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**GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES**

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SORGENIA BIOENERGIE S.P.A

SORGENIA FINALE EMILIA S.R.L.

MERCURE S.R.L.

**Sede Legale**

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## 1 General Provisions

### 1.1 Scope

- 1.1.1 These general contractual terms and conditions (the “**General Terms and Conditions**”) apply to every agreement for the purchase of goods or services to which the Purchaser is party.

### 1.2 Definitions

In addition to the definitions contemplated in other clauses of the General Terms and Conditions, the following terms and expressions shall have the meaning attributed to them in this paragraph 1.2. The terms and expressions defined in the singular shall have the same meaning when used in the plural, and vice versa.

- 1.2.1 “**Purchaser**”: indicates, according to the contents of the Order Letter, Sorgenia Bioenergie S.p.A., having a sole shareholder, having its registered office in Via Val d’Albero, 73/b, Bando d’Argenta (FE), tax code number and entered in Ferrara Companies Registration Office under number 01657580351 VAT number 12116240156, subject to the control and oversight of Sorgenia S.p.A.; or otherwise, Sorgenia Finale Emilia S.r.l., having a sole shareholder, and registered office in Via Val d’Albero, 73/b, Bando d’Argenta (FE), tax code, VAT number and entered in Ferrara Companies Registration Office under number 08412811005, subject to the control and oversight of Sorgenia S.p.A.; or otherwise Mercure S.r.l., having a sole shareholder, and registered office in Via Val d’Albero, 73/b, Bando d’Argenta (FE), tax code, VAT number and entered in Ferrara Companies Registration Office under number 14893701004, subject to the control and oversight of Sorgenia S.p.A.; a company which manages plants for the production of electricity from biomass.
- 1.2.2 “**Authority**” indicates any Italian or foreign, state, regional, local, municipal or provincial authority or another political subdivision of same and any entity or official exercising executive, legislative, judicial, regulatory or administrative functions.
- 1.2.3 “**Agreement**”: indicates the agreement for the purchase of goods or services, finalised by means of acceptance of the Order by the Vendor, whereby the Vendor sells or undertakes to sell goods or services to the Purchaser. The Agreement includes and comprises the following documents, defined hereinafter, which form an integral and substantive part of same.
- (i) “**Order Letter**” or “**Order**”: indicates the document in which, inter alia, the subject matter of the Agreement, the contractual duration and the specific financial and administrative rules governing it are established.
  - (ii) “**Price List**”: indicates the document which, in exchange for each specific service, sets out the consideration and the rules for measuring the quantities and quality to which the related list price must be applied.
  - (iii) “**Technical Specifications**”: indicates the document containing the technical specifications of the goods or services forming the subject matter of the Agreement.

- (iv) **“General Terms and Conditions”**: indicates these general terms and conditions of the Agreement and which the Purchaser has made available to the Vendor.
- (v) **“DUVRI”**: indicates the Third Party Risk Assessment Report as per article 26 of Legislative Decree n° 81 of 9 April 2008 and as subsequently amended.

- 1.2.4 **“Contractual Documentation”**: indicates the documents listed and defined in the previous paragraph 1.2.3, in addition to every annex to same and includes the General Terms and Conditions.
- 1.2.5 **“Force Majeure”**: indicates objective, unforeseeable circumstances outside the parties’ control. By way of non-limiting example, the following are considered force majeure events: wars, fires, flooding, earthquakes, general strikes called by the trade union categories in which the parties’ workers are members, lockouts and embargoes.
- 1.2.6 **“Law” or “Applicable Regulations”**: indicates the Italian, international, foreign or European Community law in every legal system and level in force at any one time and which is applicable to this specific case.
- 1.2.7 **“Party”**: indicates the Purchaser or the Vendor, according to the specific case, whilst **“Parties”** indicates jointly the Purchaser and the Vendor.
- 1.2.8 **“Resolution n° 108”**: indicates the Revenue Authority resolution n° 108 of 23 December 2019.
- 1.2.9 **“Resolution n° 109”**: indicates the Revenue Authority resolution n° 109 of 24 December 2019.
- 1.2.10 **“Vendor”**: indicates the natural person or legal entity which, by finalising the Agreement, has undertaken to sell goods or a service.

### 1.3 **Discrepancy between Contractual Documents**

- 1.3.1 With regard to the documents forming part of the Agreement as per the previous paragraph 1.2.3, it is agreed that: (i) in the event of any incompatibility or discrepancy between any of these documents, the one which overrides the others shall be determined by the sequence according to which the documents are listed there; (ii) the lack of one or more of these documents, when due to the fact that they do not apply to the Agreement in question, has no consequence on the validity and effectiveness of the Agreement and the remaining documents forming part thereof.

