

**IMI Z&J Germany, Z&J Technologies GmbH**

**Standard Terms and Conditions of Sale for Goods and Services  
(rev. 0, August 2016)**

Z&J Technologies GmbH is referred to in these terms and conditions as "Seller" and the customer or person or entity purchasing goods, services, parts and materials from Seller is referred to as "Buyer". "Goods" and/or "Services" mean the products, parts and materials manufactured by Seller or the services rendered, both as set out in Seller's technical documentation and quotation.

**1. BASIS OF CONTRACT**

These terms and conditions shall apply to any contract concluded (the "Contract") for the sale or supply of Goods and/or Services from Seller to Buyer whether the Contract for such sale is concluded by acceptance by Seller of Buyer's purchase order or by acceptance by Buyer of Seller's quotation, unless the parties expressly agree in writing in the Contract that these terms and conditions shall not apply to a specific Contract. In the event of a conflict between the pre-printed terms provided in any purchase order or other document and these terms and conditions, these terms and conditions shall prevail. All inconsistent or additional terms and conditions in any Buyer acknowledgement, invoice or other forms or which Buyer may seek to impose or incorporate by trade practice are expressly objected to and rejected by Seller and shall not bind Seller unless expressly agreed to in writing including as stated on Seller's quotation or sales order acknowledgement.

**2. PRICE AND PAYMENT**

2.1 Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods and/ or Services shall remain in effect for thirty (30) days after the date of Seller's quotation, or acknowledgment of Buyer's order for the Goods and/or Services, whichever occurs first, provided an unconditional authorisation from Buyer for the supply of the Goods and/or Services is received and accepted by Seller within such time period. If such authorisation is not received and accepted by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods and/or Services.

2.2 Once accepted, the price will become firm, however, Seller shall be entitled to increase such price to take account of cost escalation in the event that delivery of the Goods or provision of the Services is delayed beyond standard delivery schedules for reasons outside of the control of Seller and/or to take account of foreign currency fluctuations where the same differ from currency exchange assumptions in Seller's proposal.

2.3 Unless otherwise specified in Seller's quotation, payment terms are net thirty (30) days after the date of invoice. Any amounts not paid when due shall bear interest at the rate of 9 percentage points above the applicable base rate from the due date until paid, provided however that Buyer is not a consumer. Seller shall be entitled to claim exceeding damages caused by the delay. If the Buyer is a businessman acting within the scope of his business activities Seller is also entitled to claim 5% interest p.a. on the amounts due until occurrence of delay; from occurrence of delay the provision in sentence 2 of this Section 2.3 applies. Maturity interest (*Fälligkeitsszinsen*) accrued until occurrence of delay is hereby not dispended.

2.4 If Buyer defaults in any payment when due, Seller, without incurring any liability to Buyer or any other party, may, at its option and in addition to other remedies available, declare all work complete with payment immediately due and payable together with interest as provided in the preceding paragraph on all outstanding amounts due therein; stop all further work and deliveries until all past due payments and interest have been made and/or require that any further deliveries

be paid for prior to shipment. If requested by Seller, Buyer shall obtain a bond or other security to provide guarantees of payment to Seller.

2.5 As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Goods are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled shipment of Goods and commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Goods shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.

2.6 Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable milestone payments have been received. For each day of delay in receiving all applicable milestone payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, after reasonable period of time Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments or request additional forms of Payment Security, and if Buyer definitely refuses provision of security or performance of the contract or after expiry of a deadline does not pay the consideration or does not provide security, withdraw from contract or claim damages for non-performance. Withdrawal from contract leaves the right of the Seller to claim damages unaffected.

### **3. TAXES AND OTHER CHARGES**

Unless otherwise specified in writing by Seller: (a) transportation and insurance charges shall be based upon point of manufacture and shall be paid by Buyer, (b) installation charges shall be borne by Buyer, and Seller has no obligation to install the Goods for Buyer and (c) any taxes, duties or other charges imposed or incurred in relation to the performance of the obligations contemplated in the Contract shall be borne by the party that incurred such obligation or as the law specifically provides as being responsible for such tax, duty or other charge.

