

## International Terms and Conditions for Service Business

Version 09/2024

### 1. General

- 1.1 The scope, quantity, quality, functionality and technical specifications of any goods, equipment, documentation, software, work or services to be provided by Flender (collectively referred to as "**Services**") are exclusively defined as the case may be either in the order confirmation of Flender or the Contract signed by the Customer and Flender.
- 1.2 The offer letter from Flender together with these terms and conditions and those other documents expressly identified in the offer letter as forming part of the contract shall together constitute the entire agreement between the parties (the "**Contract**"). Any terms and conditions of the Customer shall apply only where expressly accepted in writing by Flender.
- 1.3 References in the Contract to "**Flender**" are to the Flender legal entity which signs the Contract, unless the context otherwise requires. References to the "**Customer**" are to the legal entity to whom the offer letter is addressed.
- 1.4 Works which are not explicitly described in the Contract are not included in the scope of the Services. Unless explicitly agreed otherwise, operating materials, consumables, spare and wearing parts shall not be included in the remuneration for the Services.

### 2. Right of Use

- 2.1 Except as expressly otherwise agreed in this Contract, as between the parties all intellectual and industrial property rights in the Services, in all documents provided by Flender in connection with this Contract (the "**Documents**") and in all software, hardware, knowhow ("**IPR**") and other things provided with or as part of the Services and the Documents shall be the exclusive property of and vest in Flender. The Customer shall not be entitled to reverse engineer, decompile, or reproduce (or have reverse engineered, decompiled, or reproduced) the Services or goods delivered in connection with such Services or parts thereof except to the extent that such restrictions are unenforceable under applicable law.
- 2.2 The Customer may use the Documents unmodified and to the extent necessary for operation and routine maintenance of the serviced objects by the Customer's own personnel, unless explicitly agreed otherwise in writing by Flender.
- 2.3 If the Services include Flender software, such software is licensed under the license terms contained in the software documentation, the software itself or in the attached license terms (in each case the "**applicable license conditions**"), which shall prevail over this Clause 2. The software is issued in object code without source codes. The license hereunder only grants the non-exclusive right to use the software as described in the applicable license conditions or, if there are no applicable license terms, for the purpose of operation and routine maintenance of the Services.
- 2.4 The Services may include third party software. Insofar as specific license terms of the third party licensor apply, Flender will provide such license terms together with the Services. The Customer shall comply with such third party license terms.
- 2.5 Insofar as the software contains Open Source Software ("**OSS**"), Flender will provide the applicable OSS license terms together with the Services. The OSS license terms shall prevail over this Contract. Details regarding any third-party software and OSS contained in the Services are available in the software documentation (e.g. README\_OSS).

- 2.6 The rights granted in Clause 2 shall be transferable to a third party only together with the transfer of ownership of all of the serviced objects to that third party.

- 2.7 Without prejudice to the Customer's intellectual property rights and subject to compliance with applicable law, Flender and its Affiliates may for its own business purposes collect, use, modify, and copy any data received under this Contract. Any legal obligations regarding personal data shall remain unaffected.

### 3. Prices and Terms of Payment

- 3.1 Unless agreed otherwise in writing, prices exclude insurance and any other additional charges (such as inspections by third parties). The price payable by the Customer under this Contract shall be referred to in this Contract as the "**Contract Price**".
- 3.2 The Customer shall bear all incidental costs, e.g. travel expenses, daily allowances, in addition to the Contract Price.
- 3.3 The Contract Price is exclusive of any indirect taxes (such as property, license, sales, use, value added or similar tax) and/or any duties, customs or public charges related to the Contract. The Customer agrees to pay to or reimburse Flender for any taxes, customs, duties or other public charges levied on Flender in relation to the Services. All payments shall be made to Flender's bank account without deduction (e.g. deduction of withholding tax) within 30 days after issuance of the invoice. If the Customer is required to make a deduction by law, the sum payable shall be increased so that Flender receives a net amount equal to the amount it would have received without such deduction. The Customer shall provide to Flender tax receipts from the relevant tax authorities in connection with the payments in due course.
- 3.4 Without prejudice to any other rights it may have, Flender may charge interest at 9 percentage points above the current base lending rate of the European Central Bank on any overdue payments.
- 3.5 Each party must pay all sums that it owes to the other party under this Contract free and clear without any set-off, counterclaim, deduction or withholding of any kind, save as agreed otherwise in writing or as may be required by law.

