

General Terms and Conditions of Sale & Delivery of e+a Elektromaschinen und Antriebe AG - Projects

§ 1 General

- 1.1** These General Terms and Conditions of Sale and Delivery (these “Terms”) are applicable to the sale, and delivery of all products and the performance of all services by e+a Elektromaschinen und Antriebe AG (“e+a”) to any customers (the “Customers” and each, individually, “Customer”) and to all related transactions between e+a and Customer.
- 1.2** All quotations, offers and proposals made by e+a may be revoked by e+a at any time for any or no reason. No Customer order, request or instruction (or any specifications, technical or other requirements, drawings, or targets proposed by Customer) shall be binding upon e+a until accepted in writing by e+a, including by fax transmission or email (such accepted order, request or instruction, a “Confirmed Order”). These Terms together with the Confirmed Order constitute the entire agreement between e+a and Customer with respect to the products (the “Products”) or services (the “Services”) described in the Confirmed Order (collectively, this “Agreement”). Unless explicitly stated otherwise in any Confirmed Order, in the event of a conflict between the provisions of a Confirmed Order and the provisions of these Terms, the provisions of these Terms shall prevail.
- 1.3** e+a shall sell and deliver to Customer the Products and/or perform the Services pursuant to the terms and conditions of the Confirmed Order and those specified below. No other terms or conditions, whether communicated orally or in writing shall be of any effect unless otherwise explicitly agreed in writing by e+a. Any additional or different terms or conditions contained in any writing delivered by Customer to e+a at any time, including without limitation any general terms and conditions of Customer, shall be deemed rejected by e+a and shall be of no force or effect even if such terms and conditions have not been expressly rejected by e+a. Unless Customer shall have notified e+a in writing within five [5] days after receipt of the Confirmed Order, these Terms shall be deemed accepted by the Customer.
- 1.4** No changes, modifications or supplements to any Confirmed Order shall be binding on e+a unless such change, modification or supplement shall have been accepted in writing by e+a.



§ 2 Prices

- 2.1** Unless otherwise agreed in writing by e+a, all prices for the Products are subject to change without prior notice; provided that the price or fees set forth in a Confirmed Order may not be changed, except (a) in the event of an increase in the price of raw materials for a Product after the date of such acceptance; or (b) by mutual written agreement of e+a and Customer. In the event e+a requests a price increase pursuant to the foregoing clause (a), it shall promptly notify Customer the reason for such request. Any price increase so requested shall be deemed accepted by Customer unless Customer shall have objected thereto in writing within fourteen [14] days. If Customer has objected to such price increase, the parties shall negotiate in good faith a mutually acceptable adjustment to the price, scope or other terms of such Confirmed Order. If the parties are unable to reach an agreement within thirty [30] days of Customer's objection, either party may terminate the applicable Confirmed Order effective immediately by written notice to the other. In such event, Customer shall reimburse e+a for its reasonable costs and expenses incurred in connection with such Confirmed Order prior to the date of termination.
- 2.2** Prices in catalogs or brochures are not binding on e+a unless confirmed in writing by e+a. Unless otherwise agreed in writing between the parties, all prices are net of applicable VAT, sales or other similar taxes, Ex Works (per Incoterms 2010) and exclusive of packaging, transport, delivery, assembly, installation, set up, customer system analysis, measurements, meetings, NRE costs, complementary services, initial commissioning and acceptance costs.