### **4. DELIVERY, RISK AND TITLE**

4.1 Unless otherwise specified in Seller's quotation, delivery of the Goods shall be ex works (EXW, Incoterms 2010) Seller's manufacturing facility. Delivery shall be deemed to be completed when Seller informs Buyer in writing that the Goods are ready for shipment and can be picked up at the delivery location ("Delivery"), upon which time the risk to the Goods shall pass to Buyer. If Buyer delays shipment on notification of completion of the Goods, if Buyer fails to collect the Goods after Seller's notification or if Seller has agreed to deliver the equipment other than ex works and shipment is postponed by or due to Buyer's delay or request, Seller may tender delivery and store the equipment at Buyer's expense (and at a rate of 1% of contract value per month) and risk. Such tender shall constitute delivery and the full purchase price for the Goods tendered shall be immediately due and payable by Buyer.

4.2 Any claims regarding shortages in delivery must be made within thirty (30) days from Delivery and must be accompanied by the packing list(s) covering the shipment.

4.3 Title shall only pass upon receipt of full payment of the purchase price for the Goods by Seller.

4.4 Performance of the Contract is contingent upon Buyer supplying to Seller, when needed, all required technical information, including drawing approval and all required commercial documents, delivery instructions and other instructions required for the supply of the Goods. Unless otherwise agreed, Seller shall have the right to make partial deliveries.

## **5. WARRANTY**

5.1 Subject to the limitation of liability and the conditions set out below and unless otherwise specified in Seller's quotation, Seller warrants title to the Goods, that the Goods, upon delivery, shall conform with the specifications listed in the Contract (or to Seller's currently published specifications if there are no specifications in the Contract) and shall be free from defects in material and workmanship. The warranty period shall expire on the earlier of twelve (12) months from the date of commissioning or eighteen (18) months from the date of Delivery to Buyer.

5.2 Subject to the limitation of liability and the conditions set out below and unless otherwise specified in Seller's quotation, Seller warrants that in performing the Services, it will exercise all reasonable skill, care and due diligence and shall perform the Services in accordance with professional practice. Seller warrants that all Services performed shall be free from faulty workmanship for a period of ninety (90) days from completion of the Services.

5.3 The above warranties are given by Seller subject to the following conditions:

- (a) Seller shall be under no liability in respect of any defects arising from any drawing, design or specification supplied by Buyer or if the Goods differ from their specification as a result of changes made to ensure that they comply with applicable statutory or regulatory standards;
- (b) Seller shall be under no liability in respect of any defects arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Seller's instructions, storage, installation, start up, maintenance and repair guidelines, modification, disassembly, alteration or repair of the Goods without Seller's written approval or where the Goods have been subject to corrosion or have been misused, mishandled or improperly installed;
- (c) Seller shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price of the defective part of the Goods has not been paid by the due date for payment;
- (d) the above warranties do not extend to the supply of soft goods required to inspect or maintain any part of the Goods supplied;
- (e) the above warranties do not extend to parts, materials or equipment not manufactured by Seller in respect of which Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Seller;
- (f) Seller shall be under no liability if Buyer makes any further use of the Goods after giving notice in accordance with clause 5.5.

5.4 Any claim by Buyer which is based on any defect in the quality of the Services shall be notified to Seller as soon as possible within the warranty period. Failure by Buyer to give such written notice within the applicable time period specified above shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Seller's liability is limited solely to correct performance of that portion of the Services found by Seller to be defective or at Seller's option, refunding to Buyer purchase price allocable to the nonconforming part of the Services.

5.5 Any claim by Buyer which is based on any defect in the quality or condition of the Goods or their failure to respond to specification shall be notified to Seller within 30 days from the date of Delivery or (where the defect or failure was not apparent on a reasonable inspection) within a reasonable time, but not later than 14 days, after discovery of the defect or failure during the warranty period. Failure by Buyer to give such written notice within the applicable time period

specified above shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Buyer shall only have the right to reject Goods that do not conform to Seller's warranties.

