

# FLEXLINK GENERAL TERMS OF SALE

(VALID FROM OCTOBER 2019)

## 1 APPLICATION

These Terms set forth the conditions that govern the sale, delivery and performance by Contractor to Purchaser of Products, Spare Parts and Services ("Works") under a Contract.

## 2 DEFINITIONS

Capitalized words used in these Terms shall have the meanings set forth below:

- 2.1 **Affiliate** means any legal entity that directly or indirectly controls or is controlled by or is under the same control as a Party from time to time.
- 2.2 **Audit** means a machine health test and check of Products in order to ensure the continued functioning of a Product as stipulated in Clause 6.3.3.
- 2.3 **Contract** means an agreement between the Parties concerning delivery and performance of Works and all appendices, including any agreed amendments and additions to such documents.
- 2.4 **Contract Price** means the payment to be made for the Works under a Contract.
- 2.5 **Contractor** means the legal entity within the FlexLink group of companies, which has entered into the Contract with Purchaser.
- 2.6 **Defect** means a fault, damage or nonconformity of the Works in materials, design and workmanship.
- 2.7 **Gross Negligence** means an infringement to an unusually high degree of the required due diligence and care which are generally to be exercised, in which the plainest deliberations have not been made and that which should be most evident to anyone in the present case has not been followed.
- 2.8 **Indirect Damages** means loss of production, loss of profit, loss of use, loss of contracts or any other indirect loss.
- 2.9 **Installation** means the installation of a Product at the Site, including assembly, setup and all measures to make the Product ready for operation at the Site.
- 2.10 **In Writing** means communication by document signed by both Parties or by letter, fax or electronic mail.
- 2.11 **Intellectual Property** means all patents, copyrights, trademarks, trade secrets, logos, designs, domain

names, software and any other intellectual property rights.

- 2.12 **Party** mean the Contractor or the Purchaser. **Parties** mean the parties to the Contract collectively.
- 2.13 **Product(s)** mean the machinery, apparatus, materials, articles, documentation, software and other products to be supplied by the Contractor under a Contract.
- 2.14 **Purchaser** means the legal entity that has entered into a Contract with Contractor.
- 2.15 **Service** means measures taken in order to remedy a Defect which has occurred in a Product and which is not covered by the Contractor's warranty obligations for Defects under Clause 4.11.
- 2.16 **Services** mean services in accordance with Clause 6 to be carried out by Contractor according to a Contract.
- 2.17 **Site** means the place where the Product is to be installed, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Product and Installation equipment.
- 2.18 **Spare Part(s)** mean parts, spares, service parts, repair parts or replacement parts used for the repair or replacement of failed parts of Products.
- 2.19 **Technical Specification** means the criteria to which the Works shall conform as set forth in the Contract, including but not limited to functionality, fitness for intended purpose, shape and material.
- 2.20 **Taking-over** shall have the meaning set forth in Clause 4.7.
- 2.21 **Terms** means the terms and conditions set forth herein.
- 2.22 **Warranty Period** means (i) for Products 12 months from Taking-over, and (ii) for Spare Parts 12 months from delivery.
- 2.23 **Works** means the Products, the Spare Parts and the Services.

## 3 SCOPE

- 3.1 Contractor shall provide the Works in accordance with the Contract and the Technical Specification.
- 3.2 These Terms apply if (i) they have been referred to in the Contractor's order confirmation and not been objected to by Purchaser within seven days upon receipt of the order confirmation, and if Purchaser



