Price in accordance with the most recent project plan, prior to the CO. Previous invoice milestones will be adjusted pro-rata and invoiced upon Howden's acceptance of the CO. Howden shall be entitled to an equitable adjustment for any increased cost and an adequate extension of time required by Howden to complete the Contract in accordance with any CO.
- 10.2** If Howden deems it necessary to vary any aspect of the Goods and/or the Contract due to an unforeseen change in any applicable law, local regulation or standard becoming effective or taking place after conclusion of the Contract, Howden shall inform Buyer in writing defining explicitly the changes deemed necessary. In this case, Howden shall be entitled to an equitable adjustment for any increased cost and an adequate extension of time required by Howden to complete the Contract in accordance with any applicable law, local regulation or standard.

## **11. LIABILITY FOR DELAY**

- 11.1.** Any lead times quoted by Howden shall run from Howden's acceptance of Buyer's order and/or on Howden's receipt of all necessary information to enable Howden to commence work under the Contract, whichever is later, and shall be subject to continued and timely performance from Buyer.
- 11.2** Should Howden agree in the Contract to pay Buyer any liquidated damages, such liquidated damages shall be Buyer's sole and exclusive remedy in the event of Howden's delay.
- 11.3** If Howden is delayed in its performance of the Contract solely attributable to the fault of Buyer, Buyer's agent and/or other contractors, Howden is entitled to receive payment at the time Howden was originally scheduled to be paid notwithstanding the delay. Shipments held beyond the scheduled date at the request or fault of Buyer may be billed immediately to Buyer including reasonable expenses incident to such delay, and Buyer shall assume the risk of loss thereof.

## **12. SERVICES**

- 12.1 Technical Services.** The following provisions shall apply where the Contract includes Technical Services:
- (i) Buyer shall be responsible for furnishing all fully qualified labor, equipment, materials, tools and supplies for implementation of such Technical Services required at site as specified in the Contract.
  - (ii) Howden's sole responsibility in providing Technical Services shall be to provide suitably qualified supervisor(s) who shall give Buyer the benefit of their technical expertise with the Goods or similar installations and who shall advise Buyer's personnel as to the installation in an efficient manner. It shall be 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.
  - (iii) Howden shall not be responsible for any overruns in the installation and Buyer shall not be entitled to instruct Howden's supervisor(s) to undertake any work in addition to supervision, whether or not necessary to achieve such installation.
  - (iv) If, due to any overruns in the timescales for installation, Howden is required to keep its supervisor(s) on site for longer than anticipated, Howden shall be entitled to charge for the further site attendance at Howden's standard daily rate.

- (v) If the Technical Services work is suspended by Buyer or for any reason beyond Howden's control for more than two (2) working days, Howden shall be entitled to withdraw its supervisor(s) from site. If Buyer requires Howden's attendance on site thereafter, Buyer will pay the supervisor(s) return travel fares (business class) and any other reasonable costs Howden incurs due to the withdrawal from, and the return to, the site.

**12.2 Construction Services.** The following provisions shall apply where the Contract includes Construction Services:

- (i) Howden shall provide specialized and trained subcontractor craft labor to perform the Construction Services work under the direct supervision and management of Howden.
- (ii) Fixed price or time and material contracts are quoted separately based on a specific individual statements of work.

