



Madern Automation Inc

General Terms and Conditions of Sales

1. PREAMBLE

1.1 Unless otherwise agreed between Parties in writing, these General Terms and Conditions of Sales shall apply to all legal relationships between Buyer and Madern. Any and all other terms and conditions including those printed or written upon any other document passing between the Parties (such as, but not limited to, Buyer's Purchase Order) are explicitly excluded and agreed to be not applicable. No variation to these General Terms and Conditions of Sales shall be applicable to any Purchase Order or other Contract unless expressly agreed by Buyer and Madern in writing.

2. DEFINITIONS

2.1 In these General Terms and Conditions of Sales the following terms shall have the meanings herein assigned to them:

- "Buyer" includes all firms or entities that are purchasers or end-users that have entered into a Contract with the Company including its subsidiaries, parent, affiliated and associated companies and agents, servants, directors, officers and employees.
- "Conditions" shall mean these General Terms and Conditions of Sales, including variations to these General Terms and Conditions of Sales that have been agreed between Parties in Writing.
- "Confidential information" shall mean either Party's data, documents and other records embodying information of a confidential and proprietary nature and irrespective if such information is marked as "proprietary" and/or "confidential" or not, such as but not limited to commercial and technical information, in either oral, written or in any other way provided to, or obtained by the other Party.
- "Contract" shall mean the written contract between the Parties concerning the supply and erection of the Goods, and all appendices, including agreed amendments and additions to the said documents.
- "Contract Price" shall mean the total amount payable by the Buyer to Madern for the performance of the Works and the provision of the Services under this Agreement. Services shall be billed on a time-charge basis at the applicable hourly rates and shall be calculated by multiplying the number of hours worked in performing the Services times the applicable rates.
- "Day" shall mean a full calendar day.
- "Force Majeure" shall mean an exceptional event or circumstance:
 - a) which is beyond a Party's control; and
 - b) which, having arisen, such Party could not reasonably have avoided or overcome its effects; and
 - c) which is not substantially attributable to the other Party.Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, provided the conditions (a) to (c) above are satisfied:
 - a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies; or
 - b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; or
 - c) riot, commotion, disorder, strike or lockout by persons other than Madern's personnel and other employees of Madern and subcontractors; or
 - d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to Madern's use of such munitions, explosives, radiation or radio-activity, or

e) natural catastrophes such as earthquake, hurricane, typhoon, pandemic or epidemic events, or volcanic activity.

- "Goods" shall mean all machinery, apparatus, materials and articles to be supplied by Madern under the Contract.
- "Gross Negligence" shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.
- "Madern" shall mean Madern Automation Inc, with its registered office at 1010 Burma Drive, Apex, NC 27539, USA.
- "Madern Equipment" shall mean all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works, but does not include the Goods.
- "Party" shall mean either the Buyer or Madern.
- "Parties" shall mean the Buyer and Madern.
- "Services" shall mean all activities to be carried out by Madern at the Buyer's facility, including but not limited to installation, commissioning, maintenance, repairs and overhaul.
- "Site" shall mean the place where the Goods are to be erected, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Goods and erection equipment.
- "Third Party" shall mean any entity other than Madern or Buyer.
- "Works" shall mean the Goods including the erection and other work to be carried out by Madern under the Contract. If the Works according to the Contract shall be taken over by separate sections intended to be used independently from each other, these Conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.

3. OBLIGATIONS OF BUYER

3.1 Buyer shall, at no charge, provide Madern timely with any information reasonably required in connection with the Contract, such as - but not limited to - relevant technical documentation, logs, inspection reports and import licenses. All information provided by Buyer to Madern under or in relation to the Contract shall be deemed complete and correct in all respects and Madern is entitled to rely fully on such information. Buyer shall remain responsible for errors and omissions in the information supplied by it to Madern.

3.2 Buyer shall provide Madern with relevant information on any laws, regulations and rules which are applicable to the Contract and the Works.