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- continues to perform the Contract, or if (ii) they have otherwise been agreed upon between the Parties.
- 3.3 All terms and conditions proposed by Purchaser that are different from or in addition to these Terms are expressly rejected by Contractor, unless such terms and conditions have been agreed In Writing between the Parties.
- ## 4 PRODUCTS
- ### 4.1 Preparatory Work and Working Conditions
- 4.1.1 The Purchaser shall in good time undertake preparatory work to ensure that the conditions necessary for Installation of the Product and for the correct operation of the Product are fulfilled.
- 4.1.2 If Installation is included in the Contract (see Clause 6.1), the Purchaser shall ensure that:
- a) the Contractor's personnel are able to start work in accordance with the agreed time schedule and to work during normal working hours and, to the extent deemed necessary by the Contractor, outside normal working hours.
  - b) the Purchaser has, in good time before Installation is started, informed the Contractor In Writing of all relevant safety regulations in force at the Site. Installation shall not be carried out in unhealthy or dangerous surroundings. All necessary safety and precautionary measures shall have been taken before Installation is started and shall be maintained;
  - c) the Purchaser has made available to the Contractor free of charge at the proper time on the Site all necessary cranes, lifting equipment and equipment for transport on the Site, auxiliary tools, machinery, materials and supplies (including fuel, oils, grease and other materials, gas, water, electricity, steam, compressed air, heating, lighting, etc.), as well as the measuring and testing instruments of the Purchaser available on the Site.
  - d) the Purchaser has made available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration of the Product(s), the tools and equipment required for Installation and the personal effects of the Contractor's personnel; and
  - e) the access routes to the Site are suitable for the required transport of the Product(s) and the Contractor's equipment.
- 4.1.3 Upon the Contractor's request in good time, the Purchaser shall make available to the Contractor, free of charge, such labour and operators as may be specified in the Contract or as may reasonably be required for the purpose of the Contract. The persons made available by the Purchaser under this Clause shall provide their own tools. The Contractor shall not be liable for such labour provided by the Purchaser or for any acts or omissions of the persons concerned.
- 4.1.4 If the Contractor so requires, the Purchaser shall give all necessary assistance required for the import of the Contractor's equipment and tools, including assistance with customs formalities. Such assistance shall be provided free of charge.
- 4.1.5 The Purchaser shall give all necessary assistance to ensure that the Contractor's personnel obtain, in good time, visas and any official entry, exit or work permits and (if necessary) tax certificates required in the Purchaser's country, as well as access to the Site. The assistance shall be provided free of charge.
- ### 4.2 Purchaser's Default
- 4.2.1 If the Purchaser anticipates that it will be unable to fulfil in time its obligations necessary for carrying out Installation, including complying with the conditions specified in Clause 4.1, the Purchaser shall forthwith notify the Contractor In Writing, stating the reason and, if possible, the time when it will be able to carry out its obligations.
- 4.2.2 Without prejudice to the Contractor's rights under Clause 4.2.3, if the Purchaser fails to fulfil, correctly and in time, its obligations necessary for carrying out Installation, the following shall apply:
- a) The Contractor may at its own discretion choose to carry out or employ a third party to carry out the Purchaser's obligations or otherwise take such measures as are appropriate under the circumstances in order to avoid or alleviate the effects of the Purchaser's default.
  - b) The Contractor may suspend in whole or in part its performance of the Contract. The Contractor shall forthwith notify the Purchaser In Writing of such suspension.
  - c) If the Products have not yet been delivered to the Site, the Contractor shall arrange for storage of the Product(s) at the Purchaser's risk.
  - d) The Purchaser shall pay any part of the Contract Price which, but for the default, would have become due.
  - e) The Purchaser shall reimburse the Contractor for any costs not covered by Clause 6.2.1, which are reasonably incurred by the Contractor as a result of measures under a), b) or c) of this Clause.
- 4.2.3 If Taking-over is prevented by the Purchaser's default as referred to in Clause 4.2.2, and this is not due to any

such circumstance as mentioned in Clause 9, the Contractor may also by notice In Writing require the Purchaser to remedy its default within a final reasonable period. If, for any reason which is not attributable to the Contractor, the Purchaser fails to remedy its default within such period, the Contractor may by notice In Writing terminate the Contract in whole or in part. The Contractor shall then be entitled to compensation for the loss it suffers by reason of the Purchaser's default.

#### 4.3 Testing

Tests before delivery of the Product(s) shall be carried out by the Contractor in accordance with general practice in the branch of industry concerned in the country of manufacture.

#### 4.4 Delivery and Passing of Risk

4.4.1 The Product(s) shall be delivered on the agreed date of delivery. Unless otherwise is explicitly stated in the Contract, delivery of the Products shall be Free Carrier (FCA) Kalmar, Sweden.

4.4.2 The risk of loss of or damage to the Product(s) shall pass to the Purchaser in accordance with any agreed trade term, which shall be construed in accordance with the INCOTERMS in force at the date of formation of the Contract.

4.4.3 Any risk of loss of or damage to Products not covered by the first paragraph of this Clause shall pass to the Purchaser on Taking-over of the Product.

4.4.4 Purchaser is responsible for obtaining and maintaining any export and/or import license(s) required for delivery of the Product(s) to the Site.

4.4.5 Purchaser shall inform Contractor of and issue all documentation according to mandatory requirements or requested regarding the export, import or re-export of the Product(s), at Purchaser's expense.

4.4.6 If the Purchaser anticipates that it will be unable to accept delivery of the Products at the time for delivery, it shall forthwith notify the Contractor In Writing thereof, stating the reason and, if possible, the time when it will be able to accept delivery. If the Purchaser fails to accept delivery at the time for delivery, it shall nevertheless pay any part of the Contract Price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery.

4.4.7 Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 9, the Contractor may by notice In Writing require the Purchaser to accept delivery within a final reasonable period. If, for any reason which is not attributable to the Contractor, the Purchaser fails to accept delivery within such period, the Contractor may by notice In Writing terminate the Contract in whole or in part. The

Contractor shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default.

#### 4.5

4.5.1 The Product(s) shall remain the property of the Contractor until paid for in full, including payment for Installation of the Product(s) if and to the extent Installation is part of the Contract (see Clause 6.1), to the extent that such retention of title is valid under applicable law.

#### 4.5.2

The Purchaser shall at the request of the Contractor assist the Purchaser in taking any measures necessary to protect the Contractor's title to the Products.

#### 4.5.3

The retention of title shall not affect the passing of risk under Clause 4.4.

#### 4.6

##### *Taking-over Tests*

#### 4.6.1

Taking-over tests shall, unless otherwise agreed, be carried out when Installation has been completed, to determine whether the Works are as required for Taking-over according to the Contract.

