



**GENERAL TERMS AND CONDITIONS- NORTH AMERICA  
EQUIPMENT  
(2022 Edition)**



## 1. DEFINITIONS

1.1. The following definitions apply throughout these General Terms (definitions hereinafter listed in alphabetical order):

1.2. **Affiliate:** means any company, or other legal entity, directly or indirectly Controlling, Controlled by, or under common Control with another company or legal entity;

1.3. **Business Days:** any day other than a day which is a public holiday in the Country where the principal or the Contractor respectively have their registered office;

1.4. **Compliant Equipment, or Compliant,** when referred to an Equipment: the Equipment delivered by the Contractor to the Principal if and to the extent the such Equipment (i) is free from any defect in design, material and workmanship, and (ii) fully compliant with the Equipment Manufacturing Standard Requirements, the Equipment Specs and any applicable Regulatory Requirements;

1.5. **Contract:** a specific contract duly executed by and between the Principal and the Contractor for having an Equipment designed and manufactured by the Contractor and then sold to the Principal, which sets forth contractual provisions which are specific to such Equipment and incorporates by reference these General Terms, together with any relevant Technical Documentation;

1.6. **Control:** the terms "Controlling", "Controlled" and "Control" mean (i) ownership, direct or indirect, of more than fifty (50) percent of the voting rights in a legal entity, or (ii) the power to appoint or elect a majority of the directors of in a legal entity, or (iii) the power to direct the management of a legal entity. Any such legal entity shall be considered an Affiliate for only such time as such voting rights or powers are maintained;

1.7. **Contractor:** the company identified as signatory at the end of these General Terms and/or to whom an Order from the Principal is addressed and/or the company signatory of a Procurement Contract;

1.8. **Contractor Technical Documentation:** both (i) any and all the documentation that the Contractor is required to keep at its own premises under any applicable Regulatory Requirements to prove that the Contractor designed, developed and manufactured the Equipment strictly in accordance with any Regulatory Requirements in force in the Country where the Equipment is manufactured by the Contractor or in the Country where the Equipment shall be installed and operated by the Principal, including any documentation requested in accordance with foreign law, export controls regulations and customs regulations also with reference to the country of origin of the Products; and (ii) the technical documentations concerning the design of the Equipment and the technical instructions for operating and maintaining the Equipment;

1.9. **Defective Equipment:** any Equipment which, after starting to be operated by the Principal, does not comply with the warranty terms and conditions set forth in Article 13 below;

1.10. **Equipment:** any equipment to be designed, developed and manufactured by the Contractor pursuant to and in accordance with the terms, conditions and specifications set forth in a Procurement Contract;

1.11. **Equipment Manufacturing Standard Requirements:** the manufacturing target requirements, as they are specified in a Procurement Contract, that, after its installation, the Equipment shall assure during its standard operational life;

1.12. **Equipment Price:** the amount that the Principal pays to the Contractor as overall consideration for any and all the Procurement Activities that the Contractor performs under a given Procurement Contract;

1.13. **Equipment Release Dossier:** the report on the results of the testing operations performed on the Equipment in accordance with Article 10 below;

1.14. **Equipment Specs:** the Equipment's technical and technological specifications, as they are identified in a Procurement Contract;

1.15. **Final Acceptance:** The written final acceptance issued by the Principal after completion



and issuance of a positive Equipment Release Dossier and after receipt of Contractor Technical Documentation;

1.16. **General Terms:** these Procurement General Terms and Conditions (Equipment);

1.17. **Labor and Environmental Regulatory Requirements:** any applicable mandatory local laws and regulations concerning (i) labor relationships that the Contractor shall be bound to comply with and to apply to its employees during the execution of the Procurement Activities, including the compliance with the rules defined in the International Standards SAI 8000 (Social Accountability International)(collectively "Labor Regulatory Requirements") and (ii) protection of the environment from any sort of pollution caused by industrial activities (Environmental Regulatory Requirements");

1.18. **Order:** the Principal's written instruction, as issued by the Principal and delivered to the Contractor, either by mail or by electronic means, via internet, to design, develop, and manufacture an Equipment, providing contractual provisions which are specific to the procurement of such Equipment, incorporating these General Terms, together with any relevant Principal Technical Documentation;

1.19. **Order Variation:** the Principal's written instruction to introduce a modification or a change to the Equipment under development, as per Article 8 below;

1.20. **Party(ies):** each and both the Principal and the Contractor;

1.21. **Procurement Contract:** either (i) an Order and the Contractor acceptance of such Order, either express or implied, without addition, deletions and/or conditions whatsoever or (ii) a Contract; both the Order or the Contract providing the specific terms and conditions that govern the procurement of an Equipment;

1.22. **Principal:** means Marelli North America Inc. and/or its Affiliates, or Marelli Ride Dynamics Mexico S. de R.L. de C.V.;

1.23. **Principal Personal Data:** means the information, in any form, that is provided to Contractor by or on behalf of the Principal that alone, or in combination with other information: (a) is considered personal data or personal identifiable information under the applicable data privacy laws; or (b) identifies or could be reasonably used to identify an individual data subject, including names, addresses, email addresses, telephone numbers, tax code , government identification numbers or any other personally identifiable information;

1.24. **Principal Technical Documentation:** (i) any and all the drawings, 3D models (in soft and/or hard copy), technical and qualitative specs, technical and qualitative standards, charts, planning, procedures and guidelines and similar documentation prepared by the Principal in connection with the design, development, delivery and installation of an Equipment and/or to be applied by any and all the Contractors to which the Principal awards a Procurement Contract, as made available to the Contractor, by delivering them, or making them available to the Contractor, by giving access to Principal's web-site where such Technical Documentation may be down-loaded by the Contractor, and (ii) any further technical documentation relevant to the Equipment, as identified in a Procurement Contract;

1.25. **Procurement Activities:** any and all the activities that the Contractor performs in accordance with a Procurement Contract and these General Terms in order to design, manufacture and, if so required by the relevant Procurement Contract, install the Equipment at the premises of the Principal;

