

## **GENERAL TERMS OF SALE of weControl SA**

### **ARTICLE 1 – DEFINITIONS**

**1.1** In these General Terms of Sale (“General Terms”) and in the associated Proposal hereto the following definitions shall apply (where the context permits the singular shall include the plural and vice versa):

**1.2** “**weControl**” means weControl, acting under the legal entity, which is submitting the Proposal and subsequently entering into an ensuing Contract.

**1.3** “**Contract**” shall mean the agreement between weControl and the Customer for the purchase and sale of the Works pursuant to Article 4, comprising: (i) weControl Proposal, including documents, if any, incorporated by express references and the acceptance thereof by the Customer in accordance with Article 4.1; or (ii) the order by the Customer and weControl’s acceptance thereof in accordance with Article 4.2.

**1.4** “**Customer**” shall mean the company, public authority or organisation to which the Proposal is addressed.

**1.5** “**Day**” shall mean calendar day.

**1.6** “**Deliverables**” shall mean all goods, materials, supplies, equipment, products, hardware or data system software (if not declared as Services).

**1.7** “**FAT**” shall mean a factory acceptance test in accordance with the test procedures and acceptance criteria agreed in the Contract or, in case no such specific test procedures and acceptance criteria have been defined, weControl’s quality test procedures with regard to a factory acceptance test.

**1.8** “**Intellectual Property Rights**” or “**IPR**” shall mean patents, trademarks, service marks, logos, trade names, copyrights (including rights in computer software in object and source code), rights in designs, utility models, rights in know-how and any other intellectual property rights, in each case whether registered or unregistered.

**1.9** “**Party**” or “**Parties**” shall mean Customer and/or weControl as the context may require.

**1.10** “**Proposal**” shall mean the written offer by weControl to the Customer that (i) is either marked as binding or non-binding; (ii) includes all documents incorporated by express reference, and (iii) details the price, scope, quantities, specifications and delivery period of the Works and other relevant information.

**1.11** “**Services**” shall mean all training, maintenance, integrated logistic support, program management, engineering, installation, commissioning and other services.

**1.12** “**Works**” shall include without limitation all Deliverables and/or Services (whether or not ancillary to the sales of goods) that are offered by weControl in the Proposal and furnished to the Customer in performance of and pursuant to the ensuing Contract.

### **ARTICLE 2 – SCOPE OF APPLICABILITY AND GENERAL OBLIGATIONS OF EACH PARTY**

**2.1** These General Terms form an integral part of the Proposal and apply to any delivery or performance of Works by weControl, unless otherwise agreed by weControl in writing.

**2.2** In case of a Contract formation pursuant to Article 4, weControl agrees to supply and/or render and the Customer agrees to pay for the Works in accordance with the terms and conditions set forth herein.

**2.3** It is expressly understood and agreed that weControl may use subcontractors and/or suppliers for the performance of its obligations under the Contract at its own discretion.

### **ARTICLE 3 – SCOPE OF WORK**

**3.1** The scope, quantities, specifications and delivery period of the Works are set forth in weControl’s Proposal or Proposal confirmation. Any change thereto is subject to weControl’s written consent and may in particular have an impact on prices and delivery schedule. In the absence of any specific requirement, the Works shall adhere to the specifications generally applicable to similar goods or services provided by weControl.

**3.2** Any documentation including marketing material provided by weControl to the Customer prior to the conclusion of the Contract, including but not limited to drawings, sketches, brochures, indications of weight or measurements, calculations, etc. are not deemed part of the Contract, unless specifically referenced to in the Contract.

**3.3** Notwithstanding the aforesaid provisions, weControl shall be entitled to make minor modifications to the Works or provide new versions or models of individual Works provided that such modifications and/or new versions meet the requirements of the Contract.