3.3 Buyer shall not assign the Contract, nor use the Contract as any form of collateral, loan basis, creditor undertaking, payment security, or factoring unless approved by Madern in writing.

3.4 Buyer shall inform Madern without delay of any facts and circumstances that could be of relevance to the implementation of the Works.

3.5 Buyer shall provide all reasonable assistance to Madern at Madern's request for Madern's applications:

- a) which Madern is required to obtain for the Works from the Contract;
- b) if applicable, for customs clearance;
- c) if applicable, for the export of Madern Equipment when it is removed from the Site.

3.6 Buyer shall perform the following for its own account and at its own risk, unless these are not required for the services to be provided or if it has been agreed otherwise:

- a) provision of the drawings and other information and documentation not to be provided by Madern, relating to the rendering of services and the Site;
- b) obtaining permits, authorizations and licenses necessary for performing of the services;
- c) organizing required inspections to be performed by Third Parties;
- d) performing of construction work such as demolition work, foundations, painting, ground and scaffolding construction, and ensure that the flooring has sufficient load bearing capacity to support the Goods;
- e) provision of storage space for the equipment, as well as all reasonable protection measures and insurances regarding the stored Equipment;
- f) provision of sufficient quantities of gas, fresh water, electricity and (compressed) air including the relevant connection points as well as sufficient telecommunication facilities;
- g) provision of unhindered and unrestricted access to the Site, with uninterrupted work and available up-and downstream equipment if applicable;
- h) removal of waste water, waste materials including packaging materials and waste products;
- i) making available suitable workspace and a suitable shelter for people used by Madern to perform the services, equipped with all reasonably expected facilities such as sanitary, lighting, heating, information and telecommunication facilities, sufficient conveniences (lockable cabinets for example) and sufficient storage space;
- j) taking the security and precautionary measures necessary, or as required by Madern, in order to perform the services in accordance with the agreed Government regulations. This includes safety measures necessary in terms of the Occupational Health and Safety and environmental acts due to special risks associated with the services and which exceed the regular Madern activities and their usual risks.

3.7 Additional work and/or additional costs and damage resulting from the delayed or improper performance as per this article resulting in delayed execution of this Contract, are for the account of Buyer. Changes to the price, time schedule and the like shall be adjusted by way of a variation order, agreed between and signed by Parties in accordance with article 10.

4. PRICE AND PAYMENT

4.1 The Contract shall be effective from the date the Contract is signed by both Parties, however the Contract commencement date shall be the date on which the last of the following requirements has been fulfilled:

- a) Madern's receipt of the agreed advance payment, if applicable;
- b) Madern's receipt of the agreed payment security, if applicable.

4.2 Unless otherwise agreed by Parties in writing, the currency of the Contract will be USD and payments will be made in USD. Payments shall be made by Buyer within 30 days after the invoice date. A milestone payment plan shall be agreed between Parties for each individual Contract.

4.3 Buyer shall provide sufficient security for payment of the total Contract Price, subject to Madern's approval. If the Buyer does not provide such sufficient security, Madern shall have the right to wholly or partially terminate or suspend the Contract by a written notification to Buyer.

4.4 All prices specified by Madern are exclusive of , shipping and packaging costs, and exclusive of any and all taxes, duties, levies and the like, such as but not limited to costs for creating a permanent establishment which shall be added to the Contract Price, if applicable. Buyer agrees to



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defend, indemnify and hold harmless Madern from all claims, suits, costs, expenses, liabilities, fines, attorney's fees, judgements and demands as may be incurred resulting from or connected with any assessment, allegation or imposition for taxation outside the United States of America.

4.5 Buyer agrees that it shall neither withhold nor set-off any amount payable to Madern for whatsoever reason. In case of a withholding or delay in payment by Buyer, Madern reserves the right to suspend the Works partially or in whole subject to article 7.