1.26. **Regulatory Requirements:** any and all the provisions of any laws and regulations which are in force, at the date of execution of the Procurement Contract, and/or that shall come into force at the date in which the Contractor delivers and/or installs the Equipment, in the country where the Equipment shall be installed and shall be then operated by the Principal and in the country where the Equipment is actually manufactured by the Contractor, including but not limited to Labor and Environmental Regulatory Requirements and safety and health laws and regulations;

1.27. **Subsidiaries:** companies in which another company has, directly or indirectly, the majority of votes exercisable at a shareholders' meeting;



## **2. APPLICATION OF THE GENERAL TERMS**

2.1. These General Terms are intended to set forth the terms and conditions that, together with the specific terms, conditions and specifications set forth in any Procurement Contract, shall govern the procurement of any given Equipment to be designed, developed, manufactured by the Contractor and then purchased by the Principal.

2.2. These General Terms, as supplemented by a Procurement Contract, are the only terms and conditions upon which the Principal is prepared to deal with the Contractor for purchasing an Equipment to the entire exclusion of all other terms or conditions.

2.3. No terms or conditions endorsed upon, delivered with or contained in the Contractor's quotation, acknowledgement or acceptance of Order, specification or similar document shall form part of any Procurement Contract and the Contractor waives any right which it otherwise might have to rely on such terms and conditions.

2.4. These General Terms shall be effective from the date of their signature by the Contractor and shall apply to any Procurement Contract already in force upon such date. It is understood between the Parties that, unless otherwise agreed, for all the Procurement Activities that the Contractor will put in place in favor of the Principal, these General Terms will be tacitly renewed between the Parties and be valid for any new Contract.

2.5. The Principal conducts business with Contractors in different countries around the world ("Countries"). There may be Countries where the Principal has adopted Country-specific general purchasing terms and conditions ("Local GTCs"). The Local GTCs, where existing with reference to a specific Country, shall apply to any and all Principal's Subsidiaries incorporated under the law of the Country to which the Local GTCs make reference to, and to their respective local Contractors. In such case the Local GTCs, where specifically countersigned by the local Contractor, shall prevail over these General Terms in order to regulate relations between the Principal and the Contractor in the referenced Country.

## **3. ENTRUSTING THE CONTRACTOR FOR THE PROCUREMENT OF THE EQUIPMENT**

3.1. By executing a Procurement Contract, the Principal shall entrust the Contractor for the execution of the Procurement Activities, and the Contractor shall accept such entrustment, subject to any and all the terms and conditions stated in these General Terms.

3.2. Any Order issued by the Principal and delivered to the Contractor shall be deemed to be accepted by the Contractor either (i) upon the Principal's receipt of the Contractor's written acceptance, or (ii) if the Contractor fails to deliver a written notice of refusal no later than 5 (five) Business Days from the date in which the Contractor receives the relevant Order.

## **4. THE CONTRACTOR STATUS OF INDEPENDENT CONTRACTOR**

4.1. The Contractor hereby represents and warrants the following:

4.1.1. The Contractor shall sign any Procurement Contract only after (i) having assessed the technical and technological specifications to be met by the Equipment, its expected functionalities and its manufacturing performance, and the Contractor's ability to design and manufacture an Equipment that meet them and (ii) having properly evaluated any and all the factors and situations which could affect the proper and timely deployment of the Procurement Activities.

4.1.2. By executing a Procurement Contract, the Contractor shall acknowledge its acceptance of the Equipment Manufacturing Standard Requirements and Equipment Specs and its ability to design, develop, manufacture, deliver and install the Equipment in accordance with such Equipment Manufacturing Standard Requirements and Equipment Specs and with any applicable Regulatory Requirements.

4.1.3. At the time in which the Contractor accepts to execute a Procurement Contract, the Contractor shall own and have available any and all the skilled personnel, the technical know-how and all the resources, including the financial resources, which are needed to properly and timely perform the Procurement Activities and deliver the Equipment.



4.1.4. During the term of a Procurement Contract, the Contractor (i) shall procure that its yearly Financial Statement are audited and certified by an auditing firm operating in accordance with the laws and regulations applicable in the Country where the Contractor is established, and (ii) shall deliver to the Principal such audited Financial Statements and any related financial information, that the Principal's may reasonably request for assessing the continuous Contractor's capability to timely and properly perform any and all the Procurement Activities.

4.1.5. When performing the Procurement Activities, the Contractor shall always comply with any and all the Regulatory Requirements concerning such Procurement Activities and the Equipment.

4.2 The Contractor hereby further represents and warrants that

4.2.1. The Contractor shall be exclusively liable for the way in which it shall manage the Procurement Activities and shall perform any of them at its own risk and as an independent Contractor and with its own organization, personnel and technical means;

4.2.2. When planning the deployment of the Procurement Activities, the Contractor shall pay due consideration to any events, situations and circumstances which may affect the orderly performance of the Procurement Activities, including but not limited to the required time schedule for completing the Procurement Activities and the date of delivery/installation/ start of operations of the Equipment;

4.2.3. The Contractor shall cooperate with the Principal, and any of its employees, officers, and third party representatives to implement any reasonable instructions, requests and directions that the Principal may issue in connection with a Procurement Contract and the performance of the relevant Procurement Activities.

4.3. Failure to comply with the above representations and warranties, (i) shall not exempt the Contractor from any Contractor's liability stated in these General Terms and/or in the procurement Contract, and (ii) shall made the Contractor liable to indemnify and hold harmless the Principal from any cost, damages and expenses whatsoever suffered by the Principal as a consequence of such failure.

## **5. THE CONTRACTOR'S OBLIGATION TO COMPLY WITH LABOR AND ENVIRONMENTAL REGULATORY REQUIREMENTS**

5.1. When performing the Procurement Activities, the Contractor (i) shall always comply with any applicable Regulatory Requirements, and (ii) in dealing with its employees shall always comply with any and all the applicable Labor Regulatory Requirements, including but not limited to those concerning prohibition of employing under-age workers, minimum wages and salaries, social and pension contributions, safety regulations, and moreover (iii) in managing its own industrial operations shall always comply with any and all the applicable Environmental Regulatory Requirements.