If complete Installation is included in the Contractor's obligations under the Contract (see Clause 6.1), the Contractor shall notify the Purchaser that the Works are ready for Taking-over. It shall in this notice give a date for Taking-over tests, giving the Purchaser sufficient time to prepare for and be represented at these tests.

If complete Installation is not included in the Contractor's obligations under the Contract (i.e. if and to the extent the Purchaser is responsible for Installation), the Purchaser shall notify the Contractor as soon as the Installation has been completed. The Contractor shall thereafter give a date for Taking-over tests, giving the Purchaser sufficient time to prepare for and be represented at these tests.

#### 4.6.2

The Purchaser shall bear all costs of Taking-over tests.

#### 4.6.3

The Purchaser shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the Taking-over tests and for final adjustments in preparing for these tests. The Purchaser shall also install free of charge any equipment and provide any labour or other assistance necessary for carrying out the Taking-over tests.

#### 4.6.4

If the Purchaser fails to fulfil its obligations under Clauses 4.6.1 through 4.6.3, delays Installation or otherwise prevents the Taking-over tests from being carried out, or if Taking-over for other reasons, except due to breach of contract by the Contractor, has not been completed at the latest 30 days upon delivery of the Product(s), the tests shall be regarded as having been satisfactorily completed at the starting date for Taking-over tests stated in the Contractor's notice, or in absence of such notice 30 days upon delivery of the



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#### Products.

- 4.6.5 The Taking-over tests shall be carried out during normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the Contractor's country.
- 4.6.6 The Contractor shall prepare a report of the Taking-over tests. This report shall be sent to the Purchaser. If the Purchaser has not been represented at the Taking-over tests after having been notified in accordance with Clause 4.6.1, the test report shall be accepted as accurate.
- 4.6.7 If the Taking-over tests show the Works not to be in accordance with the Contract, the following shall apply.
- (i) If and to the extent the Contractor has carried out the Installation work, the Contractor shall without delay remedy the deficiencies. If the Purchaser so requires In Writing without delay, new tests shall be carried out in accordance with Clauses 4.6.1 through 4.6.5. This shall not apply when the deficiency was insignificant.
  - (ii) If and to the extent the Purchaser has been responsible for Installation, the Contractor shall without delay remedy the deficiencies, unless such deficiencies are due to faults, shortcomings or deficits of the Installation work. If and to the extent deficiencies are due to the Installation work, the Purchaser may choose to order Service work from the Contractor in accordance with Clause 6.3.2 below in order to have the deficiencies remedied.

#### 4.7 Taking-over

- 4.7.1 Taking-over of the Works shall be considered to take place:
- a) when Taking-over tests have been satisfactorily completed or are regarded under Clause 4.6.4 or 4.7.2 as having been satisfactorily completed, or
  - b) where the Parties have agreed not to carry out Taking-over tests, when the Purchaser has received a Contractor's notice In Writing that the Works have been completed.

Minor deficiencies which do not affect the efficiency of the Works shall not prevent Taking-over.

The Contractor's obligation to install the Product(s) at the Site, if any, is fulfilled when the Works are taken over pursuant to this Clause 4.7.1, notwithstanding its obligation to remedy any remaining minor Defects.

- 4.7.2 The Purchaser may not in any way dispose of or use delivered Products before full payment in accordance with Clause 4.5.1 has been made and Taking-over has

been completed in accordance with Clause 4.7.1. If the Purchaser does so without the Contractor's consent In Writing, Taking-over shall be regarded as having been satisfactorily completed.

- 4.7.3 As soon as the Works have been taken over in accordance with Clause 4.7.1 or 4.7.2, the Warranty Period shall start to run. The Purchaser shall, at the Contractor's request In Writing, issue a certificate stating when the Works have been taken over. The Purchaser's failure to issue a certificate shall not affect Taking-over according to Clauses 4.7.1 or 4.7.2.

#### 4.8 Documentation

- 4.8.1 All technical documents relating to the Product(s) submitted by the Contractor, prior or subsequent to the formation of the Contract, shall remain the property of the Contractor.

- 4.8.2 Technical documents or other information received by the Purchaser shall not, without the consent of the Contractor, be used for any other purpose than that for which they were provided. They may not, without the consent of the Contractor, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

#### 4.9 Contractor's Delay

- 4.9.1 If the Contractor anticipates that it will not be able to fulfil its obligations for delivery and/or Taking-over before or at the agreed time, it shall notify the Purchaser thereof In Writing, stating the reason and, if possible, the time when delivery and Taking-over can be expected.

- 4.9.2 The Contractor shall be entitled to an extension of the time for delivery and/or Taking-over if delay occurs:

- a) because of any of the circumstances referred to in Clause 9, or
- b) as a result of suspension under Clauses 4.2.2, 4.10.4 or 4.10.6, or
- c) by an act or omission on the part of the Purchaser or any other circumstances attributable to the Purchaser.

The extension shall be as necessary having regard to all the relevant circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery and/or Taking-over.