### 1.4 **Compliance with Law**

- 1.4.1 While fulfilling the obligations entered into under the Agreement, the Vendor shall comply with all applicable legal regulations. All that which is sold, supplied or lent under the terms of the Agreement shall comply with the law in force at any one time, throughout the currency of the Agreement.
- 1.4.2 The Vendor is responsible for obtaining any and all permits and authorisation required for performing the Agreement, with the exception of those which under law are the explicit, exclusive responsibility of the

Purchaser or which are expressly indicated in the Contractual Documentation as being the Purchaser's responsibility, for which, in any event, the Vendor is required to provide the necessary technical assistance.

1.4.3 Breach of the undertakings contemplated in this paragraph 1.4 entitles the Purchaser to terminate the Agreement pursuant to article 1456 of the civil code, as provided for under the following article 10.1.

#### 1.5 Compliance with Tax Obligations relating to Withholding Tax

1.5.1 When fulfilling the obligations entered into under the Agreement, the Vendor undertakes (and ensures that any of its subcontractors also undertake) to comply with the provisions of article 17 - bis of Legislative Decree n° 241/1997 in view of the customary instructions provided by the Authority in force at any one time.

1.5.2 The Vendor shall fulfil the obligation referred to in the previous paragraph 1.5.1 should the Agreement entered into with the Purchaser: (a) have an annual total value greater than Euro 200,000; (b) be characterised by the prevailing use of labour at the Purchaser's offices; and (c) be performed through the use of capital goods belonging to the Purchaser or connected to the Purchaser in any manner.

1.5.3 Should the Agreement meet all the requirements referred to in the previous paragraph 1.5.2, the Vendor (or any its subcontractors) undertakes to send to the Purchaser no later than 5 business days after the due date for the payment referred to in article 18, paragraph 1 of Legislative Decree n° 241/1997:

- (i) the copies of the payment instructions relating to payment of the tax withholdings provided for under article 17 - bis, paragraph 1 of Legislative Decree n° 241/1997 on the income of salaried employees and equivalent workers, withheld from workers employed in services, compiled in accordance with the instructions provided for under Resolution n° 109;
- (ii) a list of the names of all the workers - identified by means of their tax code - employed to perform the Services during the previous month, providing, for each one of them, the following details: (a) the hours worked; (b) the total amount of salary paid; (c) the amount of tax withholdings in the previous month, indicating separately tax withholdings which relate to the service assigned by the Purchaser. In order to identify the list of the names of the workers, the criteria provided for under Resolution n° 108 shall be applied.

1.5.4 In accordance with law, breach of the obligations contemplated in paragraph 1.5.3 above or non-payment or insufficient payment of the tax withholding by the Vendor obliges the Purchaser: (a) to suspend remission of payments accrued by the Vendor, in accordance with the limits provided for under article 17 - bis of Legislative Decree n° 241/1997; and (b) to inform the relevant Authority of breach by the Vendor, no later than 90 days after occurrence of the breach. The suspension referred to in this paragraph remains effective for as long as the Vendor fails to perform.

1.5.5 Breach of the obligations contemplated in paragraph 1.5.3 above precludes any enforcement action - pursuant to law - on the Vendor's part intended to obtain payment of sums due and payable by the Purchaser, in accordance with the suspension referred to in paragraph 1.5.4 above.

- 1.5.6 The tax obligations as per paragraph 1.5.3 and the consequences in the event of any breach referred to in paragraphs 1.5.4 and 1.5.5 do not apply should the Vendor advise the Purchaser, attaching a specific certification issued by the Authority, that the requirements contemplated in article 17 - bis, paragraph 5 of Legislative Decree n° 241/1997 have been met.
- 1.5.7 The Vendor undertakes to hold the Purchaser harmless and to fully indemnify it from and against any adverse consequences, including any fines, arising as a consequence of breach of its duty to correctly determine the tax withheld, to correctly collect and promptly pay same, and failure to promptly send the certification referred to in paragraph 1.5.6 to the Purchaser.

It is expressly agreed that the indemnification obligation also includes legal costs incurred by the Purchaser, including costs relating to appearance in court and legal action in its defence at whatever stage or level of proceedings.

#### 1.6 **Model 231 and Code of Ethics. Rules of Ethics.**

- 1.6.1 The Vendor represents that it is cognisant of the Code of Ethics and the Purchaser's Model of Organisation and Control pursuant to Legislative Decree 231/2001, and undertakes to comply with and to ensure that any of its subcontractors comply with all the provisions set forth therein.
- 1.6.2 The Vendor undertakes to refrain from offering commission, emoluments and other benefits to the Purchaser's employees and to refrain from providing same with favours in the form of gifts, making means of transport available to them, offering hospitality and all other matters which lie outside the bounds of what is normally permitted by the highest standards of business ethics; the Vendor also undertakes to refrain from entering into such business agreements stipulated by these employees on their own behalf as may adversely affect the Purchaser's interests. Breach of this paragraph entitles the Purchaser to terminate the Agreement pursuant to article 1456 of the civil code, as contemplated in paragraph 10.1.