§ 3 Delivery

- 3.1** Customer understands that all shipping and delivery dates are estimates and shall not be binding on e+a unless explicitly agreed otherwise in writing by e+a. Except as otherwise specified in these Terms, Products shall be sold and delivered EX WORKS (per Incoterms 2010) e+a's facility, Kaufmann AG Elektromotorenbau, Aeussere Kanalstrasse 31, 5013 Niedergösgen Switzerland. Title to and risk of loss for the Products shall pass to Customer upon delivery thereof to any common carrier at such facility. In no event shall any loss, damage, injury or destruction after delivery to a common carrier at e+a's facility release Customer from its obligation to make any payments when due pursuant to this Agreement.
- 3.2** e+a shall not be liable for any delay or failure to perform caused by any Force Majeure. In the event a Force Majeure shall render e+a's performance of this Agreement impossible or commercially unreasonable, e+a may terminate this Agreement without any further liability to Customer. If a Force Majeure shall continue for more than one hundred eighty (180) days, Customer may terminate this Agreement by written notice to e+a. "Force Majeure" shall include, but not be limited to, any act of government, act of nature, fire, floods, strikes, work stoppages, accidents, casualties, inability to procure supplies or raw materials on commercially reasonable terms, delay or shortage in transportation, civil unrest, hostilities, war or other causes beyond e+a's





reasonable control.

- 3.3** If Customer fails to accept delivery of any Products or performance of any Services pursuant to this Agreement due to reasons beyond e+a's control, Customer shall nonetheless be liable for the payment to e+a of the entire purchase price and/or fees for such Products and/or Services and all other applicable payments in connection therewith. If Customer wrongfully rejects or revokes acceptance of Products or Services, fails to make payment of any amounts when due, or repudiates this Agreement, in whole or in part, e+a may withhold or stop delivery of any Products or performance of any Services, cancel this Agreement and/or sue for damages or specific performance, at e+a's sole option.
- 3.4** e+a shall have the right to make partial deliveries of Products or perform Services partially and the right to make changes and modifications to the Products or Services at any time; provided, however, that Customer shall only be required to accept delivery or performance of such changed or modified Products or Services to the extent that such changes or modifications have no material impact on the nature and use of the Products or Services.
- 3.5** e+a's obligations pursuant to this Section 3 are subject to the timely performance of all of Customer's deliverables and obligations pursuant to the applicable Confirmed Order, including without limitation the timely delivery of all information necessary to design and manufacture the Products or to perform the Services. If Customer causes a delay in the delivery of Products or the performance of Services or any part thereof, e+a, in its sole option, may extend the period of delivery or performance by a reasonable period or cancel the Confirmed Order with respect to such Products or Services. Customer shall reimburse e+a for all costs and expenses incurred by e+a as a result of such delays.
- 3.6** Notwithstanding any prior acceptance of a Confirmed Order by e+a, e+a shall have no obligation to deliver Products or perform Services to Customer or otherwise perform any of its obligations pursuant to this Agreement if Customer is in breach or violation of, or default under, this Agreement or any other agreement between the Customer and e+a.

§ 4 Transportation

- 4.1** Customer shall solely be liable for all cost of transportation of Products, including without limitation, insurance, duties, charges incurred at the point of destination such as spotting, storage, switching, and loading charges.



§ 5 Taxes

- 5.1** The amount of any sales, use, value added (VAT) or other similar tax or duty, however designated, levied or based on the price for the Products or Services payable or required to be collected by e+a shall be added to the price and paid by Customer together with the price for such Products or Services. If Customer claims an exemption from such tax or duty Customer shall provide e+a with appropriate exemption certificates or other documents acceptable to e+a in its sole discretion.

§ 6 Terms of Payment

- 6.1** Payment for Products or Services is due within thirty (30) days from the date of an invoice. Payment must be made by Customer when due without offset, deduction or counterclaim. Past due amounts are subject to a monthly service charge at a rate equal to the lesser of eight percent (8%) per annum or the maximum rate permitted by applicable law.

§ 7 Credit

- 7.1** Delivery of Products or provision of Services by e+a to Customer shall be subject to receipt of cash or availability of credit arrangements made by Customer with e+a. If payment is not made when due in accordance with these Terms, or if at any time, in e+a's sole and absolute judgment, Customer's credit standing has been impaired, e+a may withhold, defer, suspend or cancel the delivery of any Products or the provision of any Services until Customer has made cash payments or credit arrangements satisfactory to e+a in its sole and absolute discretion. If Customer fails to make such payment or credit arrangements, or comply with the terms of any such credit arrangement, e+a may, without waiving any other remedies it may have against Customer, terminate any or all Confirmed Orders then in place in whole or in part without further liability on e+a's part.