### 4. Rights and Obligations of Flender

- 4.1 Flender begins with the Services within a reasonable period of time and performs the Services during its normal service hours (Monday to Friday, 8.00 a.m. to 5.00 p.m. except for national and/or local holidays) or during the specifically agreed service hours, unless otherwise agreed in writing or stated in the Contract.
- 4.2 Flender reserves the right to execute the Services using a different, but technically equivalent method to that set out in the Contract, provided that any such modification does not materially change the agreed characteristics/specifications of the Services to the detriment of the Customer.
- 4.3 Flender is entitled to subcontract Services to subcontractors. If Flender commissions subcontractors, Flender remains responsible for these subcontractors within the scope of the statutory regulations.

Unless otherwise stated in this Contract, Flender shall not have any responsibility for Customer's scheduling, planning, project-management, quality programs, health, safety, security or environmental management and for any resulting time extension or cost-overrun with the Services.

Flender shall be responsible for obtaining any work permits required by its personnel. Flender shall only use suitably qualified and experienced personnel and shall have the right to replace any of its personnel at any time with equivalent personnel.

- 4.4 Upon Flender's request, the Customer shall inform the Flender personnel in time of all their obligations towards the local authorities (such as police registration, etc.) and shall assist such personnel in their dealings with the local authorities. Customer shall provide Flender all support reasonably required in the procurement of entry, residence and working permits.

Any impossibility or delay in obtaining the necessary entry residence or working permits which is not solely attributable to Flender shall not constitute a breach of Flender's contractual obligations and Flender shall be entitled to an adjustment in deadlines for performance.

- 4.5 To the extent the Services include supervision, Flender's only obligation is to provide correct instructions and it shall not be liable for the performance of third parties or Customer's personnel.

## 5. Delay

- 5.1 Any agreed dates for performance of the Services or any part of them shall be extended by a reasonable period of time if and to the extent that Flender is delayed or impeded in the performance of its obligations by any third party or by the failure of the Customer to perform its obligations. This includes without limitation the delivery of required documents (such as necessary permits and approvals), timely performance of any work to be undertaken by the Customer or any third party appointed by the Customer, and compliance with the terms of payment.

- 5.2 If Flender does not meet any binding dates solely due to the fault of Flender, the Customer shall be entitled to liquidated damages amounting to 0.5% of the price of the delayed part of the Services per complete week of delay, in which the Customer suffered loss as a result of such delay. Liquidated damages payable in case of delay shall be limited to 5 % of the price of the delayed part of the Services.

If Services are provided on basis of a flat rate fee, the value of the service fee applicable to one month shall be used for calculating such liquidated damages and the maximum amount of liquidated damages.

- 5.3 Any rights and remedies of the Customer in case of delay other than those expressly stipulated in this Clause 5 and in Clause 16.2 a) below shall be excluded, to the extent permissible by law.
- 5.4 If the Customer, the Customer's contractors, or any other third party put in charge by the Customer causes a delay to the provision of the Services, the Customer shall reimburse Flender all additional costs and expenses incurred due to such delay.

## 6. Force Majeure

- 6.1 A "Force Majeure Event" means any event which is beyond the reasonable control of a party or its subcontractors, which could not have been prevented by good industry practice and which results in a party, its Affiliates or any of its sub-contractors or sub-suppliers (the "Affected Party") being unable to perform or being delayed in performing in whole or in part its obligations

under this Contract. Force Majeure Events include, among others, acts of war, riot, civil commotion, terrorism, natural disaster, epidemic, strikes, lock-outs, attacks on Flender's IT systems (such as virus attacks, hacker attacks), non-issuance of licenses, permits or approvals, or any other act or failure to act by any public authority, or embargos or any other trade sanctions imposed by the European Union (EU) or the United States of America (U.S.) or any public authority within EU or U.S. territory or by the United Nations which, upon sole discretion of Flender, may expose Flender or any of its Affiliates to sanctions, penalties, loss of privileges or other acts or omissions of public authorities detrimental to Flender or any of its Affiliates, or any subcontractor or sub-supplier rejecting delivery due to reasons like those as stated herein, acts or omissions of public authorities including any entities acting on their behalf (or threats thereof), or any subcontractor or sub-supplier rejects delivery due to the same reasons.