5.2. If and when so requested by the Principal, the Contractor shall provide and make available to the Principal any and all the documentation providing evidence that the Contractor complies with Labor and Environmental Regulatory Requirements, provided that, failing the Contractor to deliver such documentation within a term reasonably stated by the Principal, the Principal shall have the right to enforce any rights and provisions in Article 29 below.

## **6. THE CONTRACTOR'S OBLIGATION TO DELIVER COMPLIANT EQUIPMENT**

6.1. The overall commitment of the Contractor, and the final result of the Contractor's Procurement Activities, is to deliver Compliant Equipment within the time schedule set forth in the relevant Procurement Contract and in compliance with the operative rules of approval and acceptance, if any, that the Principal may provide to the Contractor . When Compliant an Equipment shall be of the best available design, of the best quality, material and workmanship, without fault and defect.

6.2. For the purpose of the above, the Contractor shall design, develop and manufacture the Equipment, and shall perform any and all the relevant Procurement Activities:



6.2.1. in accordance with any and all the provisions of the Procurement Contract and in compliance with the Principal Technical Documentation, provided always that the Contractor shall have the duty to perform any and all the further activities and/or to comply with any additional technical requirements that, while not expressly stated in the Procurement Contract and/or in the Principal Technical Documentation, (i) are currently applied by the manufacturers of equipment similar to the Equipment as the most updated "state of the art", and/or (ii) are part of the technical and technological know-how owned or available to the Contractor, and/or (iii) represent technical or technological innovations which, if introduced in the design of the Equipment, may contribute to achieve and to improve the Equipment Manufacturing Standard Requirements;

6.2.2. in compliance with and pursuant to any and all the applicable Regulatory Requirements and in accordance with the Equipment Specs; and

6.2.3. in a way to assure that the Equipment when installed and operated by the Principal performs in accordance with the Equipment Manufacturing Standard Requirements.

## **7. THE CONTRACTOR'S OBLIGATION TO DELIVER / INSTALL THE EQUIPMENT ACCORDING TO THE REQUIRED TIME SCHEDULE**

7.1. The Contractor shall deliver, and install, when so provided in the relevant Procurement Contract, the Equipment within the date for delivery, and, when required, for completing the installation, as specified in the Procurement Contract.

7.2. The Contractor acknowledges and recognizes that time for delivery and installation shall be of essence and that as a consequence of any delay the Principal shall suffer loss and damage. Consequently if the Equipment is not delivered, or installed, as the case may be, on the due date then, without prejudice to any other rights provided for herein or by any applicable law, the Principal shall have the right to recover from the Contractor, by way of liquidated damages (i) an amount equal to 0,5% (zero point five percent) of the Equipment Price for each of the two initial weeks, of part of it, and thereafter, if such delay continues uncured, (ii) an amount equal to 2% (two percent) of the Equipment Price for each following week of delay, up to a maximum amount of liquidated damages equal to 10% (ten percent) of the Equipment Price. The above is without prejudice to any and all rights and /or remedies in favor of the Principal provided by these General Terms and/or by any applicable Regulatory Requirements.

7.3. Upon accrual of liquidated damages equal to the 5% (five percent) of the Equipment Price, the Principal shall have the right to terminate the Procurement Contract in accordance with Article 29 in addition to any further contractual or legal remedy for the recovery of any damage, loss, cost or expense suffered or incurred by the Principal as a consequence of the Contractor's non-performance under any Procurement Contract and/or under any applicable Regulatory Requirements.

## **8. EQUIPMENT'S MODIFICATIONS AND CHANGES**

8.1. During the design, development and manufacture of the Equipment the Principal shall have the right to require the Contractor to introduce modifications and changes (i) needed to assure the delivery and/or installation of a Compliant Equipment and/or (ii) advisable to improve the operational performance of the Equipment, and the Contractor, subject to the provisions of Article 9 below, shall be bound to procure that such modifications and changes are introduced into the Equipment.

8.2. The Contractor shall introduce the above mentioned changes and/or modifications only after having received from the Principal an Order Variation issued by the Principal.

8.3. Modifications and changes introduced by an Order Variation shall not give cause to any variation to the Equipment Price other than when the additional cost for introducing such modifications and changes is stated in the relevant Order Variation.

8.4. Modifications and changes which cause a decrease, qualitative and/or quantitative, in the Procurement Activities and in the costs to be borne by the Contractor in performing them, shall give to the Principal the right to claim a proportionate decrease of the Equipment Price.



8.5. In no event modifications and changes which are required to comply with any Regulatory Requirements shall give to the Contractor the right to claim an increase in the Equipment Price.

## **9. DELIVERY AND /OR INSTALLATION**

9.1. The Contractor shall deliver, or install, as the case may be, the Equipment in accordance with the delivery terms and specifications and the timing set forth in the Procurement Contract, and shall promptly provide any required documentation in order to comply with the applicable Regulatory Requirements, including customs regulations and in any case according to Incoterms 2020 or other version of the Incoterms as agreed with the Principal, if any.

9.2. Unless prior written consent of the Principal is obtained, (i) Equipment's advanced delivery and/or installation, and/or (ii) installation of incomplete Equipment, is not permitted.

9.3. The Contractor shall ensure that, when it is delivered, the Equipment, or any part thereof, is accompanied by a delivery note which shows, among other things, the Contract number, or the Order number, as the case may be, the date of such Contract or Order, number of packages and contents and any other information as stated in the Procurement Contract.

9.4. If under the relevant Procurement Contract the Contractor is required to install the Equipment, then the Contractor shall install the Equipment at the Principal's premises stated in the Procurement Contract.