5.6 Seller must receive written notice of any defect within the warranty period and be given a reasonable opportunity to examine the Goods and all information available so that Seller can detect the root cause of any defect. In case of a defect Seller at his own choice is entitled but also obliged to either remedy the defect or to deliver defect-free products. Seller at least has two attempts for rectification. If this rectification fails or if Seller refuses supplementary performance Buyer is entitled to either reduce the purchase price or to withdraw from contract. Rectification measures or delivery for the defective product does not lead to an extension of the warranty period. For Goods not installed by Seller, Buyer shall be responsible for removal, return and reinstallation costs.

5.7 Before returning any Goods to Seller, Buyer must contact Seller for a return authorisation confirmation and provide a failure report detailing the claimed warranty defect or failure. Upon return confirmation, Buyer will return the Goods to Seller, freight prepaid. After Seller verifies that the Goods were nonconforming or defective under this clause 5, Seller will credit Buyer for the cost of returning the Goods. Unless approved in advance by Seller, Seller shall not be liable for any transportation charges for the return of the Goods nor any other costs or charges incurred by Buyer. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period.

5.8 Subject to this clause 5, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER WITH RESPECT TO THE GOODS AND/OR SERVICES, whether the Goods are used alone or in combination with any other material. BUYER IS NOT AUTHORISED TO MAKE ANY WARRANTY OR ASSUME ANY OBLIGATION OR LIABILITY ON SELLER'S BEHALF IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF THE GOODS. Seller's warranties shall not be enlarged by, nor shall any obligation or liability of Seller arise due to, Seller providing technical advice concerning processing, further manufacture, other use or resale of the Goods provided hereunder.

## **6. LIMITATION OF LIABILITY**

6.1 This clause sets out the entire financial liability of Seller (including any liability for the acts of omissions of their respective employees, agents and subcontractors) to Buyer in respect of (i) any breach of the Contract howsoever arising, (ii) any use made or resale of the Goods by Buyer, or of any product incorporating any of the Goods; and (iii) any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract.

6.2 NOTHING IN THIS CONTRACT SHALL LIMIT OR EXCLUDE SELLER'S LIABILITY FOR (I) DAMAGE TO LIFE, BODY AND HEALTH, (II) FOR CLAIMS RESULTING FROM THE GERMAN PRODUCT LIABILITY ACT, (III) FOR WILFUL BREACH OF CONTRACT, (IV) FOR GROSS NEGLIGENT BREACH OF CONTRACT OF ITS BODIES AND MANAGERS, (V) FRAUDULENT INTENT AS WELL AS FOR BREACH OF GUARANTEE (BESCHAFFENHEITSGARANTIE) OR OTHER LIABILITIES WHICH CANNOT BE EXCLUDED BY LAW.

6.3 IRRESPECTIVE OF CLAUSE 6.1 AND IRRESPECTIVE OF THE LEGAL BASIS SELLER IS LIABLE ONLY FOR NEGLIGENT BREACH OF SUCH CONTRACTUAL OBLIGATIONS WHICH ARE OF PARTICULAR IMPORTANCE FOR THE ATTAINMENT OF THE PURPOSE OF THE CONTRACT AND FULFILLMENT OF WHICH BUYER REGULARLY CAN EXPECT.

6.4 THE COMPLETE LIABILITY UNDER THIS CONTRACT PURSUANT TO CLAUSE 6.3 SHALL IN NO EVENT EXCEED THE CONTRACT PRICE OF THE GOODS OR SERVICES SOLD UNDER THE CONTRACT. THIS LIMITATION ALSO APPLIES FOR DAMAGES RESULTING

FROM GROSS NEGLIGENT BEHAVIOUR OF EMPLOYEES AND AUXILIARY PERSONS NOT BEING MEMBER OF A COMPANY BODY OR MANAGERS OF THE SELLER.