§ 8 Security Interest

- 8.1** As security for the timely performance of Customer's payment obligations pursuant to this Agreement, Customer hereby grants to e+a a first priority security interest (the "Security Interest") in all Products delivered by e+a from time to time, wherever located, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) from the foregoing whether now existing or hereafter arising (the "Collateral"). The Security Interest shall remain in force until Customer's satisfaction in full of all amounts due to e+a by Customer pursuant to this Agreement.



8.2 e+a shall be entitled to file any and all financing, continuation or similar statements under the Uniform Commercial Code in any jurisdiction and take any and all other action necessary or desirable, in e+a's sole and absolute discretion, to perfect the Security Interest and to establish, continue, preserve and protect such Security Interest. Customer agrees to take any and all actions and provide e+a with all information necessary to enable e+a to perfect and enforce the Security Interest in all jurisdictions and vis-à-vis any of Customer's creditors.

§ 9 Inspection and Testing

9.1 Customer shall inspect the Products within ten (10) days of delivery for any visible damage or defect and compliance with the specifications, if any, set forth in the Confirmed Order, and Customer shall notify e+a within seven (7) days of such inspection of any non-conformity visible damage or defect of such Products. Prior to any use, application of any Products, or integration of such Product in any other product or equipment, Customer shall test the suitability of such Product for such use, application or integration.

9.2 Customer shall communicate its acceptance of a Model Product (as defined in Section 10.1) in writing to e+a; provided that, notwithstanding the foregoing, Customer's order of Products based on a Model Product shall constitute acceptance of such Model Product in all respects.

§ 10 Product and Service Warranty

10.1 For a warranty period of twelve (12) months from the date of shipment of the Products to Customer (the "Product Warranty Period"), e+a warrants that (a) Products, other than Products that are evaluation models or prototypes (the "Model Products"), substantially comply with e+a's published specifications (if any), are subject to the limitations set forth in Section 10.5 and are substantially free from defects in materials or workmanship; and (b) Model Products are substantially free from defects in materials or workmanship. Customer acknowledges and agrees that Model Products are subject to the limitations set forth in Section 10.5 and may only be used for Customer's evaluation and/or testing purposes and may not be sold or otherwise made available to any third parties for any purpose, and Customer assumes all responsibility for the use of any Model Product for any purpose.

10.2 For a warranty period of twelve (12) months from the completion of any Services performed by e+a for Customer (the "Service Warranty Period" and together with the "Product Warranty Period," the "Warranty Period"), e+a warrants that the Services are diligently performed by sufficiently qualified personnel in a workmanlike manner. The warranty pursuant to this Section 10.2 shall not be available for any recommendation, advice or other observation e+a may give in connection with the sale of Products or performance of any Services. Any such recommendation, advice



or observation is given AS IS WITHOUT ANY WARRANTY WHATSOEVER.