9.5. Prior to such installation the Contractor, in accordance with the Principal, (i) shall visit the Principal's premises in order to assess the procedures for installing the Equipment without causing any disruption to the normal activities performed at such Principal's premises and assuring that such installation is safely performed, and (ii) shall prepare, together with the Principal, any and all the safety plan, survey and documentation that, under any applicable Regulatory Requirements, the Contractor, alone or jointly with the Principal, is required to prepare.

9.6. During the installation of the Equipment at the Principal's premises of destination, the Contractor (i) shall carry out the Equipment's installation strictly in accordance with the planned safety plan and installation procedure, (ii) shall adopt, and have all its employees, and the employees of any authorized sub-contractors, operating the installation at the Principal's premises, adopting any and all the safety measures required by the applicable Regulatory Requirements and that are appropriate to assure that the installation is carried out in safe conditions, and (iii) shall cause all its employees, and the employees of any authorized sub-contractors, operating the installation at the Principal's premises to comply with the regulations and procedures in force at the Principal's premises where the Contractor installs the Equipment.

## **10. TESTING**

10.1. Upon delivery and/or installation of the Equipment, the Principal shall proceed, directly or through a third party, to test the Equipment in order to assess the Equipment compliance with the Equipment Specs, the Equipment Manufacturing Standard Requirements and any applicable Regulatory Requirements.

10.2. The Contractor shall always attend the testing operations, which shall be carried out either at the Contractor's premises or at the Principal's premises, as stated in the Procurement Contract or as otherwise agreed upon between the Parties at that time.

10.3. Each Party shall bear its own expenses in connection with the testing operations

10.4. Upon completion of the testing operations, the Principal, or its third party nominee, shall prepare, sign and deliver to the Contractor the Equipment Testing Report, either (i) confirming that the Equipment is Compliant, or (ii) stating any defectiveness or lack of compliance with the Equipment's Specs and/or Equipment Manufacturing Standard Requirements and/or the applicable Regulatory Requirements, and whenever possible, the reasons of such defectiveness or lack of compliance and the proposed remedial actions.



10.5. Within 10 (ten) Business Days from the receipt of the Equipment Testing Report, which term is of essence, the Contractor may submit in writing to the Principal any comments and/or remarks to the Equipment Testing Report that the Contractor may deem appropriate. Failing to provide such comments and/or remarks within such term the Contractor shall be deemed to have accepted the Equipment Testing Report.

10.6. If as a result of the testing operations the Equipment is found defective or non-compliant, the Principal shall have the right to elect, in its own discretion, to proceed with one of the following options:

10.6.1. to require the Contractor to adopt, at its own expenses, appropriate actions for remedying to such defectiveness / lack of compliance within a given term, reasonably indicated by the Principal having regard to the kind of defectiveness/non-compliance, and thereafter to proceed to a further testing of the Equipment, or

10.6.2. to accept the Equipment, subject to the prior Contractor's agreement on a reduction of the Equipment Price for compensating the costs and expenses that the Principal shall bear to directly remedy to the defectiveness/lack of compliance of the Equipment, or

10.6.3. to reject the defective / non-compliant Equipment and, if already delivered, to return such Equipment to the Contractor at the risk and cost of the Contractor and subject to the repayment of the relevant price already paid to the Contractor, or

10.6.4. to rescind or terminate the Procurement Contract in accordance to Article 29 below.

10.7. The election of any of the options mentioned above shall not affect the Principal's right to claim such damages as may have been sustained in consequence of the Contractor's failure to deliver Compliant Equipment.

10.8. The testing operations and the Principal's acceptance of the Equipment shall not affect the Contractor's warranty obligations set forth in Article 13.

## **11. CONTRACTOR TECHNICAL DOCUMENTATION**

11.1. The Contractor shall keep any and all the documentation prepared in connection with and/or relevant to the Equipment that the Contractor is required to keep at its own premises under any applicable Regulatory Requirements to prove that the Contractor designed, developed and manufactured the Equipment strictly in accordance with any Regulatory Requirements in force in the Country where the Equipment is manufactured by the Contractor or in the Country where the Equipment shall be installed and operated by the Principal;

11.2. If so requested, the Contractor shall promptly deliver to the Principal copies of the above mentioned documentation and shall thereafter amend, supplement and integrate any such documentation in accordance with any reasonable request by the Principal aimed to assure that such documentation is in accordance with the applicable Regulatory Requirements.

11.3. Except as otherwise provided for in the applicable Regulatory Requirements, the Contractor shall keep safe at its own premises the documentation referred in Article 11.1. above for a period of 15 (fifteen) years.

11.4. Upon delivery and/or installation of the Equipment, if and to the extent the Procurement Contract so require, the Contractor shall deliver to the Principal the following Contractor Technical Documentation:

11.4.1. The final project drawings of the Equipment and of the main components and sub-assemblies installed into the Equipment, together with the any relevant information, design, specs, schemes and instruction to interface the Equipment with any other equipment already operating in the Principal's manufacturing process, and

11.4.2. Technical manuals for operating and properly maintaining the Equipment





## **12. ACCEPTANCE AND TRANSFER OF TITLE**

12.1. Title of property to the Equipment shall pass from the Contractor to the Principal (i) upon the Principal's issuance of the Final Acceptance, which the Principal shall issue without undue delay, or (ii) after twenty-five (25) Business Days after the signature of the Equipment Testing Report stating that the Equipment is Compliant and the delivery of the Contractor Technical Documentation set forth in Article 11.4. above, whichever circumstances under (i) or (ii) occur first.

## **13. WARRANTY**

13.1. Subject to any supplemental warranty provided in the relevant Procurement Contract and without limitation to

the Contractor's obligations under Article 14 below, the Contractor warrants that any Equipment delivered and/or installed at the Principal's premises pursuant to a Procurement Contract shall be Compliant and capable to be normally operated in accordance to the Equipment Manufacturing Standard Requirements and in compliance with any and the terms and conditions provided for by these General Terms and/or by the relevant Procurement Contract.