## **ARTICLE 4 – FORMATION OF CONTRACT**

**4.1** In case of a Proposal explicitly marked by weControl as binding, the Contract shall come into force upon receipt by weControl of the Customer's written acceptance of the binding Proposal, and, if agreed, the receipt by weControl of the associated payment in accordance with Article 5.6 below. Under no circumstances shall any conflicting or additional, disclaiming terms in Customer's order acknowledgement or similar document be binding on weControl.

**4.2** An order placed by the Customer based on a non-binding Proposal (an invitation to offer) or an order placed by the Customer which is deviating from the binding Proposal proposed by weControl shall constitute a binding offer, which weControl is free to accept within 6 (six) weeks of receipt thereof, by way of written confirmation. No such order shall be deemed accepted unless and until confirmed in writing by weControl. If accepted by weControl, the Contract shall come into force upon receipt by the Customer of such confirmation, and, if agreed, the receipt of the respective advance payment and the confirmed opening of the letter of credit at full value, in accordance with Article 5.6 below.

**4.3** Any change to the Contract shall not become effective, unless agreed by both Parties in writing.

**4.4** In the event of any inconsistencies or conflicts between these General Terms and other documents forming part of the Contract, the following order of precedence shall apply:

- (a) Any written agreement between the Parties where the Parties explicitly agree that any of the provisions of these General Terms and/or the Proposal should be superseded;
- (b) The Proposal;
- (c) The General Terms;
- (d) The order by the Customer.

**4.5** No variation to these General Terms shall be binding unless agreed in writing between the Parties. Any varying terms proposed by the Customer in its order or any other document shall not become part of the Contract.

**4.6** No Proposal acceptance or order by the Customer which has been accepted by weControl in accordance with this Article 4 shall be cancelled, varied or suspended by the Customer except with the agreement in writing of weControl and on terms that the Customer shall indemnify weControl in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by weControl as a result of such cancellation, variation or suspension.

## **ARTICLE 5 - PRICING AND PAYMENT**

**5.1** All prices are expressed and all payments for the Works shall be made in US Dollars (USD).

**5.2** Prices are exclusive of any import/export value-added-taxes, stamp duty or equivalent taxes levied on account of sales in or upon importation into the country where they will be used. In order to ensure the application of tax-exemptions the Customer shall be obliged to provide weControl with the essential information and documents.

**5.3** Payment for the Works shall be made as follows:

Except and to the extent otherwise stipulated, payment is due 30 days from date of invoice. Payments are made by bank transfer. weControl may at any time demand advance payment, satisfaction security, such as a confirmed and irrevocable letter of credit or a guarantee of prompt payment, prior to shipment. Such a payment shall not necessarily constitute payment in full.

**5.4** In the event of any delay in payments, the Customer shall pay interest without reminder on the amount delayed at the rate of 6% above the actual discount rate of the National Bank at the place of his business with effect from the agreed date on which the payment was due.

Any partial payments received shall first be applied to cover accrued interest, if any, and thereafter credited to cover the principal amount outstanding.

**5.5** Without prejudice to Article 5.7, a delay or failure to pay shall also entitle weControl, all rights and actions reserved, to defer any supply of Works in progress until payment is completed.

**5.6** All payments to be made by the Customer to weControl shall be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, duties, charges or fees.

**5.7** The quoted prices are based upon the scope, specification and quantity of the Works referred to in the Proposal and shall not be treated as divisible. In the event of any variation requested by the Customer from the Proposal in, inter alia, the scope, specification, delivery dates or quantity of the Works ordered, weControl reserves the right to vary the quoted prices.

**5.8** In the event of any newly enacted or change in any existing applicable laws (including but not limited to tax laws), statutes, decrees, ordinances, regulations or rules in the Customer's or end-customer's country after

weControl's submission of the Proposal that leads to an increase of the prices and/or costs of weControl; the prices offered in the Proposal or agreed in the ensuing Contract shall be adjusted accordingly.

## **ARTICLE 6 - DELIVERY TERMS, RISK AND TITLE**

**6.1** All supply of Deliverables shall be affected Ex-Works (EXW) Courtelary departure (air)port in accordance with Incoterms® 2010. Risk of loss and damage in the Deliverables shall pass to the Customer in accordance with the above stated Incoterm.