- 10.3** The limited warranty pursuant to this Section 10 is subject to the proper storage, transportation, installation, use, and absence of any modification, or alteration of the Products. Failure to follow e+a's written instructions with respect to any Products or work product delivered by e+a in connection with any Services (the "Work Products"), and any modification, alteration, improper use or installation, or unauthorized repair of, or tampering with, the Products voids the limited warranty set forth in this Section 10. The limited warranty set forth in this Section 10 is not available if a defect is caused by damage or destruction of a Product resulting from the action or inaction of any person other than e+a, environmental conditions, chemical contamination or physical impact, operating the Products in inappropriate environments, by acts of Nature or other events beyond e+a's control (e.g., power surges disruptions, insufficient cooling systems, voltage peaks, inappropriate grounding, stray or extra losses, partial discharge effects, overload, inappropriate converter configuration, insufficiently testing of systems in which the Products or Work Products are integrated or for which they are used, improper handling, assembly or storage or corrosive media). The limited warranty set forth in Section 10.2 is not available if Customer or any third party uses the Services or any Work Product for any purposes other than those intended or explicitly authorized in writing by e+a.
- 10.4** All warranty claims must be made by Customer in writing within seven (7) days of the discovery by Customer of such claim and, in any event, prior to the end of the applicable Warranty Period.
- 10.5** Unless expressly agreed by e+a in writing, e+a provides no warranty whatsoever that the Products (a) may be used for a specific purpose, in a specific application, under specific environmental or operating conditions, or in any other manner not explicitly confirmed in writing by e+a; or (b) comply with applicable law, rules, regulations in any jurisdiction in which the Products may be sold or used. Without limiting the generality of the foregoing, any specifications, performance data or contained in data sheets and other documentation are good faith estimates based on reasonable technical and other assumptions. The actual specifications, performance, operating temperature, safety and life cycle of the Products depend on environmental and operational conditions and other factors, including without limitation control methods and system components, the end-product in which Products are integrated, frequency converter used, ambient temperature, cooling, wear and tear of elements and components, Customer's product and product design, additional losses in Customer's products, the ability of Customer's product or the end-product to remove heat due to any losses occurring in any component of the system, in which Products are integrated, any extra losses resulting in a reduced performance, duty cycles, current and voltage functions, grounding for high frequency signals, power supply, applied frequencies, and other factors beyond e+a's control. Customer shall be solely responsible to test, verify and confirm the adequacy, performance and safety of the Product and its components for Customer's desired purpose. **Accordingly, e+a cannot provide any representations or warranties as to, and does not certify, the performance, safety or life cycle or appropriateness of use of the Products under the conditions in which the Products are used by Customer. None of e+a's**



employees, agents or representative are authorized to make any representations to the contrary, and e+a hereby disclaims any and all liability for any such representations.

- 10.6** Any governmental or other approvals necessary in connection with a (re)sale, marketing, distribution or use of the Products shall be the sole responsibility of Customer.
- 10.7** EXCEPT AS EXPRESSLY SET FORTH HEREIN, E+A MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCTS, WORK PRODUCTS OR SERVICES, AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED. No representative of e+a is entitled to modify any of the representations or warranties set forth herein or make any additional representations or warranties with respect to the Products or Services, whether orally or in writing, and no such modified or additional representations or warranties shall be binding on e+a.
- 10.8** To obtain repairs of Products, whether under warranty or otherwise, Products or components must be shipped, freight paid, to e+a Kaufmann AG Elektromotorenbau, Aeussere Kanalstrasse 31, 5013 Niedergösgen, Switzerland. Upon repair or replacement of the defective or non-conforming Products, e+a shall have no further obligation to Customer with respect to such defect or non-conformity. e+a shall not be liable for transportation charges for the return of Products unless agreed in advance in writing by e+a.

§ 11 Indemnification

- 11.1** Customer agrees to diligently defend, hold harmless and indemnify e+a and its directors, officers, employees, shareholders, affiliates, agents and representatives (the "e+a Indemnitees") from and against any and all liabilities, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorneys', consultants' and experts' fees and expenses, and court costs when and as incurred (the "Losses"), arising directly or indirectly out of: (a) any use of the Products or Work Products, whether authorized or unauthorized and, whether the Products are used alone or in combination with other products or equipment, and irrespective of whether such claim alleges personal injury, product liability, strict or absolute liability, breach of contract or warranty, or any other claim of any nature on any theory of recovery (except to the extent such Losses directly result from a breach of e+a's limited warranty pursuant to Section 10, or e+a's gross negligence or willful misconduct); (b) any breach or misrepresentation of any of Customer's representations, covenants or other terms contained in this Agreement; (c) the improper use, storage, handling, transportation, modification or alteration of the Products or the improper use of any Work Product by Customer or any third party; or (d) a design or specification which is provided by or on behalf of Customer.