**13. ALL SERVICES**

- 13.1** Unless specified in the Contract, Howden is only the supplier of the Goods and shall have no responsibility for the assembly and installation of Goods.
- 13.2** For all Services provided by Howden, Buyer agrees to the following: (i) where the site is offshore or otherwise inaccessible or is located overseas, provide all necessary transportation facilities to and from site; and (ii) obtain all necessary statutory and other consents, approvals, licences and permissions for Services, for the work to proceed, and for Howden personnel to travel to and from the site.
- 13.3** Buyer shall indemnify Howden against any loss, damage or injury including death suffered by the person or property of Howden, its subcontractor, Buyer, or respective personnel or any third party and against any claims, liability, costs or expenses associated therewith or arising out of Buyer's performance of Services or Buyer's failure to perform or otherwise, except as expressly provided under Section 17.1, including, but not limited to, that which was caused by faulty lifting tackle, scaffolding, equipment and/or other facilities provided by Buyer.
- 13.4** Howden's on site personnel, subcontractors and/or representatives shall be given unobstructed access to the site and the work. If there are delays caused by anyone other than Howden, the time and expense of the same shall be charged to Buyer.
- 13.5** Howden is an independent contractor and is not responsible for any oversight for completion of the Services, or for the property or employees of Buyer or others, including, without limitation, matters such as health and safety, or security.
- 13.6** Howden shall comply with applicable Canadian, U.S. and/or provincial/territorial/state/local statutes, acts, ordinances, regulations, codes, and laws that apply to Howden's performance of the Services. Howden shall comply with job/site requirements as mutually agreed upon by the parties. Buyer shall advise Howden's personnel in advance of all known and/or suspected hazardous/unsafe conditions and risks that may be encountered while on-site, including proper Material Safety Data Sheets (MSDS). Howden's personnel shall not be required to take any action, or to enter or remain in any area where he/she reasonably determines that it would be unsafe. In such instance, Howden shall be excused from site attendance and the event will be considered a Force Majeure.
- 13.7** Any associated Goods shall be considered accepted at the earlier of: (i) when Services is complete and the Goods have completed such tests as are specified in the Contract or otherwise are to Howden's reasonable satisfaction; and (ii) forty five (45) days after the Goods have been delivered by Howden, although not installed or successfully commissioned or tested due to reasons attributable to Buyer or to industrial action or anything beyond Howden's reasonable control.

**14. SUSPENSION**

- 14.1** Buyer shall have the right to suspend the Contract. If the suspension period should exceed thirty (30) days, Howden has the right to consider the Contract terminated for convenience and be compensated in accordance with Section 15.1. Upon resumption of performance, Howden shall have the right to equitable relief as necessary in accordance with Section 10.

**15. TERMINATION**

- 15.1** Buyer may terminate this Contract, in whole or in part, upon at least seven (7) calendar days advanced written notice to Howden. In the event of termination for Buyer's convenience, Howden shall be reimbursed for the reasonable Direct Costs incurred by Howden in performing the Contract until termination and for its costs in effecting such termination notwithstanding any other provision of the Contract. Any Goods or Services sold by Howden that are incomplete shall be deemed to be sold "AS IS," "and "WITHOUT WARRANTY OR GUARANTEE OF ANY KIND."
- 15.2** If Howden fails to cure a material breach within a reasonable time after receipt of notice of breach from Buyer, and on Howden's acceptance of such breach, Buyer shall have the right, at its option, to terminate the Contract upon payment to Howden for work performed until the time of termination.
- 15.3** Howden may cancel this Contract, in whole or in part, at any time if: (i) Buyer suspends work or delays delivery in accordance with Section 14.1 beyond 45 days without it being mutually agreed upon in advance; (ii) Buyer breaches any material term of this Contract; and/or (3) Buyer files bankruptcy or otherwise fails to either make full and timely payments, meet its obligations, or provide further assurances.

**16. WARRANTY**

- 16.1** Howden warrants that: (i) any Goods provided hereunder will be of good material and workmanship; (ii) any Services provided by Howden 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 Howden hereunder will conform to any applicable technical specifications and/or drawings that have been agreed upon between the parties as set forth in the Contract.
- 16.2** In the event that defects appear in the Goods under proper use, Buyer's sole and exclusive remedy thereof shall be that Howden will repair or replace such Goods at Howden's option and cost (but not including transportation, removal, reinstallation, and decontamination) within the warranty period set forth in the Contract. 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 Howden's delivery date (at the applicable Incoterms point of delivery quoted by Howden).