**6.2** If Deliverables are to be shipped by weControl, any freight or packaging costs shall be charged separately. Any transport damages shall be notified by the Customer to weControl and the shipment company in writing immediately upon receipt of delivery at the agreed place.

**6.4** Subject to the exception stated in Article 15 below, the title in the Deliverables shall pass to the Customer upon full payment of the Contract price. The Customer is not entitled to lien the Deliverables or transfer title therein for purposes of security. If a third party nevertheless acquires any rights into the Deliverables, the Customer already now assigns any and all rights in and to the Deliverables resulting thereof to weControl. The Customer is obligated to immediately notify weControl if in relation to the Works a lien, an attachment or other disposition is made by a third party.

## **ARTICLE 7 - DELIVERY SCHEDULE AND DELAYS**

**7.1** The Parties shall agree on the overall delivery schedule in the Contract, indicating the relevant time periods and dates for the delivery, installation, testing, commissioning and rendering of the Works. In the absence of such express agreement, weControl shall perform its obligations hereunder as soon as reasonably practicable.

## **ARTICLE 8 - ACCEPTANCE AND INSPECTION**

**8.1** Where Deliverables are supplied to the Customer and no assembly, installation, erection or commissioning is contracted:

(a) The Customer is obliged to inspect the Deliverables and shall notify weControl within 1 (one) week after receipt of the Deliverables if there are any defects to it. Such notification of defects shall be accompanied with relevant supporting evidence.

(b) If the Customer (i) fails to notify weControl of the defects within 1 (one) week after receipt of the Deliverables; or (ii) the Deliverables are put to use by the Customer for commercial or other purposes other than testing, the Deliverables shall be deemed to be accepted by the Customer.

**8.2** Where assembly, installation, integration, erection or commissioning of the Deliverables is contracted:

(a) The Customer shall accept the Deliverables and the associated Services within 2 (two) weeks as of the date when weControl declares that the Deliverables are ready for acceptance. In case the Customer rejects acceptance for non-compliance with the acceptance criteria, all failures and discrepancies identified during the acceptance process shall be immediately reported in writing by the Customer to weControl.

(b) The Deliverables and the associated Services shall be deemed to be accepted by the Customer if (i) the Deliverables are put to use by the Customer for commercial or other purposes other than testing; or (ii) the Customer fails to accept the Deliverables within the 2 (two) weeks period without providing any written reasons or specific details of such rejection.

(c) Prior to FAT and delivery, the Parties shall agree on specific acceptance criteria and testing procedures for the Deliverables which shall serve as the basis for the acceptance.

**8.3** The Customer shall not be entitled to withhold acceptance for (a) minor deviations or deficiencies which do not materially affect the functioning of the Deliverables; or (b) defective installation or erection not carried out by weControl and/or its subcontractors; or (c) reasons that are not within the reasonable control of weControl. In case of not passing an acceptance test, only the failed test cases will be repeated.

**8.4** Any costs and expenses related to the inspection and/or acceptance of the Deliverables shall be borne by the Customer.

## **ARTICLE 9 - WARRANTY**

**9.1** weControl warrants that it will perform the Services where required with reasonable care and skill and that the Deliverables shall correspond with their contractually agreed specification at the time of delivery and will be free from defects in material and workmanship under normal use and service for a period of 12 (twelve) months ("Warranty Period") from the date of delivery of the Deliverables in accordance with Article 7.1 or any other delivery date as explicitly agreed between the Parties.

**9.2** Any Deliverables being replaced or repaired under warranty shall not result in an extension of the Warranty Period.