13.2. After assessing that Equipment is Defective and having informed the Contractor of the reasons of such defectiveness, the Principal shall have the option either (i) to have such defect remedied by the Contractor at its own expense, or (ii) to directly remedy such defects, by debiting to the Contractor any and all relevant costs.

13.3. The warranty set forth in Article 13.1. above shall remain in force for a period of twenty-four (24) months from the starting date of the Principal's mass production.

13.4. The Contractor hereby waives any right to have any defectiveness notified within any legal term which may be provided under any laws and regulations which is applicable to the relevant Procurement Contract, insofar such term is not mandatory under such applicable laws and regulations.

## **14. INTERVENTIONS IN WARRANTY**

14.1. For the entire duration of the period of warranty as stated in Clause 13, the Contractor agrees to provide to the

Principal maintenance service on the Equipment delivered and/or installed, that are the subject of the Procurement Activities:

14.2. In case of failure or malfunction of the Equipment that affects proper functioning with consequent impacts on the production process of the Principal (ie: line stoppage), and potential impacts on the production process of the Principal's customers, the Contractor guarantees any urgent intervention for the entire duration of the warranty. In particular, the Contractor guarantees immediate action – also made through a trusted third party at the premises of the Principal in case of a communication of the Principal itself about the need of urgent action.

14.3. It is understood between the Parties that for the entire duration of the warranty term, the costs relating to the interventions as per Clause 14.1, as well as all the spare parts required for any maintenance operations, will be entirely borne by the Contractor, unless otherwise agreed in writing.

14.4. For this purpose, the Contractor guarantees the immediate availability of the necessary spare parts for the entire duration of the warranty period.

## **15. MAINTENANCE**

15.1. At the end of the warranty period as per Clause 13, the Contractor agrees to provide the Principal with a maintenance service on the Equipment delivered and/or installed, that are subject of the Procurement Activities: Ordinary maintenance: the Contractor, also through third party/ies of his choice, ensures interventions of ordinary maintenance at least every 6 (six)



months. The interventions of ordinary maintenance will consist in verifying the correct operation of the Equipment, replacement of parts if not more adequate with regard to/compliant with the Regulatory Requirements in force, replacement of worn, missing or broken parts. Extraordinary maintenance: in case of failure or malfunction of Equipment, compromising the proper functioning/operation of the Equipment with the resulting impact on the production process of the Principal (ie: line stoppage), and potential impacts on the production process of the Principal's final customers, the Contractor ensures interventions of extraordinary maintenance. In particular, the Contractor guarantees an intervention - carried out also through a trusted third party/ies - at the premises of the Principal within the 6 (six) hours following the notification of the Principal about the need of an urgent intervention.

15.2. The cost of both the ordinary and extraordinary maintenance operations and of the spare parts will be mutually agreed between the Parties.

15.3. For that purpose, the Contractor guarantees the availability of spare parts most subject to wear, which will be identified by mutual agreement with the Principal. If required by the Principal, the Contractor agrees to supply these spare parts on consignment stock at the plant/premises where the Equipment has been installed. It is understood between the Parties that it will be the Contractor's responsibility to always keep an adequate level of stock.

## **16. INDEMNITY**

16.1. For the whole period of the warranty mentioned under Article 13.3. above and thereafter, the Contractor shall keep the Principal its affiliates, successors, contractors, shareholders assigns and their customers, indemnified in full against all direct and indirect liabilities, loss, damages, injury, costs and expenses awarded against or incurred or paid by the Principal as a result of or in connection with Defective Equipment.

16.2 In addition to what is specified elsewhere in this General Terms, Contractor shall indemnify, defend, release and hold harmless Principal, its affiliates, successors, contractors, shareholders assigns and their customers, in full against all loss, liability, damages, costs and all expenses, including attorney fees and expert fees, arising directly or indirectly out of Contractor's performance of work in this General Terms and other relevant Procurement Contracts, including but not limited to claims, actions or lawsuits alleging:

- a. personal injury, property damage or economic damage;
- b. any violation by Contractor of any law, rule or regulation applicable to Contractor or Contractor's business, facilities or operations;
- c. any act or omission of Contractor or its employees, agents or sub-contractors in the course of performance of this General Terms, Procurement Contractors or delivering the Equipment, including any injury, loss or damage to persons caused or contributed to by any of their negligence; or
- d. any other claims resulting from the acts or omissions of Contractor or its employees, agents or sub-contractors.

## **17. INSURANCE**

17.1. Until the expiry of the warranty period referred to in Article 13 above and except as otherwise provided for in the Procurement Contract, the Contractor shall maintain at its own cost and expense, comprehensive product liability insurance and general liability insurance covering any costs, damages and expenses whatsoever relating to or arising from any and all the Procurement Activities.

17.2. Seller shall submit to the Principal, on yearly basis, the insurance certificates and the insurance premium payment receipts issued by the insurance company. The existence of such insurance policies will not release Seller from any of its obligations or liabilities under this General Terms and/or the Contract and/or the applicable law.



## **18. EQUIPMENT PRICE**

18.1. The Equipment Price shall be stated in the relevant Procurement Contract and shall be the full consideration (i) for any and all the Procurement Activities to be rendered by the Contractor, directly or through Authorized Subcontractors, under the relevant Procurement Contract, and (ii) for the transfer to the Principal of the title on the Equipment's project and, more generally, for the right of using any intellectual property rights relevant to, or incorporated into the Equipment, as per Article 20 below.

18.2. The Equipment Price shall be exclusive of value added tax but inclusive of all other charges, including but not limited to any and all the costs and expenses born by the Contractor for insurance, transport, delivery, testing and/or installation.

18.3. The Equipment Price is fixed and firm and shall not varied for any reasons whatsoever, other than for a decrease or an increase, as the case may be, due to a Equipment's modifications and changes as per Article 8 above.

18.4. The parties agree and acknowledge that provisions related to the financial and economic aspects of the Purchase Order and Supply Agreements may be revised by the Principal as a consequence of currency exchange rate variations or other factors that could have unintended economic impacts related to the profitability of the project or otherwise.