- 16.3** Howden's warranty on Services performed by Howden will be in effect: (i) until ninety (90) days after the date of performance of any Technical Services; and (ii) one year after the date of performance of any Construction Services. Buyer's sole and exclusive remedy for breach thereof shall be the re-performance of such Services by Howden.
- 16.4** Howden's warranty shall exclude liability for defects arising from: (i) installation, commissioning and/or operation, not in accordance with Howden'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). No part shall be deemed defective by reason of its failure to resist fouling and the action of erosive or corrosive gases.
- 16.5** Any warranty repair or replacement of Goods or re-performance of Services shall be warranted by Howden for the remainder of the original warranty period. No "evergreen" or "in-place" warranty is being provided.
- 16.6** Howden shall have the sole right to specify the manner and timeframe for such repair/replacement/ re-performance. Defective/non-conforming parts(s)/Goods must be returned to Howden free of all contaminants and, in the event of replacement, will become the property of Howden unless Howden instructs otherwise. If Howden opts to perform any warranty obligations in-place, Buyer shall, without cost to Howden, during a specified time period agreed upon by the parties, provide access by disassembling, removing, replacing, and reinstalling any equipment, structures, or other obstructions to the extent necessary to permit Howden to perform its warranty obligations.
- 16.7** **THERE ARE NO WARRANTIES, CONDITIONS, GUARANTEES, REPRESENTATIONS, OR REMEDIES THAT EXTEND BEYOND THESE TERMS AND CONDITIONS. ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES, REPRESENTATIONS, OR REMEDIES EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY CONDITION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE) NOT EXPRESSLY SET FORTH HEREIN, ARE FULLY DISCLAIMED AND EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. HOWDEN'S WARRANTIES DO NOT COVER ANY GOODS OR SERVICES THAT HAVE BEEN ALTERED OR SUBJECTED TO ACCIDENT OR IMPROPER STORAGE, INSTALLATION, ASSEMBLY, COMMISSIONING, MAINTENANCE, USE OR APPLICATION. HOWDEN 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 LAWS, DECREES, OR OTHER STANDARDS.**
- 17. LIABILITY FOR ACCIDENTS AND DAMAGE**
- 17.1** Howden will indemnify Buyer from non-nuclear claims brought by third parties against Buyer for (i) bodily injury (including death); and (ii) property damage, each only to the extent directly caused by the negligence of Howden. Howden shall not be responsible for the acts/omissions of Buyer or others. Howden's indemnity obligations shall not apply to Buyer property or any nuclear activity/incident.
- 18. INSURANCE**
- 18.1** Howden shall maintain the following insurance coverage: (1) Commercial General Liability with limits of \$1,000,000 combined single limit occurrence for Bodily Injury, Physical Property Damage of third party property, and Contractual Liability coverage, subject to an annual aggregate of \$2,000,000; (2) Automobile Liability – Bodily Injury/Physical Property Damage in the amount of \$1,000,000 combined single limit each occurrence; and (3) Workers Compensation Insurance – statutory, as to Howden's employees. If requested, Howden will provide an ACORD form of certificate confirming such coverage. Howden's provision of a certificate of insurance in accordance with Buyer's site requirements does not constitute Howden's acceptance of Buyer's terms of purchase. Howden shall have no other or further obligations related to insurance or coverage.
- 19. LIMITATION OF LIABILITY AND EXCLUSION OF CONSEQUENTIAL DAMAGES**
- 19.1** Notwithstanding anything to the contrary contained herein or elsewhere in the Contract and save to the extent this limitation is prohibited by law:
- (i) Howden'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.
  - (ii) Howden 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.
- This Section shall survive any termination, default, cancellation or any other discontinuance of this Contract.
- 19.2** Any duty to indemnify under these terms and conditions/the Contract is conditioned upon Buyer: (i) making no statement prejudicial to Howden; (ii) providing prompt and detailed notice to Howden of any such claim; (iii) tendering the defense/settlement to Howden with sole control over the same; and (iv) providing full cooperation, authority, and assistance to Howden.
- 19.3** Buyer's rights and remedies shall be deemed sole and exclusive and in place of those at law and equity. The exclusions and limitations set forth in these terms and conditions shall control at all times and survive any breach or termination of the Contract. If any provision of these terms and conditions 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 these terms and conditions shall continue in full force and effect.
- 20. NO HAZARDOUS SUBSTANCES**
- 20.1** Howden warrants to Buyer that no Hazardous Substance will be used or is contained in the manufacture and supply of the Goods. For the purpose of this Section 20.1, 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 offense caused to any of their senses or harm to their property.
- 21. INTELLECTUAL PROPERTY**