- 11.2** e+a agrees to diligently defend, hold harmless and indemnify Customer and its directors, officers, employees, shareholders, affiliates, agents and representatives (the “Customer Indemnitees” and together with the “e+a Indemnities,” each an “Indemnitee” and, collectively, the “Indemnitees”) from and against any and all Losses arising directly or indirectly out of (a) e+a’s strict liability, negligence or willful misconduct with respect to any product liability claims (provided that neither (i) a Model Product’s failure or defect resulting from, or arising in connection with, its use or handling (alone or in combination with other products or equipment) nor (ii) a Model Product’s failure to comply with Customer’s or e+a’s specifications shall under any circumstances be deemed to be attributable to any negligence or willful misconduct of e+a); or (b) any breach or misrepresentation of any of e+a’s representations or covenants or other terms contained in this Agreement; provided that e+a’s obligations pursuant to this Section 11.2 shall be subject to all of the limitations set forth in these Terms.
- 11.3** Each Indemnitee shall promptly notify a party that may have indemnification obligations under this Section 11 (an “Indemnitor”) of any claim, suit or proceeding; provided, however, that any failure by such Indemnitee to provide prompt written notice hereunder shall excuse the Indemnitor only to the extent that the Indemnitor is prejudiced by such failure to give notice. The Indemnitee shall cooperate with the Indemnitor with regard to the defense of any lawsuit or threatened lawsuit. The Indemnitor may assume control of the defense of any claim, proceeding or lawsuit and shall have the authority to settle or otherwise dispose of any such lawsuit or threatened lawsuit, and to appeal any adverse judgment which may be entered, except that the Indemnitor shall obtain the Indemnitee’s prior written consent to any settlement unless the settlement involves solely the payment of money and all of such payment is payable by the Indemnitor, its insurers, and parties other than any Indemnitees.
- 11.4** The Indemnitor shall notify an Indemnitee in writing within 10 days of the Indemnitor’s receipt of knowledge of any accident or safety incident involving the Products which results in personal injury or damage to property, or any governmental or similar investigation, claim or inquiry involving the Products. The Indemnitor shall fully cooperate with each Indemnitee in the investigation and determination of the cause of any such accident or incident, and shall make available to each Indemnitee all statements, reports and tests made by the Indemnitor or made available to the Indemnitor by others. The furnishing of such information to an Indemnitee and any investigation by an Indemnitee of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by an Indemnitee, nor shall it affect the indemnification obligations above.
- 11.5** Customer represents and warrants that it has in place customary insurance and liability waivers to cover the use and operation of the Products by Customer’s personnel, customers, and third-party users, and e+a represents and warrants that it has in place the necessary insurance to cover product liability. In addition, each of e+a and Customer represents and warrants to the other that it maintains customary insurance to support the indemnification obligations assumed by it in these Terms.