- 4.9.3 If the Works are not completed at the agreed time for Taking-over, the Purchaser shall be entitled to compensation for the damages it suffers as a result of the Contractor's delay, except for any Indirect Damages and subject to Clause 4.9.6.

Claims for damages do not become due before Taking-



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over has taken place or the Contract is terminated under Clause 4.9.4.

The Purchaser forfeits its right to damages if it has not lodged a claim In Writing for such damages within six months after the time when Taking-over should have taken place.

- 4.9.4 If the delay exceeds fifteen weeks and if the Works are still not ready for Taking-over, the Purchaser may In Writing demand completion of the Works within a final reasonable period, which shall not be less than one week. If the Contractor does not complete the Works within such final period and this is not due to any circumstances which are attributable to the Purchaser, then the Purchaser may by notice In Writing to the Contractor terminate the Contract in respect of such part of the Works as cannot in consequence of the Contractor's failure be used as intended by the Parties.
- 4.9.5 If the Purchaser terminates the Contract, it shall be entitled to compensation for the damages it suffers as a result of the Contractor's delay, except for any Indirect Damages and subject to Clause 4.9.6.
- 4.9.6 Subject to Clause 10.3, the total aggregate compensation under Clauses 4.9.3 and 4.9.5 shall not exceed 15 per cent of that part of the Contract Price under the relevant Contract, which is attributable to the part of the Works in respect of which the Contractor is in delay.
- 4.9.7 Damages under Clause 4.9.3 and termination of the Contract with limited compensation under Clause 4.9.5 shall be the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded.

#### 4.10 *Prices, Payment Terms and Taxes*

- 4.10.1 The Contract Price for the Product(s) shall be as set forth in the Contract. The specified amount shall be exclusive of any value added taxes and any other taxes, duties and dues levied on invoices.
- 4.10.2 Applicable prices shall be deemed to include all duties, fees, levies and taxes in the country of origin of the Product(s).
- 4.10.3 Unless otherwise agreed in the Contract, payment shall be made prior to delivery of the Product(s) against invoice, within 30 days from the date of invoice.
- 4.10.4 If the Purchaser fails to pay by a stipulated date, the Contractor shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the Parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for

which interest for late payment becomes due.

In case of late payment or in case the Purchaser fails to give an agreed security by the stipulated date, the Contractor may, after having notified the Purchaser In Writing, suspend his performance of the Contract until it receives payment or, where appropriate, until the Purchaser gives the agreed security.

If the Purchaser has not paid the amount due or given an agreed security within two months, the Contractor shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation of recovery costs according to this Clause 4.10.4, to claim compensation for the damages it incurs. Such compensation shall not exceed the Contract Price.

- 4.10.5 The Purchaser may not withhold, set off or deduct from any payments due to the Contractor under a Contract any amount that the Contractor owes the Purchaser and/or liabilities owed by the Contractor to the Purchaser, under the relevant Contract or on any other legal grounds, other than liabilities owed by the Contractor to the Purchaser under the relevant Contract which are undisputed or have been adjudicated in a final binding court decision or arbitration award. Subject to the first sentence of this Clause 4.10.5, any rights of Purchaser for set-off, deduction and withholding under applicable law are waived.
- 4.10.6 The Contractor may suspend its performance due to non-payment on Purchaser's behalf in breach of Clause 4.10.5.
- 4.11 *Liability for Defects*
- 4.11.1 Contractor warrants to Purchaser that the Products are free of Defects during the Warranty Period.
- 4.11.2 Information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.
- 4.11.3 The Contractor shall not be liable for Defects arising out of materials provided or a design stipulated or specified by the Purchaser.

The Contractor shall neither be liable for Defects caused by circumstances which arise after the risk has passed to the Purchaser, e.g. Defects due to faulty maintenance or faulty repair by the Purchaser or alterations carried out without the Contractor's consent In Writing. The Contractor shall not be liable for normal wear and tear nor for deterioration.

The Contractor shall only be liable for Defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product(s).



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- 4.11.4 The Purchaser shall as soon as reasonably possible notify the Contractor In Writing of any Defect which appears. Such notice shall under no circumstances be given later than at the end of the Warranty Period.

The Notice shall contain a description of the Defect.

If the Purchaser fails to notify the Contractor within the time limit set forth in the first paragraph of this Clause, the Purchaser shall lose its right to have the Defect remedied.

- 4.11.5 On receipt of the notice under Clause 4.11.4, the Contractor shall at his own cost remedy the Defect without undue delay, as stipulated in this Clause 4.11.5.

Remedial work shall be carried out at the Site, unless the Contractor deems it more appropriate, having regard to the interests of both Parties, that the defective part or the Product is sent to the Contractor or a destination specified by it.

Where remedial work is carried out at the Site, Clauses 4.1.1 through 4.1.5 shall apply correspondingly.

If the Defect can be remedied by replacement or repair of a defective part and if dismantling and reinstallation of the part do not require special knowledge, the Contractor may demand that the defective part is sent to it or a destination specified by it. In such case, the Contractor shall have fulfilled its obligations in respect of the Defect when it delivers a duly repaired part or a part in replacement to the Purchaser.