- 21.1** Howden will indemnify Buyer against any claim for infringement of copyright, patent, registered design or trade mark (published at the date of the Contract) by the use or sale of any Goods supplied by Howden to Buyer and against all costs and damages which Buyer may incur in any action for such infringement or for which Buyer may become liable in any such action. This indemnity shall not apply to any infringement which is due to: (i) Howden having followed a design, process or instruction furnished or given by 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 Howden; or (iii) the use of such article or material in association or combination with any other article or material not supplied by Howden. This indemnity is conditional on Buyer giving Howden the earliest possible notice in writing of any claim being made or action threatened or brought against Buyer and on Buyer permitting Howden, at its own expense, to conduct any litigation that may ensue and all negotiations for a settlement of the claim. Buyer warrants that any design or instruction furnished or given by Buyer shall not cause Howden to infringe any copyright, letters patent, registered design or trademark in the execution of the Contract. If as a result of any such claim of infringement, the continued use of the Goods for the purpose intended is enjoined by any court of competent jurisdiction, Howden shall, at its option and expense: (i) procure for Buyer the right to continue using such Goods; (ii) replace or modify the Goods so that the Goods become non-infringing; or (iii) refund the purchase price of the infringing Goods. The foregoing is the sole remedy of Howden with respect to infringement.
- 21.2** 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 Howden, or which arise under or in the course of Howden's performance of the Contract, are, shall be and shall remain Howden's absolute property and shall not be used or reproduced without Howden's consent in writing. Howden shall grant Buyer a royalty free licence to use such intellectual property rights for the sole purpose of operating and maintaining the Goods. Notwithstanding any other provisions or requirements of this Contract, except as set forth in this Section 21.1, 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"). Buyer shall not reverse engineer or otherwise attempt to re-create the Goods/Services.
- 22. CONFIDENTIALITY**
- 22.1** Any specifications, drawings, manuals, information or particulars supplied with Howden's quote or under the Contract are supplied by Howden in confidence. They shall not be used by Buyer except for the purposes of the Contract and for the proper use of the Goods and shall not be disclosed by Buyer to any third party (except Buyer's employees having a need to know for the aforesaid purposes) for any other purpose whatsoever without Howden's prior written agreement. The foregoing shall not apply to information which is or becomes public knowledge without fault or failure by Buyer or its employees.
- 23. EXPORT CONTROL**
- 23.1** Buyer agrees that it will not participate directly or indirectly in the sale, resale, export, transfer or disposal of Howden products or technology ("Products") to any entity or to any country in breach of applicable export control and sanctions laws including but not limited to those of the US, Canada or other countries (together "Export Control and Sanctions Rules") and 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. 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 or rocket or missile applications. Upon Howden's request, 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 Howden to the authorities in connection with the export or supply of the Products. Failure by Buyer to comply with the terms of this clause shall constitute a material breach of the Contract. Howden reserve 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 Howden 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. Howden 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 delay in delivering the Products, or for delay or refusal to repair or replace under any warranty, resulting from Howden's exercise of its rights in accordance with this Section 23.1.
- 23.2** **Buyer warrants that it or any ultimate end user does not intend to use the Goods or Services in any atomic/nuclear installation or activity. If such use is intended, Buyer shall notify Howden prior to entering into any contract with Howden and shall agree to standard nuclear indemnity obligations related thereto. Any breach of this warranty shall release Howden from performance and any and all liabilities of any nature under the Contract and obligate Buyer to execute an amendment to this Contract incorporating such nuclear indemnity obligations prior to any performance by Howden.**
- 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 and economic and trade sanctions, accidental breakdown of plant or machinery, fire, flood, storm, disease outbreak or epidemic and/or any resulting quarantine restrictions ("Force Majeure"). 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. Furthermore, should both parties agree that they want to continue the Contract when reasonably practicable to do so, notwithstanding the