- 6.2 If a Force Majeure Event occurs, the Affected Party will be deemed not to be in breach of its obligations under the Contract for so long as and to the extent necessary to overcome the effects of the Force Majeure Event.
- 6.3 The Affected Party shall notify the other party as soon as reasonably practicable of the Force Majeure Event and of its affected obligations.
- 6.4 If one or more Force Majeure Events and their effect last for a period of 180 days in aggregate either party may terminate the Contract by giving to the other a written notice of termination with regard to the part of the Services not yet provided. With regard to the part of the Services not performed, Flender shall be entitled to reimbursement from the Customer of its unavoidable costs related to such termination.

## 7. Obligations of the Customer

- 7.1 The Customer shall apply for and obtain all necessary licenses, permits and approvals required for commissioning, acceptance and use of the Services.
- 7.2 The Customer shall do all that is required for Flender to commence the performance of the Services in time and to carry out the Services in an uninterrupted manner. In particular, the Customer shall at its cost provide:
- (i) Support for Flender in problem analysis to the extent necessary, e.g. providing incident reports and error messages.
  - (ii) Coordination of third parties commissioned by the Customer.
  - (iii) Before commencement of the Services and without specific request by Flender provision of up to date documents, drawings of and information about the serviced objects. Flender shall be entitled to use the Customer's documents for the provision of the Services and make them available to Flender's subcontractors providing Services.
  - (iv) Current data back-up of the current software version, including the stored data and the system parameters on an appropriate data carrier as well as the provision of a copy of the respective data carrier. Execution of data retrieval if necessary.
  - (v) Obtaining of any permits, approvals, consents or authorizations from any relevant authority, except to the extent that these can only be obtained by Flender.
  - (vi) If the Services are conducted at Flender's premises, the Customer shall bear costs related to the transportation of the serviced objects to Flender.
- 7.3 If and to the extent the Services will be performed at the Customer's premises, the Customer shall at its cost provide additionally:
- (i) unrestricted access to the serviced objects, timely performance of all preparatory work and establishment of the required operating conditions and infrastructural

- requirements necessary for the performance of the Services (e.g. internet access, electricity and telephone).
- (ii) briefings and trainings, including provision of information regarding relevant hazards for humans and machines resulting from the provision of Services, as well as regarding the applicable safety regulations of Customer.
- (iii) ensuring and monitoring that the serviced objects are in a safe condition so that there are no risks for humans or machines during the performance of the Services. The Customer shall ensure that the serviced objects are disconnected from the mains during the performance of the Services. The switching authorization for the serviced objects and the respective responsibility always remains with the Customer. The same applies to the implementation of other required operational and legal safety measures, as well as to the provision of (special) protective clothing and devices as well as the provision of security and escort personnel to escort the service technicians in accordance with the requirements of work safety, and upon Flender's request, the provision of a second person required for accident prevention.
- (iv) suitably qualified personnel during the performance of the Services with the necessary experience and know-how to operate the serviced objects. Furthermore, the personnel must be able to make and implement any necessary decisions concerning the Services. Unqualified personnel may be rejected by Flender and shall be replaced at the Customer's cost.
- (v) technical resources and auxiliary equipment (e.g. ladders, scaffolding, lifting devices, special tools as well as on-site transportation) with the required operating personnel as well as the operating and production resources and materials and consumables necessary for the performance of the Services.
- (vi) power and water supplies together with the necessary connections up to the required location on site as well as heating and general lighting and, if necessary, air-conditioning and ventilation.
- (vii) be responsible for adequate safety precautions on site against theft, damage, destruction and other adverse factors. Material lost or damaged shall be replaced or repaired at the Customer's cost.

7.4 If Services cannot be performed in the required manner or can only be performed upon delay on grounds for which Flender is not responsible, particularly because the Customer has not performed or timely performed its general or special duties of cooperation or the Customer has culpably missed an agreed deadline, Flender may separately charge to the Customer the additional expenses incurred, including all waiting periods. Agreed-upon dates and deadlines shall be prolonged to a reasonable extent.

7.5 The Customer acknowledges that Services on site may generate and/or uncover hazardous waste which is subject to specific legal or regulatory requirements under applicable laws "hazardous materials" or "hazardous waste".