#### 1.7 **Notifications and Documentation**

- 1.7.1 All notifications to the Vendor or the Purchaser are made in writing by means of email.
- 1.7.2 All notifications and documents relating to the Agreement shall bear the Order number.
- 1.7.3 Any final documentation or certification shall be sent to the Purchaser prior to, or concurrently with, performance of the Agreement.

#### 1.8 **Orders**

- 1.8.1 Only Orders sent or delivered by the Purchaser in writing are valid.

#### 1.9 **Acceptance of Orders**

- 1.9.1 Orders become effective from the time when the Order Letter signed by the Vendor by way of acceptance is received by the Purchaser or, absent this, from the time when the Vendor commences performance of the service (“**Acceptance of the Order**”).
- 1.9.2 By accepting the Order, the Vendor undertakes to provide the goods or service forming the subject matter of the Agreement in accordance with the specifications set forth in same. Prior to commencing provision, the Vendor shall give notice of any need to change what is prescribed in the specifications. In such case provision of the goods or services may only commence after written acceptance by the Purchaser of the changes proposed by the Vendor.
- 1.10 **The Vendor’s Obligations**
- 1.10.1 With regard to the goods or services it provides, the Vendor undertakes to abide by the rules recognised by good practice, security standards and the technical data agreed. Any amendments to the subject matter of the goods or services provided or of the production process which have already been approved, or otherwise the transfer of same to another site, require the Purchaser’s prior written authorisation.
- 1.10.2 The Vendor is under an obligation to permanently monitor the quality of the product or service provided and to keep its own quality system always updated to the most recent standards of good practice. The Vendor undertakes to ensure that any of its own subcontractors do the same.
- 1.10.3 Should the Vendor have received drawings or samples from the Purchaser, it undertakes to abide by the type, quality and performance of same for the production of the goods or services being provided.
- 1.10.4 Should Authorities or clients request that the Purchaser view the Vendor’s production cycle, it must be ready to provide any and all information and documentation as reasonably requested by same. The Vendor undertakes to ensure that any of its subcontractors do the same.
- 1.11 **Sales Auxiliaries**
- 1.11.1 There shall be no direct relations between the Purchaser and the Vendor’s collaborators, be they salaried employees or freelance contractors, in any capacity whatsoever (the “**Auxiliaries**”). The Purchaser may not exercise any power of control and/or discipline or any other type of control over the Auxiliaries. The Vendor shall inform the Purchaser of the name of one or more managers who shall be the Purchaser’s direct contacts for any request relating to the Agreement.
- 1.11.2 In respect of its own Auxiliaries, the Vendor undertakes to comply with and fulfil all present and future legal and contractual provisions, howsoever applicable, relating to regulatory, financial, insurance-related, social security and accident avoidance matters. More specifically, in its dealings with salaried employees, the Vendor shall apply financial and regulatory conditions which are not inferior to those provided for under collective employment contracts stipulated by employers’ associations and trade union organisations which are comparatively more representative of the category at a national level, and, with regard to the Auxiliaries, shall duly fulfil its duties relating to salaries, social security, insurance, welfare and any other matter, in accordance with the Applicable Regulations. Breach of the obligations referred to in this clause entitles the Purchaser to



avail itself of the right to terminate the Agreement, pursuant to article 1456 of the civil code as contemplated by paragraph 10.1 below.

- 1.11.3 In order to demonstrate the correctness of its actions, if requested by the Purchaser, the Vendor is required to submit to the Purchaser a valid copy of the INPS [Italian Social Security Programme]/INAIL [National Institute for Insurance against Accidents] Single Insurance Contribution Payment Certificate Document. It remains agreed that should the Purchaser fail to request the documentation and the information referred to above, under no circumstances shall this release the Vendor from its related liability and obligations.
- 1.11.4 The Vendor undertakes to indemnify the Purchaser and to hold it harmless from and against all claims, of any type and in any capacity, brought by:
- (i) the Vendor's Auxiliaries;
  - (ii) social security and insurance entities
  - (iii) third parties by reason of the Auxiliaries' behaviour and conduct, including cases of fraud or gross negligence by same.

It is expressly agreed that the indemnification obligation also includes legal costs incurred by the Purchaser, including costs relating to appearance in court and legal action in its defence at whatever stage of level of proceedings.