The Purchaser shall at its own expense provide access to the Product(s) and arrange for any intervention in equipment other than the Product(s), to the extent that this is necessary to remedy the Defect.

Unless otherwise agreed, the Purchaser shall bear any additional costs, which the Contractor incurs for remedying the Defect caused by the Product(s) being located in a place other than the Site.

Defective parts which have been replaced shall be made available to the Contractor and shall be its property.

If the Purchaser has given such notice as set forth in Clause 4.11.4 and no Defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs it incurs as a result of the notice.

- 4.11.6 When a Defect in a part of the Product(s) has been remedied, the Contractor shall be liable for Defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product(s) for a period of 12 months. For the remaining parts of the Product(s), the Warranty Period shall be extended only by a period equal to the period during which and to the extent that the Product(s) could not be used as a

result of the Defect.

- 4.11.7 If the Contractor fails to fulfil its obligations under Clause 4.11.5 within reasonable time, the Purchaser may by notice In Writing set a final reasonable period for fulfilment of the Contractor's obligations, which shall not be less than one week.

If the Contractor fails to fulfil its obligations within such final period, the Purchaser may itself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Contractor.

Where successful repair work has been undertaken by the Purchaser or a third party, reimbursement by the Contractor of reasonable costs incurred by the Purchaser shall be in full settlement of the Contractor's liabilities for the said Defect.

- 4.11.8 Where the Defect has not been, or may not be, successfully remedied, as stated under Clause 4.11.7,

a) the Purchaser is entitled to a reduction of the Contract Price for the defective Product in proportion to the reduced value of the relevant Product, provided that under no circumstances shall such reduction exceed 15 per cent of the Contract Price for the relevant Product, or,

b) where the Defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Purchaser may terminate the Contract by notice In Writing to the Contractor in respect of such Product as cannot in consequence of the Defect be used as intended by the Parties. The Purchaser shall then, subject to Clause 10.3, be entitled to compensation for its loss, costs and damages up to a maximum of 15 per cent of that part of the Contract Price which is attributable to the Product in respect of which the Contract is terminated.

- 4.11.9 Notwithstanding the provisions of Clauses 4.11.1 through 4.11.8, the Contractor shall not be liable for Defects in any part of the Product(s) for more than one year from the end of the Warranty Period or from the end of any other liability period agreed upon by the Parties.

- 4.11.10 Purchaser's rights under this Clause 4.11 are the only rights or remedies that Purchaser may have against Contractor for Defects or other nonconformities of the Products. Save a stipulated in Clause 4.11, the Contractor shall not be liable for Defects or other nonconformities of the Product(s).

- 4.12 *Allocation of Liability for Damage Caused by the Product(s)*

- 4.12.1 The Contractor shall not be liable for any damage to property caused by the Product(s) after Taking-over



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and whilst the Product(s) are in the possession of the Purchaser. Nor shall the Contractor be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

4.12.2 If the Contractor incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Contractor harmless.

4.12.3 If a claim for damage as described in this Clause is lodged by a third party against one of the Parties, the latter Party shall forthwith inform the other Party thereof In Writing.

## 5 SPARE PARTS

### 5.1 Applicable Provisions

The following provisions shall apply mutatis mutandis to the sale of Spare Parts by Contractor to Purchaser:

- Clause 4.4 (Delivery and passing of risk)
- Clause 4.8 (Documentation)
- Clause 4.10 (Prices, payment term and taxes)
- Clause 4.11 (Liability for Defects)

### 5.2 Contractor's Delay

5.2.1 If the Contractor anticipates that it will not be able to deliver the Spare Parts at the agreed time for delivery, it shall notify the Purchaser thereof In Writing, stating the reason and, if possible, the time when delivery can be expected.

5.2.2 The Contractor shall be entitled to an extension of the time for delivery if delay occurs:

- a) because of any of the circumstances referred to in Clause 9, or
- b) as a result of suspension under Clauses 4.2.2, 4.10.4 or 4.10.6, or
- c) by an act or omission on the part of the Purchaser or any other circumstances attributable to the Purchaser.

The extension shall be as necessary having regard to all the relevant circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

5.2.3 If the Spare Parts are not delivered at the agreed time for delivery, the Purchaser shall be entitled to compensation for the damages it suffers as a result of the Contractor's delay, except for any Indirect Damages and subject to Clause 5.2.6.

The Purchaser shall forfeit its right to damages if it has not lodged a claim In Writing for such damages within

six months after the time when delivery should have taken place.

5.2.4 If the delay exceeds fifteen weeks and if the Spare Parts are still not delivered, the Purchaser may In Writing demand delivery within a final reasonable period which shall not be less than one week. If the Contractor does not deliver the Spare Parts within such final period and this is not due to any circumstances which are attributable to the Purchaser, then the Purchaser may by notice In Writing to the Contractor terminate the Contract for purchase of Spare Parts.

5.2.5 If the Purchaser terminates the Contract, it shall be entitled to compensation for the damages it suffers as a result of the Contractor's delay, except for any Indirect Damages and subject to Clause 5.2.6.