If Flender discovers hazardous materials like asbestos, environmentally hazardous substances, geological or geothermal conditions, archaeological findings or any other local conditions which adversely affect the Services, the Customer shall be liable for any required remediation and also reimburse Flender for any additional costs and expenses. Flender shall also be entitled to a reasonable extension of time. The Customer shall, at its expense, provide containers complying with all legal and regulatory requirements and shall handle, store and dispose of hazardous waste in accordance with the applicable laws.

7.6 Flender shall comply with the Customer's site rules and regulations when performing Services on the Customer's premises, provided that the Customer informs Flender, in writing, of all relevant site rules and regulations in force at the premises within a reasonable period prior to performance of the Services.

The Services shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken by the Customer, at no cost to Flender, before Services commence and shall be maintained by the Customer during Flender's performance of the Services.

The Customer shall inform Flender prior to the execution of any Services about potential health or safety risks which may originate from the Customer's plant or equipment or may exist at Customer's site, including but not limited to hazardous materials which may exist in addition to those already specifically addressed in the Contract or which may be generated or released in the course of the Services ("**HS Risks**").

If a potential health or safety risk arises, then, without limiting its other rights and remedies, Flender may suspend its work until the respective health or safety risk has been permanently eliminated, or protective and preventive measures required by Flender have been taken by the Customer.

The Customer shall reimburse Flender all additional costs incurred by any special and preventive measures protective as deemed necessary by Flender to deal with existing HS Risks as well as costs resulting from the suspension. The contractual schedules and time limits shall be adjusted accordingly.

The Customer is responsible for the health and safety conditions on site, shall comply with any applicable laws as well as the laws, regulations and requirements of the European Union, and shall implement and conduct a risk assessment of potential hazards for the health and safety of the personnel on site, measures to control such risks (including suitable safety and working regulations for the work on site, emergency and evacuation procedures, and effective medical aid systems and resources), and potentially necessary corrective measures. Prior to their performance of any activity on site, Customer shall provide Flender's and its subsuppliers' personnel with the required safety and working regulations and related trainings. If Flender provides Customer with a safety and health document for the site, the Customer shall comply with the regulations contained therein, including provided updates.

The Customer is responsible for ensuring that the site, including the ambient air and all parts of the plant Flender's employees or subcontractors may come in contact with, are free of asbestos. The ambient air shall be deemed free of asbestos if the airborne asbestos fiber concentration does not exceed 1,000 fibers/m<sup>3</sup> measured with SEM or 10,000 fibers/m<sup>3</sup> measured with PCM. Upon request by Flender, the Customer shall certify these conditions by a licensed and independent institute. Flender shall be entitled to perform corresponding measurements.

In case aforementioned parts or ambient air is not free of asbestos or as long as the permanent absence of asbestos is not ensured, Flender may, without limiting its other rights and remedies, suspend any work in affected areas and reject any delivery of asbestos-containing parts to its factory or workshop until it is certified by a licensed and independent institute that the site and the parts are free of asbestos. The costs of such certification and/or other expenses related to on site asbestos shall be borne by the Customer. Flender may nevertheless agree to perform certain limited scope of work under defined protection measures to the extent determined by Flender. Flender shall be entitled to compensation for any additional cost incurred and to an equitable adjustment to the schedule.

All local transportation, provided or arranged by the Customer shall be booked with companies which are certified in terms of quality and safety. Local cars used for crew transportation shall be safe, in a good state of maintenance, equipped with safety belts, headrests, airbags, and where required, 4-wheel drive. The drivers shall be experienced and have good company records. When required by the country, special guidance,

protection, special or spare tires and safety measures shall be arranged by the Customer.

Basic Customer HS Risks work location requirements are: fenced-in work area; controlled entrance; first-aid staff and equipment; plant gas and fire alarm system; site emergency plan; full time HS Risks coordinator; sanitary provisions and canteen facilities; good house-keeping and waste control; permit-to-work system and regular site inspections; personal protection equipment; hoisting, fire-fighting, electrical and hydraulic equipment; to be yearly inspected and in good working order.

- 7.7 For any portion of the Services performed by Flender and/or its subcontractors on a time basis, the Customer shall confirm Flender on a weekly basis of the hours worked by Flender's and/or its subcontractors' personnel.

## 8. Changes to the Services, Variations

- 8.1 Either party may at any time request in writing changes, modifications or additions to the scope of the Services (hereinafter referred to as "**Variation**"). Upon receipt of such Variation request, Flender shall provide the Customer with a written quotation for the requested Variation, specifying the effects of the requested Variation on the Contract, including any necessary adjustment of Contract Price, time schedules and agreed dates, scope of the Services and any other affected provisions of the Contract.