## **19. TERMS OF PAYMENT AND INVOICING**

19.1. The Principal (i) shall pay the Equipment Price to the Contractor upon receipt of the relevant invoice in accordance with the time schedule and the terms of payment set forth in the relevant Procurement Contract, (ii) shall be entitled to set off any amount due at any time to the Contractor against any amount due, for whichever reasons, by the Contractor to the Principal, and (iii) shall have the right, if the Contractor is materially in default to any of its obligations, to suspend the payments of any outstanding part of the Equipment Price, subject to written notice to Contractor.

19.2. When invoicing the Equipment price, or any part thereof, the Contractor shall insert in the relevant invoice(s) which shows, among other things, the Contract number, or the Order number, as the case may be, the date of such Contract or Order, and any other relevant information as stated in the Procurement Contract.

19.3. Any payment made by the Principal shall never constitute acceptance or recognition that (i) the Equipment is a Compliant Equipment, and/or (ii) the Contractor properly performed any of the Procurement Activities.

## **20. NO ASSIGNMENT OF CREDITS**

20.1 Unless previously authorized in writing by the Principal, the Contractor shall not sell, transfer or assign to any third party any credit the Contractor may have to the Principal for the payment of any Equipment to be supplied to the Principal under any Procurement Contract.

## **21. SPARE PARTS**

21.1. The Contractor shall grant to the Principal the supply of quality parts and components for the Equipment as spare parts for servicing purposes for a period of not less than 15 (fifteen) years from the date of delivery of the Equipment, or in any case for a period at least sufficient to satisfy the original equipment manufactures' (OEMs) production requirements.

## **22. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

22.1. The Contractor hereby acknowledges and agrees that the Principal is and shall remain the exclusive owner of (i) any and all the intellectual property rights on the project of the Equipment, and (ii) any and all the relevant Contractor's Technical Documentation and/or Principal Technical Documentation;



22.2. Materials, tools, gauges, dies, moulds which may be delivered by the Principal to the Contractor for using them in the manufacturing of a specific Equipment shall at all times be and remain the exclusive property of the Principal but shall be held by the Contractor in safe custody at its own risk and maintained and kept in good condition by the Contractor until returned to the Principal and shall not be disposed of other than in accordance with the Principal's written instructions, nor shall such items be used otherwise than as authorized by the Principal in writing.

22.3. The Contractor shall maintain confidential and shall not reveal, disclose or transfer to any third party any and all the Contractor Technical Documentation and/or the Principal Technical Documentation. The Principal may disclose to its agents, consultants and engineering services' providers, who reasonably need to know the confidential information as required for the performance of the Contract.

22.4. If, and to the extent, the Contractor incorporates into the Equipment and/or uses in its own manufacturing process any intellectual property rights of whichever nature, other than Contractor's intellectual property rights, then the Contractor:

22.4.1. represents and warrants its title and right to incorporate and use third party intellectual property rights;

22.4.2. agree to indemnify and hold harmless the Principal from any third party's claim alleging the infringement of its intellectual property rights in connection with the manufacture of any Equipment delivered in accordance with these General Terms.

22.5. By incorporating into an Equipment any of its own intellectual property rights, the Contractor grant to the Principal an irrevocable free of charge license to use such intellectual property rights when operating, maintaining, and, as the case may be, re-selling the Equipment to any third party.

### **23. INSPECTION**

23.1. During the term of the Procurement Contract the Principal shall have the right, by informing in advance the Contractor, to access, directly or through its authorized representatives, the Contractor's premises, at its own expenses and during normal business hours, to verify and assess that the Contractor properly complies with any and all its obligations, as stated in this General Terms and in the relevant Procurement Contract.

### **24. SUB-CONTRACTING**

24.1. Except as otherwise authorized, in writing and in advance by the Principal, the Contractor shall not assign and/or subcontract the Procurement Contract, or any part thereof, and/or any rights or obligations.

24.2. If and when duly authorized in advance by the Principal to sub-contract any part of the Procurement Activities, the Contractor (i) shall only select, under its own responsibility, reliable and financially sound sub- contractors, with the experience and technical skills required to perform the portion of Procurement Activities assigned to them, (ii) shall assure that such sub-contractors agree to comply with any and all the obligations set forth in these General Terms and in the relevant Procurement Contract.

### **25. FORCE MAJEURE**

25.1 Neither Party shall be responsible to the other by reason of failure to perform obligations hereunder to the extent that the failure to perform is caused by an act of God, natural disaster, flood, fire, epidemic, pandemic, storm, earthquake, shipwreck, acts of public enemy, or acts or omissions of any sovereign government, branch or agency thereof and other similar events beyond reasonable control of the Party whose performance is prevented or interfered with. The affected Party shall promptly notify the other Party and shall not be responsible for its failure to perform any obligation required under this Agreement as a result of any of the forgoing. The Parties specifically agree that strikes and labor disputes at the Party whose performance is prevented or interfered with shall not be included in the Force Majeure events.

25.2 In case a firm order, Purchase Order, or Procurement Contract cannot be executed on



schedule due to Force Majeure events, delivery terms shall be deemed to be postponed and a new delivery term shall be agreed upon between Principal and Contractor in relation to the specific situation (in this respect, it remains understood that the liability of Contractor is never excluded in case of a strike).

25.3 The application of this Article 25 is conditional upon Contractor promptly notifying Principal of the commencement of a Force Majeure event in accordance with the notice requirements outlined in the Service agreements and/or related Purchase Orders.

25.4 The application of this Article 25 is further conditional upon Contractor taking all necessary steps to avoid, end, or mitigate the effects of the force majeure event at Contractor's own expense and without any cost to Principal, including but not limited to Contractor arraigning and paying for: (1) any and all premium freight; (2) any and all broker costs; and (3) any and all cost differential from securing alternative sources of materials, goods or services. Contractor shall not be excused from performance hereunder where alternate sources of materials, goods or services are available.