5.2.6 Subject to Clause 10.3, the total aggregate compensation under Clauses 5.2.3 and 5.2.5 shall not exceed 15 per cent of that part of the Contract Price under the relevant Contract for the purchase of Spare Parts.

5.2.7 Damages under Clause 5.2.3 and termination of the Contract with limited compensation under Clause 5.2.5 shall be the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded.

5.2.8 If the Purchaser anticipates that it will be unable to accept delivery of the Spare Parts at the time for delivery, it shall forthwith notify the Contractor In Writing thereof, stating the reason and, if possible, the time when it will be able to accept delivery.

If the Purchaser fails to accept delivery at the time for delivery, it shall nevertheless pay any part of the Contract Price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery.

5.2.9 Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 9, the Contractor may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason which is not attributable to the Contractor, the Purchaser fails to accept delivery within such period, the Contractor may by notice In Writing terminate the Contract in whole or in part. The Contractor shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default.

### 5.3 Obligation to make Spare Parts available

The Contractor agrees to make available Spare Parts or compatible substitutes thereof, required for satisfactory performance of the Products, at least ten (10) years after last complete delivery of each version



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of the Products. The obligation under this Clause 5.3 is limited to Spare Parts branded "FlexLink" and manufactured by the Contractor.

## 6 SERVICES

### 6.1 Scope of Services

6.1.1 The Contractor offers the following Services, which can be ordered by the Purchaser:

- Installation
- Service
- Audit
- Training
- Production support

6.1.2 Services are included in a Contract if and to the extent explicitly agreed In Writing between the Parties. The scope of the Services is defined in the Contract.

6.1.3 Clause 6.2 sets forth provisions that apply to all Services, in addition to the provisions in other applicable Clauses of these Terms. Clause 6.3 contains provisions regarding specific Services.

### 6.2 Provisions applicable to all Services

#### 6.2.1 Services Work

Services work shall be undertaken with proper skill and care. It shall be commenced within the time agreed by the Parties In Writing.

The Purchaser shall without undue delay inform the Contractor by notice In Writing of any alterations in the Products or their operation or other measures taken by the Purchaser, which may affect the Contractor's obligations under the Contract to provide Services.

#### 6.2.2 Remuneration for Services

Unless otherwise agreed, Services carried out by the Contractor shall be paid on a time and cost basis.

The rates shall be as agreed in the Contract or, failing agreement, as normally charged by the Contractor.

Overtime and work on Sundays, holidays and at night shall be charged at special rates.

If Services are carried out on a time basis, the following items shall be separately charged (to the extent applicable):

- a) time and costs of travel, board and lodging;
- b) transport costs;
- c) costs of spare parts;
- d) costs of other material which has been used;

- e) waiting time, overtime and additional costs caused by the Purchaser;
- f) expenses incurred by the Contractor in connection with the provision of equipment by him (e.g. charge for the use of Contractor's own heavy equipment)
- g) any taxes or dues levied on the invoice and payable by the Contractor in the country where Installation takes place;
- h) any costs which could not reasonably be foreseen by the Contractor and are caused by circumstances which are not attributable to the Contractor;
- i) any extra costs resulting from the applicability of mandatory rules of the Purchaser's country in the social field; and
- j) any costs, expenses and time spent resulting from extra work which is not attributable to the Contractor.

If Services are to be carried out for a lump sum, the Contract Price shall be deemed to include all the items mentioned in this Clause 6.2.2 a) through d). Any items mentioned in Clause 6.2.2 e) through j) shall be deemed to be excluded from the Contract Price and shall therefore be charged separately. If these costs are time-related, they shall be charged at the rates referred to in this Clause 6.2.2.

#### 6.2.3 Payment terms

Unless otherwise agreed in the Contract, payment shall be made within 30 days from the date of invoice. The Contractor may claim a reasonable amount as advance payment before commencement of the Services.

Clauses 4.10.4 through 4.10.6 shall apply mutatis mutandis to invoices issued by Contractor for the provision of Services.

#### 6.2.4 Liability for Defects or delay

In the event of any Defect or delay in the performance of the Services caused by the Contractor, the Purchaser shall be entitled to require remedial action or, if the Defect or delay cannot be remedied or is not remedied by Contractor within reasonable time, a reduction of the Contract Price payable in relation to the applicable Service.

The Contractor is liable for damages incurred by Purchaser arising out of or in connection with the provision of the Services only insofar as it arises as a result of negligence or wilful misconduct by the Contractor.

The Contractor's liability under this Clause 6.2.4 does not cover Defects or damage due to circumstances



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which are not attributable to the Contractor, such as incorrect use of Products, incorrect daily care by the Purchaser or faulty maintenance by the Purchaser. Nor shall the Contractor be liable for normal wear and tear.

#### 6.2.5 *Liability period and notice of Defects*

Unless otherwise agreed, the Contractor shall be liable for the Services for a period of twelve months after the work was completed.

Any claim by Purchaser for breach of the relevant Contract for provision of Services must be presented to the Contractor In Writing as soon as reasonably possible from when Purchaser became aware of the circumstances giving raise to the claim, and in no event later than one month from the date Purchaser became aware or should have become aware of such circumstances. If the Purchaser fails to give notice without undue delay, the Purchaser shall lose its rights in respect of the relevant breach.