§ 12 Limitation of Liability

- 12.1** Except as otherwise expressly set forth herein or as provided by applicable mandatory law, Customer's sole and exclusive remedy, and e+a's sole and exclusive liability, for (a) defective or non-conforming Products shall be, at e+a's option, the repair or replacement of the Products; (b) defective or non-conforming Services shall be, at e+a's option, the reperformance of such Services or the return or waiver of the portion of the fees that would be payable by Customer for such defective or non-conforming Services; and (c) defective or non-performing Work Products shall be, at e+a's option, the redesign of such Work Products or the return or waiver of the portion of the fees that would be payable by Customer for such defective or non-conforming Work Products.
- 12.2** Except as expressly set forth in Section 11.2 or as provided by applicable mandatory law, e+a shall not be liable to Customer or any third party for any Losses (including without limitation personal injury or property damages) arising out of the use of Products or Services, whether alone or in combination with any other products or equipment. Without limiting the generality of the foregoing, e+a assumes no liability, and Customer shall be solely liable, for any Losses whatsoever resulting from (a) the use or handling of any Model Product, whether in accordance with e+a's instructions or otherwise, or (b) the failure of such Model Product to comply with Customer's or e+a's specifications.
- 12.3** Except as provided by applicable mandatory law, e+a shall not be liable to Customer or any other person for losses arising out of or in connection with the Products, Services or Work Products in excess of the purchase price or fees received by e+a for such Products, Services or Work Products. It is agreed and acknowledged that the provisions of these Terms allocate the risks between e+a and the Customer in a fair and equitable manner, e+a's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, e+a would not have entered into these Terms.
- 12.4** In no event, except as provided by applicable mandatory law, shall e+a be liable to any person for indirect, incidental, consequential, punitive or other non-compensatory damages (including but not limited to loss of profits or goodwill, or additional expenses incurred), whether pursuant to a claim in contract, tort or otherwise and whether in an action for breach of warranty or otherwise.
- 12.5** In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.
- 12.6** With respect to any costs, damages, interest or claims adjudicated against e+a by a court or arbitration tribunal located outside of Switzerland or applying other laws than the laws of Switzerland, e+a shall only be liable to the extent it would have been liable pursuant to the internal laws of Switzerland, and, as between Customer and e+a, any liability in excess of any liability so adjudicated to e+a shall be borne by Customer.



§ 13 Proprietary Rights

- 13.1** All of e+a's specifications, technical data, layouts, models, designs, sketches, blueprints and patterns incorporated in, or used to design or manufacture, the Products or otherwise provided to Customer are the proprietary information of e+a and shall be held in strict confidence by Customer and may not be disclosed to third parties. Customer hereby agrees not to utilize any such information in any way or to manufacture or have manufactured any products which are identical or similar to the Products.
- 13.2** Unless otherwise agreed in any Confirmed Order, all drawings, documents, studies, reports, analyses, specifications, layouts, models, designs, sketches, blue prints, patterns, and all technical information related thereto which are specifically developed by e+a for Customer (the "Work Product") in connection with any Services shall remain the exclusive property of e+a. Customer explicitly acknowledges that the fees paid by Customer for any Work Product constitute only compensation for time spent, and not consideration for any intellectual property or other rights in, or exclusivity as to, any Work Product.
- 13.3** Notwithstanding any agreement with Customer to the contrary, e+a shall retain all right, title and interest in and to all discoveries, inventions, know-how, patents, patent applications, trade secrets, trademarks, proprietary materials, methods, processes, techniques, technical documents and specifications, documentation, electronic code, data and rights (a) owned by, or licensed to, e+a prior to the start of the Services or the development of any Product, or (b) developed or created by e+a after the commencement of any Services or the development of any Product without the use of Customer's confidential information or proprietary rights, or (c) which have general applicability for purposes other than the Products or the Work Products (the foregoing, collectively, the "Background IP"). e+a hereby grants to Customer a non-exclusive, fully paid-up, worldwide, sub licensable license to use the Background IP to the extent necessary to use the Products or the Work Products for the purpose specified in the Confirmed Order.
- 13.4** Unless otherwise agreed in writing, each of e+a and Customer agrees not to disclose proprietary information which is received from the other party in connection with the Services to be performed or Products delivered by e+a, unless (a) otherwise required by law or judicial Confirmed Order, or (b) the receiving party can prove that such information has been known to it prior to receipt. Without limitation, each of the parties agrees (i) to use such information only for its intended purpose; (ii) not to disclose such information to any third party without the other party's prior written consent; and (iii) to return or destroy - subject to compliance with applicable laws and regulations - all copies of such information, whether in paper form or stored electronically at the other party's request.
- 13.5** Neither party may issue press releases or scientific publications containing confidential or proprietary information of the other party without the other party's prior written permission.