25.5 Force majeure may not be invoked if it arises after expiration of the agreed delivery term.

25.6 Subcontractors delays shall not be considered force majeure events, unless it is proved that said delays are caused by force majeure.

25.7 If force majeure causes such a delay in delivery of Products not complying as to prevent compliance with Principal's production needs (production interruption), Principal shall have the right to engage Service from third parties. In the event that substitute Service must be acquired from an alternate supplier by Principal, any and all cost differential from securing alternative sources of materials, goods or services shall be the sole obligation of Contractor.

25.8 Should the above measure as stipulated in Article 25.7 – in Principal's sole discretion - prove impossible to be put in place or unreasonably expensive, Principal shall have the right to terminate the Agreement with immediate effect. Principal's liability is excluded in case of circumstances out of Principal's control preventing receipt of deliveries or reducing the need of Services.

25.9 Notwithstanding the foregoing, it is hereby agreed that, Principal shall, at its discretion, have the right to, after ten (10) days of the occurrence of force majeure events, cancel the firm order effective immediately, through a Notice to Contractor.

## **26. CODE OF CONDUCT AND SUSTAINABILITY GUIDELINES**

26.1 The Contractor is aware of the provisions of the Code of Conduct (hereinafter "Code of Conduct") adopted by the Principal and downloadable from the web-site [https://www.marelli.com/public/uploads/2020/02/MARELLI\\_Code\\_of\\_Conduct\\_ENG.pdf](https://www.marelli.com/public/uploads/2020/02/MARELLI_Code_of_Conduct_ENG.pdf) which sets forth the basic principles and the business behaviors that the companies, directly or indirectly, controlled by Principal are committed to comply with in their business activities.

26.2 The Contractor acknowledges that the companies, directly or indirectly, controlled by Principal expect their suppliers to carry on their business in accordance with the above-referred principles and behaviors.

26.3 The Contractor shall perform its business activities in accordance with ethical standards and procedures similar to those provided for in the laws of the Country(ies) where it operates (included but not limited to bribery, money-laundering and any case of Corporate Liability), in the Code of Conduct, aimed to ensure the compliance with proper ethical levels in the performance of its own business activities.

26.3 The Contractor is aware that the Principal shall not further carry on business relationships with any supplier which does not comply with the provisions of the laws of the Country(ies) where its business activities are carried out and/or the Code of Conduct.

26.4 Any breach by the Contractor of the provisions of the organization, management and control model and/or the Code of Conduct shall constitute a breach of these General Terms according to Article 29 below.

## **27. TERMINATION AT-WILL**

27.1. The Principal shall have the right at any time and for any reason to terminate any Procurement Contract by giving a prior written termination at-will notice to the Contractor, such



notice to be effective from the date in which the Contractor receives such termination notice.

27.2. In such event the Principal shall pay to the Contractor (i) an amount proportional to the portion of Procurement Activities that the Contractor reasonably proves were already performed before the receipt of such notice and for any work-in-progress at the time of termination, and (ii) a further amount equal to the two point five percent (2.5%) of the unfilled portion of the Procurement Contract.

27.3. The payment of the above mentioned amounts shall be in full settlement of any claim that the Contractor may have for the occurred termination of the Procurement Contract and the Contractor hereby irrevocably waives any right the Contractor may have under applicable law to claim further compensation whatsoever against the Principal.

27.4. Upon payment of the amounts referred to in the following Article , the Principal shall acquire the ownership of any portion of the Equipment's project and of the Equipment itself, and the Contractor shall deliver to the Principal, at the Principal's expense, any part of the Equipment already manufactured/under manufacturing together with any and all the relevant documentation as existing at the date of receipt of the termination-at-will notice.

## **28. TERMINATION BY MATERIAL DEFAULT**

28.1. The Principal shall have the right to terminate any Procurement Contract if the Contractor commits a material default of any of its undertakings under such Procurement Contract, provided that prior to termination hereof the Principal shall notify the Contractor of the default in writing, stating a reasonable time, in any event not exceeding 30 (thirty) calendar days from the date the notice is received, within which the Contractor shall have to remedy said default.

28.2. For this purpose, representatives of the Parties shall meet as soon as possible to agree on how remedy said default provided always that any failure to agree shall not remove or reduce in any way the obligation of the Contractor to remedy the default.

28.3. Should the occurred default remain unremedied after the expiry of the reasonable period stated in the above mentioned notice, the Principal may terminate the Procurement Contract by giving written notice of termination to the Contractor, the date of such written notice being the termination date.

28.4. Any termination of a Procurement Contract under this Article shall be without prejudice to any rights which the Principal may have against the Contractor in respect of any breach occurred prior to the termination date. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **29. TERMINATION BY SPECIFIC DEFAULTS**

29.1. The Principal shall have the right at any time by giving notice in writing to the Contractor to terminate any Procurement Contract forthwith if:

29.2. the Contractor commits a material breach to any of the terms and conditions set forth in Articles 4.1.5., 5.1., 5.2., 6.2.1., 7, 8.2., 9.5., 9.6., 9.7., 10.6., 17, 20, 24, 25.3., 26 and 31 of these General Terms; or

29.3. the Contractor enters into a bankruptcy procedure, or a receiver is appointed to control the assets of the Contractor, or a winding up order is made against the Contractor, or the Contractor make any arrangement or composition with its creditors; or

29.4. the financial position of the Contractor deteriorates to such an extent that in the opinion of the Principal the capability of the Contractor adequately to fulfil its obligations under the Contract has been placed in jeopardy.

## **30. CONSEQUENCE OF TERMINATION**

30.1. Any termination of a Procurement Contract under Article 28 or 29 above shall be without



prejudice to any rights which the Principal may have against the Contractor in respect of any breach occurred prior to the termination date. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

### **31. CHANGE OF CONTROL**

31.1. The Contractor recognizes and acknowledge that the Principal's decision to award a Procurement Contract to a given contractor is materially based on a prior positive assessment of the professional, financial and managerial capabilities of such contractor to properly and timely perform any and all the Procurement Activities.