- 1.11.5 In cases where the relevant Authority detects irregularities giving rise to suspension of the works and/or the imposition of fines, the Vendor undertakes to indemnify the Purchaser, to compensate it and to hold it harmless from and against any loss or damage, barring none, caused to the Purchaser (also on the grounds of fines imposed on it in its capacity as customer) by reason of such suspension. In such case any penalties for delays due to failure to comply with the contractual time limits shall not preclude the possibility of seeking compensation for any further loss or damage suffered.
- 1.11.6 Payment of the contractual consideration agreed is contingent on fulfilment by the Vendor of all the conditions referred to in the previous paragraphs. Accordingly, in the event of any failure on the Vendor's part to fulfil the obligations referred to in the above paragraphs, the Purchaser may suspend payment of the consideration until such time as the breach is remedied.

## 1.12 Confidentiality Obligations

- 1.12.1 The expression "Confidential Information" means all information and data of any type provided by the Purchaser to the Vendor in writing, orally or in any other form, which refers to the Agreement in any manner, in addition to all analyses, assessments, reports and documents which in any capacity and in any manner contain or process Confidential Information, with the exception of the data and information:
- (i) which are already in or which enter the public domain for reasons other than failure to perform the Agreement;
  - (ii) of which the Vendor can already demonstrate legitimate ownership on a date prior to notification of same under the Agreement;

- (iii) disclosure of which is lawfully and conclusively imposed on the Vendor by law or by judicial orders, provided that the Vendor has immediately notified the Purchaser, in order to allow the latter to adopt all necessary measures to prevent or curb such disclosure.

1.12.2 All Confidential Information received (or howsoever acquired) by the Vendor or by its subsidiaries, associates entities, employees, subcontractors or consultants (hereinafter the “**Authorised Parties**”) shall remain strictly confidential and reserved and under no circumstances whatsoever and for no reason may be disclosed or in any manner made available to third parties, without the Purchaser’s prior written consent. The Vendor undertakes to ensure that the obligations set forth in this article are complied with, including by authorised parties.

1.12.3 More specifically, the Vendor undertakes:

- (i) to preserve and diligently look after and protect the Confidential Information;
- (ii) to prevent unauthorised parties having access to the Confidential Information which is in the possession of the Vendor.
- (iii) to use Confidential Information or ensure that such information in its possession is used solely for contractual purposes;
- (iv) not to copy, photocopy or reproduce Confidential Information in any manner, for distribution to unauthorised persons.
- (v) to return to the Purchaser, when requested by same in writing, all hard copy, electronic, magnetic or other storage media containing the Confidential Information, howsoever acquired and coming into its possession in any manner whatsoever, including all copies, including partial copies of the aforementioned storage media.
- (vi) to destroy, when requested by the Purchaser in writing, all hard copy, electronic, magnetic or other storage media containing the Confidential Information, howsoever acquired and coming into its possession in any manner whatsoever, including all copies, including partial copies of the aforementioned storage media.

1.12.4 The Vendor accepts full liability for any disclosure or use of the Confidential Information coming about in breach of this article.

1.12.5 The Vendor acknowledges that the Confidential Information which it may receive from the Purchaser comprise confidential proprietary data to which the Vendor shall retain exclusive title. The Purchaser incurs no liability regarding the completeness and accuracy of such Confidential Information as may be provided by the Vendor.

1.12.6 The confidentiality obligations shall remain operative throughout the currency of the Agreement and for an additional period of three years after termination of same.

### 1.13 Trade Secrets

1.13.1 In addition to the confidentiality undertakings referred to in paragraph 1.10 above, the Vendor also provides an undertaking on behalf of own employees and subcontractors, not to use in favour of third parties, without obtaining the Purchaser’s prior written consent:

- (i) drawings, models or otherwise products manufactured or services prepared, based on the Confidential Information.
- (ii) pieces, instruments and products developed and finalised by the Purchaser in cooperation with the Vendor.

#### **1.14 Safety of materials and products supplied**

- 1.14.1 The Vendor specifically warrants and represents to the Purchaser that the materials supplied comply with applicable laws governing the safety of the products, specifically, where applicable, with regard to compliance with the provisions of the Regulation (CE) n° 1907/2006 (concerning registration, evaluation, authorisation and restriction of chemical substances– REACH), the Regulation (CE) n° 1272/2008 (relating to the classification and labelling and packaging of substances and mixtures – CLP) and Legislative Decree 81/08 (governing health and safety).
- 1.14.2 With regard to TITLE IX “Hazardous Substances” of Legislative Decree 81/08 governing the protection against chemical, carcinogenic and mutagenic agents, all the products and materials supplied – composition of which involves the presence of substances or mixtures classified pursuant to regulations in force as chemical agents or which, though not being classifiable as hazardous may give rise to a risk due to their chemical–physical, chemical or chemical–technological properties – must be accompanied by the list of products and materials containing chemical agents and the relative safety data sheets prepared pursuant to legal provisions in force.
- 1.14.3 The safety data sheets must be delivered or sent on an electronic storage media concurrently with delivery of the goods.
- 1.14.4 For any reason, including when requested by the Purchaser, subsequently to issue of the Order and prior to delivery of the goods, should the products and the materials stated in the Order be replaced and/or altered in such a manner as to modify their “classification for purposes of assessing work and environmental risks”, the supplier is required to promptly send to the Purchaser the updated list of products and materials containing chemical agents and the safety data sheets relating to new products included in the list, in addition to any safety data sheets which are more updated than those already provided.