§ 14 Miscellaneous

- 14.1** These Terms and all claims arising out of or related to these Terms, including tort claims, shall be governed by and construed in accordance with the laws of Switzerland without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Switzerland. All disputes and/or legal proceedings related to these Terms shall exclusively be maintained in the federal or state courts with jurisdiction in Aarau/Kanton Aargau, and each party waives any and all defenses against the jurisdiction of such courts, including without limitation the defense of *forum non convenience*; provided that either party shall be entitled to seek injunctive relief in any court of competent jurisdiction in the event of the other party's breach of such other party's proprietary rights or of any of the provisions of Section 13. In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney's fees, expert witness fees, and any other costs incurred to bring or defend such action. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THESE TERMS.
- 14.2** In the event of a violation or threatened violation of Section 13 by either party or a violation of either party's proprietary rights, the other party shall have the right, in addition to such other remedies as may be available pursuant to law or these Terms, to seek temporary or permanent injunctive relief enjoining such act or threatened act without the need to post any bond or security. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that such other party would suffer irreparable harm as a result of such violation.
- 14.3** If any provision contained in these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.
- 14.4** Customer may not assign its Confirmed Order or any right or interest therein or any other obligation arising hereunder without the prior written consent of e+a. No assignment shall relieve the assignor of any of its obligations under this Agreement.
- 14.5** The waiver by e+a of any breach or violation of these Terms by Customer shall not be construed as a waiver of any other existing or future breach or breaches by Customer.



- 14.6** The parties hereto are independent contractors and nothing in these Terms shall be construed as creating a joint venture, partnership, employment or agency relationship between the parties.
- 14.7** These Terms shall apply to all sales of Products and the provisions of all Services to Customer and shall survive the termination or cancellation of the Confirmed Order or any other agreements between e+a and Customer, including but not limited to development or supply agreements.

§ 15 Dealing with the SARS-CoV-2 virus pandemic

These Terms are being implemented in the midst of the global spread of the coronavirus Covid-19. Due to these circumstances and with no awareness of how the situation will develop, the parties accept that it may not be possible to adhere to the delivery date stated. For this reason, the parties agree that this delivery date is not binding and can be adjusted insofar as at least one of the following events occurs:

- as a result of measures ordered by the Swiss authorities, the supplier has to limit or stop production. The reason for limiting or stopping production must be directly or indirectly connected to the virus, its spread, preventing its further spread, etc. (e.g. direct official measures, many cases of infection amongst the supplier's workforce, measures to comply with the supplier's duty of care to its workforce, etc.);
- a component or material bought-in by the supplier can only be obtained with a delay. This is irrespective if the reason for the delay is due to the sub-supplier, to a third party (e.g. other suppliers in the supply chain, interruption in the supply chain for material) or to restrictions in logistics (e.g. limited transport capacities);
- a component or material bought-in by the supplier is not available in sufficient quantity despite searching for alternatives. The supplier is released from the search for alternative sources of supply, if the component or material can only be obtained from a single supplier;
- the additional cost of procuring a component or material exceeds 10% of the usual purchase price, insofar as this component or material cannot be replaced by a cheaper alternative of the same quality;

After the lifting of the last measure by the Swiss authorities, the supplier cannot start up production to the extent needed for reasons directly or indirectly connected to the virus, its spread, preventing its further spread, etc. (e.g. direct official measures, many cases of infection amongst the supplier's workforce, measures to comply with the supplier's duty of care to its workforce, etc.).

If any one of these events occurs, the supplier shall not be considered in default on expiry of the delivery date and thus no consequences of default shall apply. No contractual penalty, compensation for damages nor any other indemnification shall be owed. The parties shall agree a new later delivery date taking adequate account of the circumstances. If no agreement can be reached, the delivery date shall be automatically postponed by the time from the occurrence of the first event to the cessation of the last



event.