31.2. The Contractor agrees to promptly inform the Principal of any change in its managerial organization, or of any change in its shareholding structure and it is aware that, if in the Principal's discretionary opinion, such changes materially affect the Contractor's ability to properly and timely perform, the Principal may enforce the provisions of Article 29 above.

### **32. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**32.1. Negotiation Phase.** In the event that any dispute between the parties arises, the party raising the matter in dispute shall notify the other party in writing detailing the specific nature of the dispute. Thereafter, the parties shall negotiate in good faith in an attempt to reach a fair and equitable resolution of said dispute. At any time, either party may, at their own discretion, terminate this "Negotiation Phase" by providing the other party 10 days advance written notice.

**32.2 Arbitration.** Following the conclusion of the Negotiation Phase, under Article 32.1, either party may request the other to participate in binding arbitration by making a written request to the other party. The party receiving the written request to arbitrate shall have 14 days after receipt of such request to respond in writing as to whether it will agree to binding arbitration administered by the American Arbitration Association under its Commercial Rules in effect on the date of this Agreement. However, in the case of disputes relating to quality, quantities, delivery, payments, warranty, indemnification, any service action, and other topics contemplated by these General Terms and Conditions, Purchaser may unilaterally elect to arbitrate, at which time the parties shall submit to binding arbitration administered by the American Arbitration Association under its Commercial Rules in effect on the date of this Agreement. Prior to any unilateral election to arbitrate by Purchaser, the parties must have participated in the Negotiation Phase. Any arbitration proceedings shall be conducted in Michigan in accordance with the laws of the State of Michigan.

**32.3.1 Litigation.** In the event that a dispute has not been resolved within the Negotiation Phase, Litigation may be initiated, unless the parties arbitrate under section 28.2. In any litigation, the parties agree that the litigation will be filed in the State of Michigan. These General Terms and any any agreements related to the Services shall be governed by and construed in accordance with the laws of the State of Michigan without taking into account its principles on conflicts of law. Any action, suit or other proceedings pursuant to, arising under, or touching or concerning these General Terms or any agreements related to the Services or the transactions contemplated hereby shall be brought in any federal or state court of competent jurisdiction in the State of Michigan. The parties agree to take any and all necessary or appropriate action to submit to the jurisdiction and venue of any such court. In any such action, suit or proceeding, (i) service of process may be by certified mail, return receipt requested or any means permitted or provided by applicable law and (ii) the successful or prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with that action, suit or proceeding, in addition to any other relief to which such party may be entitled. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these General Terms or any Supply Agreements.

**32.3.2 Litigation (Mexico).** In the event that a dispute has not been resolved within the Negotiation Phase, and such dispute arises between a Contractor's Mexico affiliate or subsidiary and Principal's Mexico entity, litigation may be initiated, unless the parties arbitrate under section 23.2. In such litigation, the parties agree that the litigation will be filed in Mexico City. These General Terms and Contract(s) shall be governed by and construed in accordance with the laws of Mexico without taking into account its principles on conflicts of law. Any action, suit or other



proceedings pursuant to, arising under, or touching or concerning these General Terms or any agreements related to the Services or the transactions contemplated hereby shall be brought in any federal or state court of competent jurisdiction in Mexico City. The parties agree to take any and all necessary or appropriate action to submit to the jurisdiction and venue of any such court. In any such action, suit or proceeding, (i) service of process may be by certified mail, return receipt requested or any means permitted or provided by applicable law and (ii) the successful or prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with that action, suit or proceeding, in addition to any other relief to which such party may be entitled. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these General Terms or any Procurement Contracts.

### **33. PRINCIPAL PERSONAL DATA**

33.1. If, in the course of performing any and all obligations in this General Terms, Orders or the relevant Procurement Contracts described herein, Contractor collects, transfers, or uses third parties' personal data (information that can be linked to a specific individual), Contractor acknowledges that such collection, transfer, or use may be governed by certain personal data protection laws, regulations, and industry standards. Should any sanctions (e.g., monetary fines or penalties) be imposed on Principal by any government authority as a result of Contractor's failure to comply with its data protection obligations, Contractor shall reimburse Principal the full amount of such sanction within five (5) banking days of being notified by Principal of the sanction imposed.

33.2. In any case, the Supplier undertakes and warrants to hold harmless Purchaser from and against every objection, action or claim, brought by data subjects, due to the processing of personal data effected by the Supplier in breach of the provisions of all applicable data protection legislation.

### **34. MISCELLANEOUS**

34.1. Each right or remedy of the Principal under these General Terms and/or any Procurement Contract is without prejudice to any other legal remedy of the Principal whether under these General Terms and/or any Procurement Contract or not.

34.2. Failure or delay by the Principal in enforcing, in full or in part, any of the provisions of these General Terms and/or of any Procurement Contract shall not be construed as a waiver of any of its rights under these General Terms and/or any Procurement Contract.

34.3. All rights and remedies of the Parties, or either of them, hereunder shall be in addition to all other legal rights and remedies belonging to them and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies.

34.4. Any Procurement Contract executed by and between the Principal and the Contractor shall be deemed to incorporate any and all the terms and conditions of these General Terms, provided always that in case of discrepancy between the provisions of these General Terms and those of any procurement Contract, the provisions of these General Terms shall prevail.

34.5. No amendment to any provision of a Procurement Contract shall be effective or binding on either of the Parties unless set forth in writing and executed by a duly authorized representative of each Party.

34.6. In case any provisions in these General Terms is invalid, illegal or unenforceable under any applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The invalidity, illegality or unenforceability of any provision in these General Terms in any jurisdiction shall not invalidate or render illegal or unenforceable such provision in any other jurisdiction.





<b>CONTRACTOR ENTITY:</b>	
<b>ACKNOWLEDGMENT, ACCEPTANCE AND EXECUTION BY THE AUTHORIZED SIGNATORY OR LEGAL REPRESENTATIVE OF THE CONTRACTOR</b>	
NAME	STAMP AND SIGNATURE
TITLE	
DATE	