6.5 WITH RESPECT TO CLAUSE 6.3 LIABILITY FOR ALL CONSEQUENTIAL OR PECUNIARY LOSSES (E.G. LOSS OF PROFIT) (*FOLGE- UND VERMÖGENSSCHÄDEN (Z.B. ENTGANGENER GEWINN)*) IS EXCLUDED.

6.6 All Seller liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period. These limitations do not apply for all cases mentioned in Section 6.1 and in Sec. 438 para. 1 no. 2 and Sec 634a para. 1 no. 2 German Civil Code (*BGB*). Warranty claims lapse pursuant to Sec. 5.1 of these General Terms and Conditions.

6.7 If Buyer is supplying Goods or Services to a third party, or using Goods or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Clause 6, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this clause 6.

6.8 The following terms (“a” through “c”) apply specifically to all projects involving nuclear applications:

(a) Buyer (including for the purpose of this clause Owner/Operator) agrees to hold harmless, indemnify and keep indemnified Seller (for and on behalf of itself and each of its group undertakings, and their respective officers and employees) (each an Indemnified Person) from and against all losses, liabilities, obligations, claims (including claims from third parties), demands, damages, penalties, expenses and fees suffered or incurred by Seller or any other Indemnified Person, arising out of any actual or alleged nuclear damage caused by the Goods or which otherwise occurs in consequence of the performance of or failure to perform the Contract, whether by Seller, or any sub-contractors of Buyer or Seller, and any actual or alleged nuclear damage arising in consequence of any activities from time to time carried out in relation to the Contract, whether or not resulting from the negligence of Seller.

(b) Buyer undertakes to provide and to maintain, or procure that Owner/Operator of the site provides and maintains, throughout the operational life of the site and for ten years thereafter, insurance covering nuclear damage. Such policy will be placed with recognised international Nuclear Pools (Liability and Property) on industry standard terms, will provide for all suppliers and sub-suppliers to be covered as additional insured and will include a waiver of subrogation for the benefit of Seller. Buyer will pay any deductible applicable to such insurance (or, as applicable, procure that Owner/Operator pays such deductible). Buyer will provide a copy of the insurance certificate to Seller upon written request.

(c) In this clause, the term “liability” means any form of liability or obligation whatsoever including but not limited to liability for nuclear damage (as defined below) and liability for misrepresentation, under contract, common law, equity or any statutory provision whether or not based on negligence or breach of any express or implied duty to act with care or skill. The term “nuclear damage” means injury or death to persons and damage to any property or facility and/or damage or harm to the environment, natural resources, flora and fauna (and including the property and/or facility of Buyer and Owner/Operator and/or the site) arising out of or resulting from radioactive, toxic, explosive or other hazardous properties (or any combination of such properties) of any nuclear matter in connection with which the Goods are directly or indirectly used, including but not limited to ionizing



radiation or contamination by radioactivity from any nuclear fuels, radioactive products or any nuclear waste from the combustion of nuclear fuels coming from, originating in, or sent to, any site at which the Goods are to be installed and/or used, whether or not such injury, death or damage results from the negligence of Seller.

## **7. CHANGES**

7.1 Each party may at any time propose changes in the schedule or scope of Goods or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

7.2 The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made on account of a general change in Seller's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

7.3 Seller reserves the right to change or modify the design and construction of any of its products, in due course of its manufacturing procedure, without incurring any obligation to furnish or install such changes or modifications on products previously or subsequently sold. Seller also reserves the right to amend the specifications of the Goods if required by any applicable statutory or regulatory requirements.

## **8. TERMINATION AND SUSPENSION**

8.1 Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) makes an assignment for the benefit of its creditors, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

8.2 Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) makes an assignment for the benefit of its creditors or (ii) materially breaches the Contract, including, but not limited to, a breach by the Buyer of clauses 10 or 12, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions and Buyer, after appropriate period of time set by the Seller, does not eliminate such breach.

8.3 If the Contract (or any portion thereof) is terminated, Buyer shall pay Seller for all Goods completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract price applicable to uncompleted made-to-order Goods and 15% of the Contract price applicable to all other uncompleted Goods. Buyer is entitled to provide evidence that Seller's actual damage is lower.