#### **1.15 Industrial and intellectual property**

- 1.15.1 The Vendor warrants and represents that the goods supplied, their components and accessories in addition (where applicable) to the works performed by same for the Purchaser, the use of the services provided by the Purchaser and, more generally, all that which is provided by same, do not breach industrial or intellectual rights or third–party rights. The Vendor undertakes to promptly settle any claims brought by third parties asserting that their industrial or intellectual property rights have been breached as a consequence of the possession or use, depending on the case, by the Purchaser, of the goods and/or services provided by the Vendor, in all circumstances indemnifying the Purchaser and holding it harmless from and against all such claims.
- 1.15.2 Unless otherwise agreed in writing, the Vendor waives the option of claiming any industrial and intellectual property rights to the goods or services provided against the Purchaser and its successors and assignees.

## 2 Prices, Invoicing and Payment Conditions

### 2.1 Prices

- 2.1.1 The prices are to be considered fixed and invariable, unless otherwise indicated in the Order Letter or in the Contractual Documentation.
- 2.1.2 The Vendor represents that the prices have been determined taking into consideration every possible increase in costs and expenditure relating to its own services rendered and the Vendor accepts the risk of any increase, including unforeseeable or significant increases, waiving its options and rights contemplated under article 1467 of the civil code

### 2.2 Invoicing

- 2.2.1 The original invoices shall comply with law and shall be registered in the name of and addressed as indicated in the Order Letter. Every invoice shall refer to a single Order and shall be issued in the currency specified in the Order. In the event of any partial delivery, the invoice shall indicate whether the delivery is partial or final. The invoice must be received by the Purchaser within 5 (five) days of total or partial delivery.
- 2.2.2 Invoices which fail to conform with the provisions of the above paragraph 2.2.1 are considered as having never been received.

### 2.3 Payment Procedure and Interest on Arrears

- 2.3.1 The term for payment of duly issued invoices is indicated in the Order Letter. Should the term not be indicated, the term of 90 (ninety) days from the date on which the invoice is received shall be applied. Payment is remitted subject to verification of accounts.
- 2.3.2 In the event of any delay in payment, interest on arrears shall be at the legal rate of +1% (one per cent) and, notwithstanding article 4 of Legislative Decree 231/02, interest will only start accruing after the Purchaser receives a specific, justified written request for payment from the Vendor. Interest on arrears shall, when applicable, be paid in its entirety to meet every request or claim for damages raised by the Vendor with regard to late payment.

## 3 Delivery

### 3.1 Place of delivery and terms

- 3.1.1 Delivery shall be to the address indicated in the Order Letter. In order to establish compliance with the delivery terms and terms for transfer of the risk of damage or partial or total loss of the goods under the Agreement, the Incoterms provisions and rules indicated in the Order are applied.
- 3.1.2 Should the Order fail to indicate the place of delivery and/or the applicable Incoterms rules, the following delivery terms are applied:
- (i) the place of delivery is the Purchaser's registered office;

- (ii) the Vendor accepts all risks of damage or partial or total loss of the goods under the Agreement until such time as the goods in question are delivered to the place of delivery;
- (iii) the Vendor is liable for all transport insurance costs.

### 3.2 Delays in delivery

- 3.2.1 The delivery terms, located in the Order Letter are mandatory and essential. The Purchaser is under no obligation to accept partial services or services rendered after the time limit. To comply with the terms, only full and final delivery is considered.
- 3.2.2 Any delays in delivery shall only be justified if caused by demonstrable reasons of Force Majeure. Under no circumstances whatsoever are delays in manufacturing or delayed delivery by subcontractors to be considered amongst Force Majeure causes.
- 3.2.3 In the event of delay, any penalties contemplated by the Order Letter are applied, in all circumstances without affecting the right to claim for damages. In this regard it is agreed that the Purchaser is entitled to compensation for direct and indirect loss or damage, including loss or damage caused by failure to manufacture the goods.
- 3.2.4 The Vendor is under an obligation to immediately advise the Purchaser in writing of the onset of any cause of delay. Any delays accepted by the Purchaser or delays which are justified shall give rise to a corresponding extension of the delivery terms.
- 3.2.5 Should the Vendor have undertaken to provide goods or services to the Purchaser on a continuous basis or on a repeat basis, any continued delay in delivery entitles the Purchaser to terminate the Agreement pursuant to article 1456 of the civil code, as provided for in the paragraph **Errore. L'origine riferimento non è stata trovata.** below.