If the Customer wishes to proceed with a requested Variation on the basis of a Flender Variation quotation, the Customer shall notify Flender thereof in writing within 14 days of receipt of such Variation quotation. Flender is not obliged to give effect to the Variation until it has been agreed in writing by the parties.

- 8.2 If applicable laws, rules and regulations, engineering standards and codes of practice, and decisions or guidance issued by courts or public authorities are amended or added to after the date of Contract signature, Flender shall be entitled to an adjustment of the Contract, including inter alia an adjustment of the Contract Price to reflect any additional costs to be incurred by Flender, the time schedules and scope of Services, as necessary in order to compensate for any adverse effects or additional requirements deriving from such changes.

## 9. Acceptance and Risk of Accidental Damage

- 9.1 Unless otherwise agreed in writing, an acceptance of the Services is not required. Where the parties have agreed on an acceptance in writing, the Customer shall declare acceptance within 1 week of completion of performance of the Services by Flender, or of the notice of completion, whichever is earlier. The Customer is not entitled to refuse acceptance due to non-significant defects. Acceptance shall be deemed to have occurred within 1 week of completion of performance by Flender or if the serviced objects have been put into operation.
- 9.2 All costs and expenses of the Customer and any third parties (other than those of Flender's own personnel or contractors) incurred in connection with inspections, tests, approvals, acceptance procedures etc. shall be borne by the Customer.
- 9.3 The Customer shall bear the risk of accidental damage to or loss of the Services and the serviced objects. Goods and materials included in the Services are delivered EXW (Incoterms 2010).

## 10. Defects Liability

- 10.1 Flender shall be liable for the proper performance of the Services in accordance with this Contract. If Flender delivers materials and goods in connection with the Services, Flender

shall be liable to the Customer for any non-conformity with express terms of this Contract resulting from circumstances existing at the time of the transfer of risk.

- 10.2 The Customer shall immediately notify Flender in writing of any defective Services or defective materials and goods without undue delay. The Customer's claims in respect of defects shall be excluded for any apparent defects if the Customer has failed to do so.

Upon such written notification, Flender shall be given a reasonable period of time and opportunity to re-perform the Services and/or, at its option, repair or replace defective materials or goods. The Customer shall grant Flender working access to the defective Services, material, or goods, shall undertake any necessary disassembly and reassembly, and shall provide access to operation and maintenance data, all at no charge to Flender. Upon Flender's request, the Customer shall ensure that the title to the replaced parts/items shall pass to Flender.

- 10.3 The defects liability period for any part of the Services shall expire 12 months after provision of the defective Services or acceptance if agreed. For materials and goods, the defects liability period shall expire 12 months after the transfer of risk.

For re-performed Services and replaced or repaired materials and goods, the defects liability period is 6 months from the date of re-performance, replacement, or repair, if the original defects liability period expires earlier. In any event, the defects liability period shall end no later than 24 months from the beginning of the original defects liability period.

- 10.4 There shall be no warranty claim for insignificant deviations from the agreed quality, of only minor impairments of usability, for normal wear and tear, or impairments due to improper or negligent handling by Customer, unsuitable equipment provided by Customer, non-reproducible software errors or special external influences which are not identified within the Contract. In addition, software errors are only deemed a defect if the defect occurs in the most current software version at the given time.

- 10.5 If software is defective, Flender shall only be obliged to provide the Customer with an updated version of the software in which the defect has been remedied when Flender can be reasonably expected to provide such updated version or, if Flender is only licensee, such updated version is reasonably available from Flender's licensor. If the software has been modified or individually developed by Flender, Flender shall in addition provide the Customer with a workaround or other interim error correcting solution until the provision of an updated version of the software in which the defect is remedied, if such workaround or interim solution is feasible at reasonable expense and if otherwise the Customer's business operations would be stopped or substantially impeded.

- 10.6 If Flender re-performs allegedly defective Services and it is ultimately not established that the Services were defective, the Customer shall pay Flender for such re-performance.

- 10.7 Any other liability of Flender and claims of the Customer in case of defective Services or defects, other than those expressly stipulated in this Clause 10 or, in case Flender failed at least three times in remedying/re-performing, in Clause 16.2 b), shall be excluded. All warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.