#### 6.2.6 *Limitation of Liability*

Subject to Clause 10.3, the Contractor's total aggregate liability under each Contract for provision of Services shall be limited to an amount corresponding to the Contract Price for the relevant Services under the relevant Contract invoiced by Contractor during the 12-month period prior to the relevant event, however, not exceeding twenty (20) price base amounts (*Sw. prisbasbelop enligt lag (1962:381) om allmän försäkring*).

### 6.3 *Provisions applicable to specific Services*

#### 6.3.1 *Installation*

The provisions in Clauses 4.1 (preparation), 4.2 (Purchaser's default), 4.6 (Taking-over tests) and 4.7 (Taking-over) apply, if and to the extent Installation of the Products delivered to the Purchaser is included in the Contract.

#### 6.3.2 *Service*

##### 6.3.2.1 *Scope*

Service is carried out by remote assistance or at the Site.

The scope of the Service work shall be defined in the Contract, stating inter alia the Products which are subject to the Service work, a description of the Defect to be repaired or the repair work to be undertaken and technical documentation to be provided by the Purchaser.

Unless otherwise agreed In Writing, the Service work shall include:

- fault tracing;
- remedial work;

- provision and replacement of spare parts;
- functional check; and
- assistance at testing.

If the Service work is to be carried out at the Site, Clause 4.1 shall apply mutatis mutandis for the Purchaser's obligations of preparing the Service work and working conditions.

#### 6.3.2.2 *Transport of Products*

If not otherwise agreed, the Purchaser shall arrange for the transport of the Products from and to the Site.

The risk of loss or damage to Products while outside the Site for the purpose of Service shall be borne by the Purchaser, unless such loss or damage is due to negligence of the Contractor.

#### 6.3.3 *Audit*

6.3.3.1 The scope of Audit work shall be defined in the Contract, stating inter alia the Products which are subject to the Audit, a description of the measures to be taken by the Contractor and technical documentation to be provided by the Purchaser.

Unless otherwise agreed, the Audit shall include:

- checking the condition of the Products;
- functional check;
- adjustments, where appropriate;
- provision and replacement of wear parts; and
- cleaning and necessary lubrication.

6.3.3.2 If any Defect is detected during the Audit, the Purchaser may order Service in accordance with Clause 6.3.2.

6.3.3.3 Continuous preventive maintenance measures (i.e. measures taken in order to ensure the continued functioning of the Products) shall be taken by the Purchaser in accordance with the manual for the relevant Product.

#### 6.3.4 *Training*

Training may be held at Contractor's and/or Purchaser's site. Training may include workshop trainings, technical seminars or staff training.

#### 6.3.5 *Production support*

Production support may include production assistance, remote assistance services and consultancy work.

## 7 INTELLECTUAL PROPERTY

Purchaser and its direct and indirect customers are entitled to use Contractor's Intellectual Property (or that of any third party incorporated into the Works) only to



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the extent such use is required when Purchaser and/or its direct and indirect customers make use of the Products.

- 7.2 Purchaser may not, without Contractor's previous consent In Writing, use any of Contractor's trademarks or trade names, whether registered or not. Neither may Purchaser without Contractor's prior consent In Writing publicly refer to Contractor as a partner or in any other way refer to the Parties' co-operation.

## **8 CONFIDENTIALITY**

- 8.1 Contractor and Purchaser agree not to release, without the other Party's prior consent In Writing, documents to third parties or in any other manner disclose information which concerns the internal circumstances of the other Party or its Affiliates or sub-contractors or customers and which was obtained by the Party as a consequence of the Parties' and / or their Affiliates' co-operation or any prior contractual relationship between the Parties and / or its Affiliates.
- 8.2 Confidential Information may be used only for the benefit of the disclosing Party, unless these Terms stipulate otherwise.
- 8.3 Confidentiality shall not apply to information where a Party can show:
- that the information was in the public domain at the time of disclosure for reasons not attributable to such Party or its Affiliates;
  - that, at the time of disclosure, the Party had a lawful right of disposition over the information other than due to the direct or indirect acquisition of the information in question from the other Party or its Affiliates;
  - that the Party received the information from a third party without the Party or its Affiliates or a third person being in breach of these Terms or another confidentiality undertaking and which, following receipt, was not covered by this confidentiality undertaking or, as far as the Party or its Affiliates are aware, any other confidentiality undertaking.

- 8.4 Notwithstanding the foregoing, a Party shall at all times be entitled to provide such information to the extent and in the context that a Party is obligated to do so pursuant to law or ordinance or as a consequence of a decision or order issued by a governmental authority or court of law. In the aforementioned case, a Party which reasonably believes that it is obligated to provide information shall notify the other Party thereof in advance (to the extent that such advance notification is lawful). The disclosure of information in accordance with the aforementioned shall at all times be limited to that which is necessary under the circumstances and

the Parties shall, in such context, at all times observe the greatest possible care in order to protect the other Party's interests.