**9.3** Any warranty obligation of weControl shall lapse in case:

- (a) Of any defect in the Deliverables arising from any drawing, design or specification supplied by the Customer; or
- (b) Of use of the Deliverables by the Customer before acceptance; or
- (c) Of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow weControl's instructions (whether oral or in writing), misuse or alteration or repair of the Deliverables without weControl's approval or improper or inadequate maintenance by the Customer; or
- (d) Of minor deviations from the drawings, design or specifications supplied by weControl's, insignificant deviations from the agreed quality or minor impairment of usability which do not materially affect the use of the Deliverables (which shall not be considered to be a defect); or
- (e) The Deliverables have been used in a manner or under a circumstance or for a purpose not reasonably to be inferred by weControl or disclosed to weControl prior to entering into the Contract; or
- (f) Where the Deliverables consist of software: for non-reproducible software errors.

**9.4** weControl's sole liability with regard to defects in the Deliverables during the Warranty Period shall be to either repair or replace the defected Deliverables (or the relevant parts thereof) at weControl's sole discretion free of charge, or to refund to the Customer the price of the defective Deliverables.

**9.5** Article 9 sets out the sole and exclusive remedy of the Customer for all warranty claims during the Warranty Period.

**9.6** If not otherwise agreed between the Parties, the defective parts shall be returned by the Customer in suitable packaging to weControl Carriage and Insurance Paid (CIP), agreed place, in accordance with Incoterms® 2010. The cost of reshipping to the Customer (weControl Carriage and Insurance Paid (CIP), agreed place, in accordance with Incoterms® 2010) shall be borne by weControl, except in cases as described in Article 9.3 where the costs shall be borne by the Customer.

## **ARTICLE 10 – SOFTWARE**

**10.1** weControl guarantees that software can be operated under the specified computer operating systems, or in the case of embedded software, the specified platform. weControl does not grant warranty for functionality, completeness, accuracy or timeliness. The purchase or provision of software provides the right for use on one system only. The software may not be reproduced, copied, re-engineered or transmitted in any way whatsoever.

## **ARTICLE 11 - FORCE MAJEURE**

**11.1** weControl shall not be liable to the Customer or deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Works, if the delay or failure was due to force majeure. For the purposes of this Article, force majeure shall mean any unforeseen event beyond the reasonable control of weControl, such as, but not limited to, any act of God, hostilities between nations, war, riot, civil commotions, insurrection, blockades, embargoes, national emergency, earthquake, fire, flooding, or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material and supply.

**11.2** Where there is a force majeure event, weControl shall be entitled to an extension of the contractually agreed delivery dates by such further periods as may reasonably reflect the delay caused by such force majeure event.

**11.3** Without prejudice to the other provisions of the General Terms, where the force majeure continues for more than 180 (one hundred and eighty) days, weControl shall have the right to terminate the Contract. In such a case, weControl shall be reimbursed by the Customer for Works already performed/delivered in accordance with the agreed Contract prices, cost of other materials or goods reasonably ordered, any other expenditure reasonably incurred in the expectation of completing the Works as well as the reasonable costs for removal of weControl's equipment and demobilization of personnel.

## **ARTICLE 12 - LIABILITY**

**12.1** weControl is not liable for any direct or indirect damages, including material or personal injuries that could occur from the use of the Works provided by weControl. In particular, weControl is not responsible for any mis-operation, for mechanical deficiencies, for any errors occurring during the flights, for crashes or crash landings. This includes damages or injuries that could occur during the training. In order to guarantee optimal operation and reliability of the products and systems, all components have to be maintained and looked after according to the

given guidelines. It is up to the buyer to obtain any flight allowances needed for the operation of systems provided by weControl.

**12.2** weControl, including its personnel, shall not be liable for any loss of profit (actual or anticipated), loss of use, loss of production, loss of contracts, loss of opportunities, loss of revenue, cost of capital, cost of replacement, loss of reputation, loss of information or data, loss from any third party contract, loss due to business interruption or any indirect, incidental, special or consequential losses or damage arising from or in connection with its performance or non-performance under the Contract and whether based upon contract, tort or any other legal theory.