## 11. Intellectual Property

- 11.1 If a third party asserts legitimate claims against the Customer that the Services infringe an IPR owned by such third party,

then subject to the following provisions of this Clause 11, Flender shall, at its option and expense, either

- a) obtain a right to use the relevant IPR in connection with the Services;
- b) modify the works forming part of the Services so as not to infringe the relevant IPR; or
- c) replace the infringing part of the Services.

If, in the opinion of Flender, none of the foregoing is reasonably possible, Flender may take back the relevant part of the Services and reimburse the price for such part.

11.2 Flender's obligations in Clause 11.1 are subject to the following conditions:

- a) The Customer has immediately notified Flender in writing of the third party's claim and furnished Flender with a copy of each communication, notice or other action relating to the alleged infringement,
- b) the Customer does not acknowledge an infringement and provides Flender with the authority, information and assistance reasonably required by Flender to defend or settle such claim, and
- c) Flender is given sole control of the defence (including the right to select counsel), and the sole right to settle such claim.

If the Customer ceases to use the works forming part of the Services or any relevant portion thereof, it shall notify the third party in writing that its cessation of use is not an admission of IPR infringement.

11.3 Any claims of the Customer shall be excluded if the Customer (including its agents, employees or contractors) is responsible for the IPR infringement, which shall include without limitation if the IPR infringement was caused by specific demands of the Customer, by use of the works forming part of the Services for a purpose or in a manner not foreseeable by Flender, by a modification of the works forming part of the Services by the Customer or by use of the works forming part of the Services in connection with other equipment.

11.4 This Clause 11 sets forth Flender's entire liability for infringement of third party IPRs. Any other rights and remedies of the Customer shall be excluded.

## 12. Liability

Unless explicitly stipulated in this Contract, this Clause 12 shall exclusively govern the liability of Flender for damages, costs and expenditures, regardless of the legal theory upon which it is based, including, but not limited to liability in Contract, in tort (including negligence), misrepresentation, indemnity, under warranty or otherwise.

12.1 Flender shall be liable for bodily injuries and for intentional acts or omissions pursuant to the applicable law.

12.2 Flender shall in no event be liable, whether pursuant to any indemnity or in contract, tort (including negligence and statutory duty) or otherwise for loss of profit or revenue, loss of production, interruption of operations or loss of use, cost of capital, loss of interest, loss of information and/or data, for claims arising from Customer's contracts with third parties, or for any indirect or consequential damage.

12.3 Flender's total liability, whether pursuant to any indemnity or in contract, tort (including negligence and breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall not exceed 50% of the Contract Price, if a lump sum has been agreed, or 50% of the fees paid in the 12 months preceding the month in which the claim arose if no lump sum has been agreed.

12.4 Any limitations of liability set forth in this Contract shall also apply for the benefit of Flender's subcontractors, employees, agents or any other person acting for Flender.

12.5 If the Customer is not or shall not be the sole end user and ultimate owner of the Supplies or is procuring them for the benefit of any kind of joint venture, the Customer shall include a clause in its contracts with the end user, ultimate owner or joint venture participants so that Flender is given the benefit of the indemnities, exclusions and limitations of liability in the Contract by all such users, owners or participants (which shall apply as if the user, owner or participant were the Customer) and shall indemnify Flender against claims by them to the extent that Flender would not be liable therefore to the Customer under the Contract if the claim had been made by the Customer.

12.6 Any and all liability of Flender under this Contract shall cease with the expiry of the defects liability period of the Services.

12.7 To the extent the Services include supervision, Flender is only obliged to provide correct and clear instructions and shall not be liable for the consequences of any non-compliance with those instructions.

12.8 Any rights, and remedies of the Customer against Flender that are not expressly stipulated in the Contract shall be excluded.

## 13. Assignment and Sub-contracting

13.1 The Customer may not assign this Contract or any part thereof without Flender's prior written approval.

13.2 Flender may assign the Contract or any part of it to an affiliated company ("Affiliate"), being any legal entity ("Company") which directly or indirectly is controlled by Flender, controls Flender or is controlled by a Company which directly or indirectly controls Flender.

13.3 Flender shall further be entitled to assign the whole Contract or a part of it to any third party, in the event of a sale or other transfer of the business or a part of the business of Flender to a third party.