- 8.5 The Parties will ensure that employees, consultants and sub-contractors (and employees, consultants and sub-contractors of its Affiliates) who have access to confidential information are informed of, and will comply with, the aforementioned confidentiality undertaking. Such access is permitted only on a strict need to know basis.

- 8.6 The above-stated confidentiality undertaking shall remain in full force and effect during the term of the Parties' and their Affiliates' co-operation and for an additional period of five years.

## **9 FORCE MAJEURE**

- 9.1 Either Party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by causes or events beyond its reasonable control and without its fault or negligence and which were unforeseeable when the Contract was entered into, as well as for which the effects thereof could not reasonably have been avoided or mitigated by such Party.

- 9.2 The affected Party shall give notice In Writing of such delay, including the anticipated duration thereof, to the other Party as soon as such Party has reason to suspect the occurrence of a force majeure event. If a Party fails to give such notice, the other Party shall be entitled to compensation for any additional costs which it incurs and which it could have avoided had it received such notice.

- 9.3 Regardless of what might otherwise follow from these Terms, either Party shall be entitled to terminate the Contract by notice In Writing to the other Party if performance of the Contract is suspended under Clause 9.1 for more than six months.

## **10 LIMITATION OF LIABILITY**

### *10.1 Indirect Damages*

Subject to Clause 10.3, neither Party shall be liable towards the other Party for any Indirect Damages.

### *10.2 Maximum liability*

Subject to Clause 10.3, the Contractor's liability for any loss, costs and damages due to any breach of its obligations under a Contract for which no specific maximum liability is stipulated in these Terms shall be limited to a maximum of 15 per cent of the Contract Price under the relevant Contract which is attributable to that part of the Works in respect of which the Contractor has breached its obligations.

- 10.3 **Gross Negligence or wilful intent**  
The limitations of the Contractor's liability under these Terms shall not apply where the Contractor has been guilty of Gross Negligence or wilful intent. In the event of breaches of a Contract committed with Gross Negligence, the Contractor's liability for any loss, costs and damages shall be limited to a maximum of 100 per cent of the Contract Price under the relevant Contract which is attributable to that part of the Works in respect of which the Contractor has breached its obligations.
- 10.4 **Obligation to mitigate damages**  
The Purchaser shall use its reasonable endeavours to mitigate any losses, damages, cost and/or expenses incurred by it due to Contractor's non-fulfilment of obligations under a Contract and shall in that respect comply with instructions of the Contractor.
- 11 TERMINATION**
- 11.1 A Contract may be terminated by either Party immediately upon notice In Writing if the other Party should become insolvent or starts negotiations about composition with its creditors or a petition in bankruptcy should be filed by or against it or it makes an assignment for the benefits of its creditors.
- 11.2 A Contract may be terminated for cause by either Party immediately upon notice In Writing if the other Party should fail to fulfil any of its material obligations under the Contract and such failure shall not be remedied within thirty (30) days from the date a request In Writing from the first Party for such remedial action is received by the defaulting Party. Such grace period is not required in case the breach cannot be rectified.
- 12 ASSIGNMENT**
- 12.1 Neither Party may assign or transfer obligations hereunder without the prior consent in Writing of the other Party, provided however that Contractor may assign its rights and obligations hereunder, without Purchaser's consent, to any Affiliate of Contractor or by merger or consolidation with another company.
- 12.2 The Contractor may sub-contract any part of a Contract without the Purchaser's approval. The Contractor shall be responsible for the acts, defaults and neglects of its sub-contractors as if they were the acts defaults and neglects of the Contractor.
- 13 SEVERABILITY**
- 13.1 If any provision of a Contract shall to any extent be or become invalid or unenforceable, the Parties agree to negotiate in good faith to reach necessary and reasonable adjustment of the Contract in order to secure the vital interests of the Parties and the main objectives prevailing at the time of execution. Failing an agreement between the Parties on adjustments of the Contract, such adjustments shall be made by arbitrators in accordance with the provisions of the arbitration clause in these Terms.
- 13.2 If any provision of a Contract or the application thereof to any Party or circumstance be held invalid or unenforceable, the remainder of the Contract and the application of such provisions to other Parties or circumstances will not be affected thereby.
- 14 ADDITIONS AND AMENDMENTS**
- 14.1 No amendments or additions to a Contract may be made except by a written amendment signed by duly authorized representatives of the Parties.
- 15 APPLICABLE LAW AND ARBITRATION**
- 15.1 These Terms and all Contracts shall be governed by the substantive laws of Sweden. The United Nations Convention for the International Sale of Goods (CISG) shall not be applicable.
- 15.2 Any dispute, controversy or claim arising out of or in connection with the provisions of a Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce. The Rules for Expedited Arbitrations shall apply where the amount in dispute does not exceed EUR 100,000. Where the amount in dispute exceeds EUR 100,000, the Arbitration Rules shall apply. The Arbitral Tribunal shall be composed of a sole arbitrator where the amount in dispute exceeds EUR 100,000 but not EUR 1,000,000. Where the amount in dispute exceeds EUR 1,000,000, the Arbitral Tribunal shall be composed of three arbitrators. The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration.
- 15.3 The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.