### 3.3 Partial or Non-Conforming Delivery

- 3.3.1 In the event of partial delivery it must be stated whether the delivery is partial or final.
- 3.3.2 Deliveries which fail to conform with the provisions of this article 3 may be rejected by the Purchaser.

## 4 Accompanying Document – Packaging

- 4.1.1 All the goods being supplied must be accompanied by an “accompanying document” which complies with legislation. Every accompanying document refers to the goods in just one Order and must bear the related number, in addition to elements for identifying the goods, as well as any other information required by law.
- 4.1.2 A duplicate copy of the delivery note must be included with the goods.
- 4.1.3 Packaging must be appropriate to the goods supplied and to the means of transport required; as a consequence, the Vendor shall incur liability for any damage caused by packaging defects, even if delivery of the material is agreed ex-works.
- 4.1.4 For materials which, in accordance with law, or otherwise due to the composition of same or their environmental impact require a special treatment for packaging, transport, storage, handling and waste disposal, the Vendor

shall submit to the Purchaser: a fully compiled safety data sheet; the datasheet required for any sale abroad; in addition to a specific information sheet in the event of accidents (transport). In the event of changes to the materials, the Vendor shall provide the Purchaser with updated data sheets and information sheets.

## **5 Warranty, Quantity and Quality**

### **5.1 Duration**

- 5.1.1 The Vendor warrants the suitability of the goods provided in addition to the absence of any flaws or nonconformities, for a period of 24 (twenty four) months from the time of final delivery, unless otherwise provided for in the Order.
- 5.1.2 The warranty shall be automatically renewed for the same period in respect of all the parts replaced, repaired or in any manner modified with effect from the date on which they are put back in service or installed.
- 5.1.3 The extent and effectiveness of the warranties issued by the Vendor in this article 5 are not limited by any checks, inspections or controls carried out by the Purchaser.

### **5.2 Quantity**

- 5.2.1 Should the quantity of goods delivered fail to conform with the volumes agreed in the Agreement, the Purchaser may choose from the following:
- (i) to accept the quantities actually delivered and, in proportion, to adjust the quantities of any subsequent deliveries;
  - (ii) to ask and ensure that the Vendor collects any amounts in excess of the amount ordered, with the right to return them directly at the Vendor's own expense and to charge the Vendor for all costs arising as a consequence of any payments already made in addition to storage costs should the Vendor fail to immediately comply;
  - (iii) to ask and ensure that the Vendor immediately sends the missing quantities of goods, in all cases charging the Vendor for all costs and expenses arising as a consequence of its failure to perform.

The Purchaser shall exercise its rights provided for hereinabove within 20 (twenty) days of the date on which the goods are delivered.

### **5.3 Quality**

- 5.3.1 The Vendor warrants that the goods delivered and the services rendered are devoid of any defects, whether obvious or concealed, and conform with the specifications agreed in the Agreement. The goods and services provided shall be considered as defective, by way of non-limiting example, should:
- (i) they fail to conform with the provisions of the Agreement; or otherwise
  - (ii) they fail to reflect the characteristics of the samples and prototypes delivered by the Vendor; or otherwise
  - (iii) they not be suitable for ordinary or foreseeable use, or otherwise the special use to which the Purchaser intends to put them, provided that the Vendor has been advised of same.

- 5.3.2 The Purchaser is entitled to conduct checks on the Vendor's premises both for purposes of possible checks on the goods and/or services or for acceptance of the goods and/or services and on the quality system implemented within the Vendor's organisation. The methods and extent of such verification shall be agreed with the Vendor from time to time.
- 5.3.3 Without prejudice to all the Purchaser's rights pursuant to the Agreement and legislation, when requested by the Purchaser and within the reasonable timeframe set by same, at its own expense, the Vendor shall repair or replace the defective item or shall render the service in a manner which conforms with the Agreement. Should the Vendor fail to comply with the above, the Purchaser may, at its own discretion, select one of the following:
- (i) to terminate the Agreement pursuant to article 1456 of the civil code, as contemplated in the paragraph below 10.1;
  - (ii) to obtain a fair price reduction on the defective Goods or Services, or otherwise
  - (iii) should only part of the goods or services be defective, to engage a third party of its choice and at the Vendor's expense, to provide only the defective goods or only the nonconforming services.
- 5.3.4 Notwithstanding article 1495 of the civil code, the Purchaser shall report flaws or nonconformities affecting the goods or services to the Vendor within 20 (twenty) days of the date on which they are discovered.
- 5.3.5 The Vendor indemnifies the Purchaser and holds it harmless from and against all loss or damage, legal action, right or third-party claim howsoever caused or connected to use of the goods or services provided by the Vendor.
- 5.4 **Penalties for Flaws or Defects**
- 5.4.1 The Order Letter may impose penalties applicable to specific flaws or nonconformities in the goods or services, without prejudice in any event to the right to make a claim for damages.