**12.3** The limitations and exclusions of liability pursuant to this section shall not apply in cases of gross negligence or wilful misconduct, and if and to the extent such liabilities are determined by law (such as the Product Liability Act) or as a result of a guarantee providing for liability regardless of negligence or fault.

## **ARTICLE 13 – EXPORT CONTROLS**

**13.1** An act of Government or any public authority, which has a consequence that the Works may not be supplied, e.g. non-issuance, restriction and/or revocation of export, import or other required licenses, permits, or authorizations, export or import regulations or embargoes, constitutes a cause of Force Majeure as per the provisions of Article 11.

**13.2** The Customer agrees not to export or re-export, as the case may be, any Works (including any hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision and including any kind of technical support) to any other country without obtaining the necessary licenses and permits that may be required under any applicable legislation. weControl shall be entitled to terminate the Contract if the Customer is in violation of applicable rules and regulations.

## **ARTICLE 14 - CONFIDENTIALITY**

**14.1** Each Party shall keep in confidence all material and information received from the other Party, and marked as confidential or which should be understood to be confidential, and shall not disclose it to third parties or use it for any other purposes than those set out in the Proposal or the ensuing Contract, without the prior written permission of the disclosing Party. Each Party will use the confidential information at its own risk.

**14.2** Each Party shall limit disclosure of confidential information to individuals within its own organization, including its Affiliates, to external counsels, service providers or to advisors on a "need to know" basis only and provided that such recipient has taken any necessary measures to ensure compliance with the undertakings of this Contract. The receiving Party shall in no event use a lower degree of care in safeguarding the disclosing Party's Information than it uses for its own information of like sensitivity and importance and in any case not less than reasonable care.

**14.3** The obligations set forth in this Article 14 shall bind the Parties for an indefinite period from the date of disclosure of confidential information and such obligations shall survive the termination or expiration of the Proposal or the ensuing Contract.

## **ARTICLE 15 - INTELLECTUAL PROPERTY RIGHTS**

**15.1** Notwithstanding the Customer's rights under this Contract, all rights, titles and interests in and to all Intellectual Property Rights of whatever nature arising out of or related to any Works vest in, and shall be the sole and exclusive property of weControl or its third party licensors, whether or not specifically recognized, registered or finalised under the applicable law.

**15.2** weControl shall grant the Customer a limited, non-exclusive, non-transferable royalty-free right to use such Intellectual Property Rights as stipulated in Article 15.1 to the extent required for complying with the purpose of the Contract. Unauthorized copying shall be strictly prohibited, however, subject to permission, reasonable back-up copies of each user loadable program and any related update or revision in order to replace an authorised existing copy may be made. Any other copying, translation, modification, adaptation, decompilation, disassembly or reverse engineering of any Works shall be prohibited, unless otherwise ruled by the mandatory provisions of law. For COTS ("Commercial-Off the Shelf") supplies the licensing conditions of the COTS producers shall prevail.

**15.3** Subject to the conditions and limitations set forth below, weControl undertakes to indemnify the Customer for any costs, losses or damages finally awarded by a competent court in the applicable jurisdiction or by weControl approved settlement amounts arising from the infringement of Intellectual Property Rights of third parties by the Works, provided that in case of any claim of infringement, the Customer shall immediately notify weControl in writing and afford weControl every possibility to, at weControl's option (and at no cost to the Customer), modify the Works so as to make it non-infringing, to obtain a license from the owner of the right that is alleged to be infringed by Works and/or to defend itself against the claim of infringement. In the event that none of the above is commercially reasonable, then weControl shall have the right to pay back the amounts paid by the Customer for the infringement.

**15.4** The obligation for indemnification as stipulated in Article 15.3 shall not apply in cases where (and to the extent that) the claim for infringement is based on any unauthorized modification of the Works, combination of the Works with other equipment (whether hardware or software) not supplied by weControl, use of the Works for purposes

other than that they were designed for or in conjunction with other equipment not supplied by weControl or if the infringement results from compliance by weControl with any part of the specification that is a mandatory requirement of the Customer and which is not commercially and/or technically reasonably capable of being complied with without infringement of the IPR on which the third party has based its claim. The same exception as stated in the preceding sentence shall apply in cases where the infringement claim is asserted by an Affiliate of the Customer.