8.4 Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is a Force Majeure Event (as described in clause 9) lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable →

under clause 8.3, excluding the cancellation charge for uncompleted Goods unless acts or omissions of Buyer or its contractors or suppliers cause the delay.

8.5 Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension (including a suspension as a result of a Force Majeure Event (as described under clause 9), including, but not limited to, expenses for repossession, fee collection, demobilisation/remobilisation, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

## **9. FORCE MAJEURE**

9.1 A Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict;
- (d) imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) any direction, request, requirement or obligation (whether or not having the force of law) of any monetary agency, central or other bank, or financing institution;
- (g) nuclear, chemical or biological contamination or sonic boom;
- (h) collapse of buildings, fire, explosion or accident; and
- (i) interruption or failure of utility service

provided it has complied with this clause 9, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. The Affected Party shall (a) as soon as reasonably practicable after the start of the Force Majeure Event and to the extent it is legally able, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract and Seller shall also advise of the effect of the Force Majeure Event on the price of the Goods to be supplied and (b) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## **10. ETHICS**

10.1 Buyer represents and warrants to Seller and Seller represents and warrants to Buyer, that both Parties and all persons or entities providing goods and/or services in connection with this Contract in any manner will comply with all applicable laws, statutes and regulations and any internal policies concerning anti-bribery and corruption, conflict of interest, money laundering, labour standards, and other laws that may be implicated in connection with this transaction. It is the intent of the Parties to prohibit participation in or facilitation of any form of public-sector or private-sector corruption, kickback, extortion, or any other illegal, unethical or improper means of obtaining or retaining a business advantage or inducing anyone to misuse his or her discretion.

10.2 If, during the term of the Contract, either Party knows or becomes aware of any facts or circumstances contrary to the representations and the warranties above, said Party will immediately notify the other Party and provide sufficient information for the affected Party to take appropriate protective or corrective actions, which may include voiding or rescinding the Contract. The notifying Party further agrees to cooperate fully in any investigation undertaken by the affected Party.

10.3 If requested, both Parties agree to show evidence of an ethics or code of conduct program or otherwise acknowledge in writing that their respective employees are aware of their obligations under this clause.

## **11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

11.1 Buyer acknowledges that the intellectual property in the Goods and/or Services is Seller's property and that nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of Buyer in relation to such intellectual property.

11.2 Seller's documentation, prints, and drawings ("Documents") (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with the Contract are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Notwithstanding the foregoing, Buyer may use the Documents as is necessary in the installation, operation, maintenance, and repair of the Goods sold under this Contract but may not disclose them to any third party without the prior written consent of Seller.

11.3 Seller warrants that the Goods sold pursuant to the Contract, or their use as provided below, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid patent in existence in the country where the Goods are installed as of the date of delivery. This warranty is given upon condition that Buyer (i) promptly notifies Seller in writing of any claim or suit involving Buyer in which such infringement is alleged, (ii) makes no admission of liability and does not take any position adverse to the Seller, (iii) gives Seller sole authority to control defence and settlement of the claim, and (iv) provides Seller with full disclosure and reasonable assistance as required to defend the claim. Seller's warranty as to use only applies to infringements arising solely out of the inherent operation (i) of such goods, or (ii) of any combination of goods sold hereunder in a manner designed by Seller.

11.4 Should any Goods, or any portion thereof, become the subject of a claim notified under clause 11.3, Seller may at its option (i) procure for Buyer the right to continue using the Goods, or applicable portion thereof, (ii) modify or replace it in whole or in part to make it non-infringing, or (iii) failing (i) or (ii), take back infringing Goods and refund the price received by Seller attributable to the infringing Goods, without being liable for any further damages.

11.5 This clause 11 states Seller's exclusive liability for intellectual property infringement by Goods.

11.6 Buyer agrees, at its expense, to indemnify Seller against any claim for infringement of any intellectual property rights arising out of Goods made or Services provided by Seller in compliance with Buyer's designs, specifications or instructions.