13.4 Flender may sub-contract parts (but not all) of the Services.

## 14. Confidentiality, Data Protection

14.1 The parties shall use any documents, know-how, data or other information provided by the other party ("**Information**") exclusively for the purpose of this Contract and keep the same confidential subject to the following. The parties may disclose Information to employees of the receiving party and to third parties who reasonably need to know such Information for the purpose of the Contract provided such employees and third parties are bound by equivalent confidentiality obligations. The party disclosing Information shall be held liable for a breach of such obligations by its employees or a third party.

14.2 This confidentiality obligation shall not apply to Information which

- a) is or becomes part of the public domain other than by fault of the receiving party;
- b) is disclosed to the receiving party in good faith by a third party who is entitled to make such disclosure;
- c) is developed independently by the receiving party without reliance on Information;
- d) was known to the receiving party prior to its disclosure by the other party; or
- e) is required to be disclosed by law (subject to the receiving party's obligation to notify the disclosing party in a timely manner of such requirement).

14.3 The Customer shall only be entitled to take photographs or videos or to otherwise record the performance of the Services with Flender's prior consent. In addition, only personnel of the Customer who operate the plant shall be entitled to be present during the performance of the Services by Flender.

14.4 This confidentiality obligation shall survive the expiration or termination of this Contract.

14.5 Flender and the Customer shall comply with the statutory provisions relating to protection of personal data. The Customer is obliged to create the prerequisites required by law (e.g. to obtain declaration of consents) to enable Flender to perform the Services without any breach of law. The Customer is advised to take appropriate measures – as far as possible – to prevent access of Flender to personal data or trade secrets of the Customer while providing the Services. In the event that it cannot be prevented that Flender is granted access to personal data of the Customer, the Customer is obliged to inform Flender in due time before the Services are performed. The Customer and Flender shall then agree on the actions to be taken.

## 15. Suspension

15.1 Flender may suspend performance of its obligations under the Contract, if (i) the Customer is in delay with any payment or in providing any payment security required under this Contract for more than 30 days, or (ii) the Customer fails to perform those of its obligations necessary for Flender to perform the Services, or (iii) the Customer otherwise materially breaches the Contract.

15.2 If Flender suspends the Contract in accordance with Clause 15.1 or in the event the Customer suspends the Contract without the express written agreement of Flender, the Customer shall become immediately liable to pay Flender for all parts of the Services already provided. The Customer shall further reimburse Flender all reasonable additional costs and expenses incurred as a result of such suspension (e.g. payments to subcontractors, cost of waiting time, demobilization and remobilization, etc.). Any contractual dates shall be extended for a reasonable period to overcome the effects of the suspension.

## 16. Termination

16.1 Either party may terminate this Contract with immediate effect by written notice, if the other party becomes bankrupt or insolvent, has a receiving order made against it or compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors or goes into liquidation.

16.2 Save as provided under Clause 6.4 and Clause 16.1, the Customer may terminate the Contract only in the circumstances set out below and in each case upon 14 days written notice to Flender:

- a) in the event of delay, if the maximum liquidated damages under Clause 5.2 are payable, a reasonable additional period of time for performance of the Services has been granted to Flender, and has expired and Flender within that time has not provided a commitment to pay further liquidated damages exceeding the before-mentioned maximum liquidated damages in respect of the continuing period of delay, or
- b) in the event Flender has materially breached the Contract and has not remedied the breach within a reasonable period after receiving a written notification of the breach from the Customer.

16.3 Any termination by the Customer shall not affect those parts of the Services already performed in accordance with the Contract prior to the termination. After termination of the Contract in accordance with Clause 16.2, the Customer shall remain liable to pay Flender for all parts of the Services already performed prior to termination. The Customer shall be entitled to

compensation for the costs incurred in excess of the Contract Price if it had the defective Services completed by a third party. For the avoidance of doubt, Clause 12 shall apply in case of termination.

- 16.4 Notwithstanding any other rights it may have under this Contract, Flender may terminate the Contract
- a) if the Customer comes under the direct or indirect control of any competitor of Flender, or
  - b) if the Customer materially breached the Contract and has not remedied the breach within a reasonable period after a notification by Flender or is in delay in making any payment or in providing any payment security required under this Contract for more than 60 days; or
  - c) if the Contract has been suspended for more than 60 days.

16.5 In the event of termination by Flender, Flender shall be entitled to recover from the Customer the Contract Price less any saved or avoided expenditure and any additional cost and expenses incurred by Flender due to such termination.