**15.5** To the extent that a third party makes a claim of infringement against weControl based on the exceptions specified in the foregoing Article 15.4 above, the Customer shall indemnify weControl in respect of any costs, losses or damages arising out of such action, subject to the same conditions (*mutatis mutandis*) as specified in subparagraph 15.3 above.

**15.6** In the event that software that is included in the Works contains third party components which weControl has licensed under generally used "open source" license terms, the terms of the Contract shall apply to those components to the extent that they do not conflict with the "open source" license terms. If necessary, the Customer agrees to sign a license agreement with the licensor of such software.

**15.7** weControl total liability for infringement of any and all Intellectual property Rights in the Works shall be limited to a maximum amount of 10% of the total value of the contract.

## **ARTICLE 16 – PROTECTION OF INFORMATION**

**16.1** For the purpose of the Contract, weControl might collect and process information relevant to data protection regulations. In any case, weControl commits to take the appropriate technical and organisational measures to ensure that the processing of the personal data responds to the requirements of the "Swiss Federal law on Data protection" ("General Data Protection Regulation") and to ensure to the Customer the protection of its rights under such regulation. weControl shall make available to the Customer all the necessary information to demonstrate the respect of the aforementioned regulation. weControl commits to inform the Customer in case of any violation of the regulation or any provision related to Data Protection.

## **ARTICLE 17 - APPLICABLE LAW AND DISPUTE RESOLUTION**

**17.1** The Contract including this dispute resolution clause shall be **governed by and construed in accordance with the laws of Switzerland** with the exception of its conflict of law provisions. The Parties expressly exclude the application of the International Sales of Goods Act (the "CISG"). interpretation, performance, breach or termination) that the Parties cannot settle amicably within 30 (thirty) Days from the date of written notice of the dispute from either of them to the other shall be exclusively referred to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") in effect on the date of this Contract, by one (1) or more arbitrator(s) appointed in accordance with said Rules. Where the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court") determines that three arbitrators shall be appointed, the two party-appointed arbitrators shall jointly nominate a Chairman within 15 (fifteen) Days of their appointment by the ICC Court. All proceedings shall be conducted in the English language. The place of the arbitration shall be Zurich, Switzerland, or such other location as the Parties may mutually agree. The award of the arbitral tribunal shall be final and binding on both Parties and both Parties waive the right to any appeal under any system of law, to the fullest extent possible. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. Notwithstanding the foregoing, either Party may seek and obtain temporary injunctive relief from any court of competent jurisdiction against any breach by the other Party of its obligations under the Contract.

## **ARTICLE 18 - MISCELLANEOUS**

**18.1** Any notice to be served by either Party upon the other shall be deemed to have been duly given 2 (two) Days after being sent to the intended recipient at its last known address by pre-paid first class post or its last known number or email address 1 (one) Day after being sent by telefax or by email.

**18.2** If any provision in these terms shall be found or held to be void, the validity of the remaining provisions shall not be affected thereby. The replacing provision and any other required modification shall be subject to new negotiations between the Parties.

**18.3** Neither Party shall assign or transfer to any third party, without the prior written consent of the other Party the Contract or any part thereof.

**18.4** The relationship between weControl and the Customer during the term hereof shall be solely that of vendor and vendee; the Customer, its agents, employees, representatives or affiliates shall under no circumstances be deemed agents or representatives of weControl, and the Customer and said agents, employees, representatives or affiliates shall have no right to enter into any contracts or commitments in the name of or on behalf of weControl or to bind weControl in any respect whatsoever.

**18.5** No waiver by weControl of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions. If weControl delays, targets or chooses not to enforce its rights under the Contract, it shall not affect its right to do so at a later stage.