11.7 Buyer undertakes to Seller to keep confidential all information (written or oral) disclosed by Seller to Buyer or otherwise acquired during the course of the performance of the Contract except information that is subject to an obligation to disclose under law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise, or already in its possession other than as a result of a breach of this clause or in the public domain other than as a result of a breach of this clause.



## **12. EXPORT COMPLIANCE**

12.1 Buyer agrees to comply, at its own expense, with all applicable export control laws and regulations which control the Goods and/or Services it purchases from Seller, including, without limitation, the U.S. Export Administration Regulations, U.S. International Traffic in Arms Regulations, U.S. Nuclear Regulatory Commission Regulations, U.S. Office of Foreign Asset Control regulations, EU Regulation 428/2009, the export control regulations of the individual European countries, Swiss Goods Control Ordinance GKV 946.202.1, Korean Notice on Trade of Controlled Items and/or the Japanese Foreign Exchange and Foreign Trade Law regulations, all as amended or superseded from time to time and as applicable to this transaction. Buyer shall not import, export or re-export, or authorise the export or re-export any Goods procured under this Contract or any other goods, technology, or information that it obtains or learns from Seller under this Contract, or any copy or direct product thereof, in violation of any of such laws, restrictions, or regulations or without any government license or authorisation required thereunder. Any and all obligations of Seller to provide Goods, Services, technology or information hereunder shall be subject in all respects to such laws, restrictions, and regulations.

12.2 Without limiting the foregoing, any commodity, technology, or software provided by Seller is prohibited for export, re-export, or transfer to Cuba, Islamic Republic of Iran, Democratic People's Republic of North Korea, Republic of Sudan, Republic of South Sudan or Syrian Arab Republic, as well as to persons or entities listed on restricted parties lists published by the governments of the U.S., EU, UK, Switzerland, Japan or Korea as applicable to this transaction. Buyer shall immediately notify Seller if Buyer is, or becomes, listed in any restricted parties list or if Buyer's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency. Additionally, any commodity, technology, or software provided by Seller is prohibited for export, re-export, or transfer to any person or entity which will use it for end-uses proscribed by any relevant export control regulations, including chemical and biological weapon, missile, nuclear, maritime nuclear propulsion, and terrorism related activities.

12.3 Buyer agrees to indemnify and hold harmless Seller from any and all fines, claims, damages, losses, costs and expenses (including reasonable attorney's fees) incurred by Seller as a result of any breach of this clause 12 by Buyer.

12.4 Performance of this Contract is contingent upon Seller obtaining any necessary government approvals, including, but not limited to, any required export licenses or required authorisations. Buyer acknowledges that failure to receive a required approval by the relevant government(s) to proceed with an export or transfer of technology excuses Seller from performing the Contract and delivering under the order.

## **13 MISCELLANEOUS**

13.1 Seller is a member of the group of companies whose holding company is IMI plc and accordingly, Seller may perform any of its obligations to exercise any of its right hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act of omission of Seller.

13.2 The validity, interpretation and performance of this Contract and any dispute connected herewith shall be governed and construed in accordance with German law, excluding any conflicts of laws principles and excluding the United Nations Convention on Contracts for the International Sale of Goods.

13.3 Any dispute or claim arising from or in connection with this Contract, including any question regarding its existence, validity or termination, shall first be settled through discussion between the Parties upon the written request of any Party. In the event that no settlement is reached within forty five (45) days after any such written request, the courts of Germany shall have exclusive jurisdiction

to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation.

13.4 This Contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement and supersedes any price or contemporaneous oral or written communications between the parties concerning the goods supplied hereunder.

13.5 No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by the acknowledgement or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance with or in addition to those set forth herein.

13.6 No waiver by either Seller or Buyer with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressed in a writing signed by the party to be bound.

13.7 Buyer shall not (by operation or law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation without such consent shall be void.

13.8 If any provision or part-provision of the Contract or these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract or these terms and conditions.