## 17. Dispute Resolution, Applicable Law

17.1 The Contract and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the substantive laws of Switzerland. The UN Convention on Contracts for the International Sale of Goods shall not apply.

17.2 All disputes arising out of or in connection with the Contract including any question regarding the termination or any subsequent amendment of the Contract shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC"). If the value of the total matter in dispute, including the value of any counterclaims, is less than € 1,000,000, the tribunal shall consist of one arbitrator and if the value of the total matter in dispute is € 1,000,000 or more the tribunal shall consist of three arbitrators. If the tribunal consists of three arbitrators, each party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator, within 30 days after their appointment. Should the two arbitrators fail to reach agreement on the third arbitrator within the thirty-day period, the ICC shall select and appoint the third arbitrator.

17.3 The seat of arbitration shall be Zurich, Switzerland. The language to be used in the arbitration proceeding shall be English. Any order for the production or disclosure of documents shall be limited to the documents on which each party specifically relies in its submission(s).

17.4 Upon request of a party, the arbitral tribunal shall order any claiming or counterclaiming party to provide security for the legal and other costs of any other party related to that claim or counterclaim, by way of bank guarantee or in any other manner and upon such terms as the arbitral tribunal considers appropriate.

## 18. Export Regulations

18.1 If Customer transfers goods including, but not limited to hardware and/or software and/or technology as well as corresponding documentation delivered by Flender ("Goods"), or works and services, regardless of the mode of provision, and/or including all kinds of technical support provided by Flender ("Services") to a third party, Customer must comply with all applicable national and international (re-) export control regulations. In any event of such transfer of Goods and/or Services, Customer shall comply with the (re-) export control regulations under the applicable national law, the law of the European Union ("EU") and the law of the United States of America ("USA") and any United Nations ("UN") regulations.

18.2 For all deliveries by Flender Group entities with registered offices in the European Union and the United Kingdom, all direct or indirect sales, exports, or re-exports of any Flender Goods or Services must comply with EU regulations. This includes but is not limited to Articles 12g and 12ga of Council Regulation No.

833/2014, Article 8g of Council Regulation No. 765/2006, and all other Articles within these Council Regulations, as amended from time to time.

These regulations are principles of this Agreement and any violation of these provisions by the Customer shall entitle Flender to seek appropriate remedies, including, but not limited to the termination of this Agreement and/or liquidated damages of 5 (five) percent of the price of the Goods exported or of the rights or information provided, unless a higher amount is required by EU regulations. The liquidated damages shall serve as the minimum amount of the damage and shall not be interpreted as a penalty. The assertion of further damages shall not be excluded.

- 18.3 The Customer hereby represents and warrants that the Customer, its customer and the End-User of the Goods or Services are not listed on any applicable restricted party list, e.g., those of the EU, USA or the UN, and is not under the direct or indirect control of any such party.
- 18.4 Upon request by Flender, the Customer shall promptly provide Flender with all information pertaining to the End-Customer, the particular destination and the particular intended use of Goods and Services, as well as any export control restrictions existing.
- 18.5 The Customer shall indemnify and hold harmless Flender from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by the Customer, and the Customer shall compensate Flender for all losses and expenses resulting thereof.

## **19. Miscellaneous**

- 19.1 Nothing in this Contract shall be deemed to create an employment relationship between Flender and the Customer or any of their personnel or subcontractors.
- 19.2 The Customer is not entitled to issue instructions to Flender's employees. Flender is free to select and allocate the personnel deployed for the performance of the Services. Flender alone shall pay for all compensation and social benefits of its employees.
- 19.3 Flender shall not be obligated to fulfill this Contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

19.4 If any provision of this Contract is prohibited or declared invalid or unenforceable by a court of competent jurisdiction, this shall not affect the validity or enforceability of any other provision. The parties shall use their reasonable efforts to substitute such provision by a legal, valid or enforceable one with the same or a similar result.

19.5 Any amendments, changes or additions to this Contract must be made in writing in the form of a written agreement signed by authorised representatives of both parties.

19.6 No delay or omission by either party in exercising any right, power or remedy provided by law or under this Contract shall affect, impair or operate as a waiver of such right, power or remedy.

19.7 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

19.8 This Contract is drawn up in the English language. If this Contract is translated into another language, the English language text shall in any event prevail.