after the aforementioned 180 day period being reached, the parties will agree in good faith to renegotiate any necessary Contract amendment(s) to allow the Contract to continue.

## 25. LAW AND JURISDICTION

- 25.1** The Contract shall in all respects operate and be governed by the laws of Ontario.
- 25.2** The official language of this Agreement is English. It is the express wish of the parties that this Agreement 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.
- 25.3** 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.
- 25.4** The Uniform Law on the International Sale of Goods shall not apply to any Contract arising from any order placed under these terms and conditions.

## 26. ENTIRE AGREEMENT

- 26.1** 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

## 27. DATA PROTECTION

- 27.1** 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.

## 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 Howden Canada/VentSim Standard Terms & Conditions, the inconsistency shall be resolved by giving precedence to these VentSim Supplemental Terms.

### 1. DEFINITIONS

**Sensors:** means a unit capable of measuring ambient conditions such as but not limited to: gases, dust, airspeed, 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

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 software terms and conditions located at <https://www.howden.com/en-gb/products/other-products/ventsim-control>.

### 3. DELIVERY

When the Contract requires installation of the Goods, delivery of the Goods shall be deemed accepted by Buyer when installation is completed by Howden on Buyer's site. On completion of the installation by Howden, 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 Howden. In the absence of such evidence provided within the said 15-day period, Howden will be deemed entitled to consider delivery of the Goods as accepted.

### 4. STORAGE

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** Howden 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 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 programme, 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 Section 5.1(i), Buyer shall provide Howden and all other persons duly authorised by Howden 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 Howden 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 Howden in performing the VentSim Services and provide any assistance or information as may reasonably be required by Howden, 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 Howden, Howden shall invoke an adjustment to the price if Howden'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, Howden may suspend the VentSim Services and/or terminate the Contract on giving 10 days' notice to Buyer in writing.

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

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

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

## **6. WARRANTY – VENTSIM SERVICES**

**6.1** Howden 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 12 months from when the VentSim Services are completed; and (iii) at the date of Contract, Howden has obtained and will maintain for the duration of the Contract term all permissions, licenses and consents necessary for Howden to perform the VetSim Services.

**6.2** If, during the term of the Contract, Howden receives written notice from Buyer of any breach by Howden of the representations and warranties contained in Section 6, Howden 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 Howden to comply with its obligations under this Section 6.

## **7. WARRANTY – GOODS**

**7.1** In the event the Goods contain sensors and the sensors become defective under proper use and maintenance, Howden will repair or replace the sensors, at Howden'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) Howden 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 Howden within (i) a 3-month period following delivery of the Goods to Buyer for software developed by Howden and (ii) a 12-month period following delivery of the Goods to Buyer for embedded software, Howden 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 Howden. The foregoing shall be Buyer's sole and exclusive remedies and the entire liability of Howden and its licensors for any breach of the limited warranties contained in respect of the software. No Howden 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 Howden's software functionality or services will meet Buyer's requirements, or that the operation of Howden's software will be uninterrupted or error-free

## **9. SOFTWARE**

**9.1** The Howden Canada/VentSim Standard Terms & Conditions shall apply to software sold hereunder including but not limited to Sections 21 and 22.

## **10. EMBEDDED SOFTWARE**

**10.1 Grant of License.** In the event that the Goods contain embedded software ("Embedded Intellectual Property"), Howden 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.

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

**10.3 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.