## 6 Insurance

### 6.1 The Vendor's insurance

- 6.1.1 At its own cost, the Vendor shall take out an insurance policy with a leading insurance company, with deductibles and claim limits which are adequate for the goods and services provided under the Agreement, covering its own liability for loss or damage to the Purchaser or to third parties on any grounds whatsoever, including on the grounds of manufacturer's liability arising from or connected to performance of the Agreement. The Vendor shall provide the Purchaser with a copy of the insurance policy prior to commencing performance of the Agreement.
- 6.1.2 The policy shall provide for express waiver on the part of the insurance company of any action to recover losses from the Purchaser.
- 6.1.3 The Vendor shall in any event indemnify and hold the Purchaser harmless from and against any third-party claim, should it fail, either partially or wholly, to comply with the above obligation.

## 7 Letter of Guarantee

### 7.1 Undertaking to deliver the Letter of Guarantee

7.1.1 Where expressly established in the Order Letter, the supplier shall obtain and deliver to the Purchaser, jointly with the acceptance letter, a Letter of Guarantee (“**Letter of Guarantee**”) for the entire amount of the Order, or for any percentage agreed by the parties, appropriately drafted, valid and unconditionally binding, irrevocable and payable upon immediate application.

### 7.2 Nature of the Letter of Guarantee

7.2.1 The Letter of Guarantee, shall be construed as an “autonomous guarantee” fully binding under the law, shall be issued by a leading Italian bank or by a branch office having its registered office in Italy of a leading foreign bank, or by a leading Italian insurance company, in all cases subject to approval by the Purchaser.

7.2.2 In order to be effective in accordance with the Order, the wording of the Letter of Guarantee must have previously obtained the Purchaser’s approval.

7.2.3 The Letter of Guarantee shall guarantee compensation for any loss or damage caused by possible breach of the contractual obligations of its suppliers, subcontractors and/or collaborators.

7.2.4 More specifically, the Vendor undertakes to ask the bank to include a specific declaration whereby the guarantor acknowledges that the obligation undertaken constitutes a performance bond and that therefore the benefits, rights and conditions contemplated under articles 1945, 1955 and 1957 of the civil code do not apply and must therefore be deemed waived to all intents and purposes.

7.2.5 Should the amount contemplated in the Letter of Guarantee be insufficient to indemnify the entire amount of loss or damage suffered by the Purchaser, the Vendor shall be under an obligation, in any event, to compensate the Purchaser for any further loss or damage.

7.2.6 In all cases, the Vendor is under an obligation to replenish the amount contemplated in the Letter of Guarantee which the Purchaser avails itself of, either in its entirety or partially, during provision of the goods and/or services.

7.2.7 Release of the Letter of Guarantee shall be required once 24 months have elapsed from the date on which the goods are delivered or from termination of the services, or any other term which is jointly agreed in writing. Should the Vendor fail to deliver the Letter of Guarantee to the Purchaser within the terms and conditions provided for above, the Purchaser shall be entitled to declare the Order legally terminated pursuant to article 1456 of the civil code, as provided in the paragraph below 10.1.

## 8 Subcontractors and Assignment of the Agreement

### 8.1 Prohibition on Subcontracting

8.1.1 The Vendor is prohibited from assigning, either directly or indirectly, partially or any entirety, the production or provision of the goods or services under the Agreement to third parties, without the Purchaser’s prior written



consent. In the event of breach of this prohibition, the Purchaser is entitled to terminate the Agreement pursuant to article 1456 of the civil code, as provided in the paragraph below 10.1.

## 8.2 Prohibition on the Vendor Assigning the Agreement

8.2.1 The Vendor is prohibited from assigning, either in its entirety or partially, directly or indirectly, the Agreement or the receivables arising thereunder, without the Purchaser's prior written consent. In the event of breach of the prohibition, the Purchaser is entitled to terminate the Agreement pursuant to article 1456 of the civil code, as provided in the paragraph below 10.1.

## 8.3 Assignment of the Agreement by the Purchaser

8.3.1 The Purchaser is entitled to assign the Agreement, either in its entirety or partially, directly or indirectly, to subsidiaries, parent companies and entities subject to joint control, pursuant to article 2359 of the civil code, paragraphs 1 and 2. It is not necessary to obtain the Vendor's consent to assigning the Agreement in this manner.

# 9 Processing of personal data

## 9.1 Privacy Policy Statement

9.1.1 Regarding the personal data provided in order to perform this Agreement, the parties represent that they have exchanged the information referred to in articles 13 and 14 of the Regulation (EU) 2016/679, known as the General Data Protection Regulation (hereinafter "GDPR"), relating to the purpose, legal basis of processing, manner and instruments used in addition to the rights and procedures for exercising same, in accordance with the provisions of article 12 GDPR.

## 9.2 Technical and Organisational Measures and Appointment of the Data Processor

9.2.1 By signing this Agreement, having ascertained that the Vendor is able to demonstrate adoption and conformity with appropriate technical and organisational measures complying with laws and regulations in force on the processing of personal data, provided that circumstances are met, the Vendor may be designated Data Processor pursuant to article 28 of GDPR and article 29 of Legislative Decree n° 196/2003, (hereinafter also Privacy Code), in addition to the Italian legislation adapting to the GDPR. In such case, as Data Processor, the Vendor shall be required to abide by obligations and instructions given by the Purchaser, in its capacity as Data Controller, as stated in annex 9.2 to this Agreement of which it forms an integral, substantive part, and shall be required to abide by any additional instructions which the Data Controller may reasonably give in order to guarantee the protection and security of personal data.

## 9.3 Purpose of data processing

9.3.1 The Vendor is authorised to process personal data as per this Agreement solely for the purposes set forth therein, and therefore any processing operations, communications and assignment of personal data for purposes other than those indicated in the Agreement shall have to be expressly and specifically authorised by the Data Controller.

#### 9.4 The Data Subject's Rights

- 9.4.1 It is agreed that, in accordance with articles 15 (Right of Access), 16 (Right of Rectification), 17 (Right to be Forgotten), 18 (Right to Restrict Processing), 20 (Data Portability Right) and 21 (Right of Opposition) of the GDPR, at any time the data subject may request access to their personal data and rectification or erasure or restrictions on the processing of same or they may object to processing, in addition to the data portability right, by forwarding a written communication to the Data Controller.

### 10 Termination and withdrawal:

#### 10.1 Express Termination Clause

- 10.1.1 Termination is effected in accordance with law, pursuant to the provisions of articles 1456 of the civil code, in those cases contemplated in paragraphs: 1.4 (*Compliance with Law*); 1.6 (*Rules of Ethics*); 1.11 (*The Vendor's Auxiliaries*); 3.2 (*Delays in Delivery*); 5.3 (*Quality*); 7 (*Letter of Guarantee*); 8.1 (*Prohibition on Subcontractors*); 8.2 (*Prohibition on Assigning the Agreement*). Termination shall be effective when the Purchaser advises the Vendor in writing that it wishes to avail itself of this express termination clause.

#### 10.2 Written Instructions to Perform

- 10.2.1 In any case of breach by the Vendor of its obligations arising under the Agreement for the provision of goods or services, the Purchaser shall instruct the Vendor in writing to perform within 15 (fifteen) days of the date on which it receives such notice, with the warning that once such time limit has elapsed to no avail, the Agreement shall be deemed terminated, either in its entirety or partially, without prejudice to the Purchaser's right to make a claim for damages as a consequence of the breach.

#### 10.3 Withdrawal on the grounds of Insolvency or Bankruptcy or involvement by the Vendor in Insolvency Procedures

- 10.3.1 In the event of the Vendor's insolvency or a declaration of bankruptcy involving the Vendor, or in the event that it is subject to forced administrative liquidation procedures or bankruptcy protection, the Purchaser shall be entitled to withdraw from the Agreement without forewarning by means of a written communication.

#### 10.4 Unilateral Withdrawal by the Purchaser

- 10.4.1 The Purchaser is entitled, at any time, to withdraw from the Agreement. Withdrawal is effective from the day on which it is notified to the Vendor, unless the notice of withdrawal includes a different effective date
- 10.4.2 In any event of withdrawal by the Purchaser, including withdrawal contemplated by paragraph 10.3.1 above, the Vendor shall not be entitled to any consideration, refund or indemnification on the grounds of lost earnings, or any other sum howsoever described, with the exception of such costs and expenditure as the Vendor will have already incurred or has undertaken to incur.

## 11 Applicable law. Court exercising jurisdiction

### 11.1 Applicable Law

11.1.1 This Agreement is governed by Italian law.

### 11.2 Court Exercising Jurisdiction

11.2.1 Milan law court exercises sole jurisdiction in respect of any dispute relating to or howsoever connected to the existence, validity, interpretation, effectiveness, performance or termination of the Agreement.