4.6 Notwithstanding Madern's rights under 4.5, Buyer shall be liable to pay interest on the delayed outstanding amount at an interest rate of 1% per month, without further notice. Any additional costs, such as, however not limited to collection costs, incurred by Madern shall be borne by Buyer.

4.7 Title to and ownership of the Works shall remain vested in Madern until the latter has received all payments at its free disposal of the full Contract Price. Until title to the Goods passes to Buyer, Buyer shall (i) keep the Goods in a flawless condition, (ii) not change the location of the Goods and (iii) adequately insure the Goods against fire, damage, theft and other likely risks. The insurance policy shall show Madern as the sole beneficiary and it shall be submitted to Madern. Any costs related to the retention of title by Madern shall be borne by Buyer. If retention of title in Madern is subject to registration or observance of any other legal requirement, Buyer shall cooperate and take all necessary steps to preserve title in Madern until Madern has received payment in full. The retention of title shall not affect the passing of risk as described in clause 5.2.

4.8 Until the moment title has been transferred to Buyer in accordance with the previous paragraph, Buyer shall take no actions (like combining the Goods delivered, either in production or in storage, with other goods, or transferring, selling or encumbering them in any respect, or taking them into another country) which could jeopardize the unfettered execution of Madern's property right. Furthermore, Buyer shall take any actions reasonably required in order to protect these rights, and shall immediately return the Goods to Madern at the latter's first request.

5. DELIVERY

5.1 Unless otherwise agreed by Parties in writing, delivery of the Goods shall be made in accordance with Incoterm FCA Madern's plant (Incoterms 2020).

5.2 Risk of damage and/or loss to the Goods shall pass to Buyer in accordance with the agreed Incoterm.

5.3 Madern is entitled to make partial deliveries and Buyer is obliged to accept the Goods and/or services including partial deliveries.

5.4 In the event that the Factory Acceptance Test, the dispatch or the collection of the Goods at the designated place of delivery is delayed for reasons not solely attributable to Madern, Madern shall be entitled to store the Goods at the expense of Buyer in a warehouse at Madern's choice. Upon such storage, delivery according clause 0 shall be deemed completed and the risk for the Goods shall transfer to Buyer accordingly.

5.5 Unless otherwise agreed, all delivery dates and lead times mentioned by Madern are indicative and for reference only and shall not constitute any binding obligation on account of Madern.

5.6 Notwithstanding clause 5.5, should Parties expressly agree on a firm delivery date for the Goods, Buyer shall have a right to charge liquidated damages in case of delivery later than this agreed date. In case such delay is solely

attributable to Madern, Buyer shall be entitled after a written notification and grace period of thirty (30) days to charge liquidated damages in the amount of 0,5% of the value of the delayed Goods for each full calendar week of delay. Notwithstanding any provision under the Contract, the aggregate of the liquidated damages shall never exceed 5% of the Contract Price. Madern's liability for liquidated damages is subject to and shall be payable only against demonstrated and documented direct damages suffered by Buyer due to Madern's delay. For the avoidance of doubt, timely delivery of a substantial part of the Goods shall in no event constitute a delay on Madern's side. The Parties confirm that liquidated damages sum represents a genuine pre-estimate of the loss that Buyer would suffer in the event of a delay attributable to Madern and that such liquidated damages shall be the sole and exclusive remedy of Buyer in respect of such failure and shall settle all claims due to delay finally. The right to liquidated damages shall become null and void in case Buyer has not fulfilled all its payment obligations under the Contract.

5.7 Unless expressly otherwise agreed upon, Services shall be provided during a working week which shall be in accordance with normal industry practice. A working day is deemed to consist of eight (8) working hours.

5.8 Hours worked outside these normal working hours, on Saturdays or Sundays or on official holidays will be charged separately as overtime.

6. WARRANTY

6.1 If Works are found to be defective, Buyer shall be entitled to require Madern to rectify the defect free of charge, either by means of repair, replacement or re-execution, at Madern's sole discretion, provided that all of the following conditions are met:

a) it is reasonably possible to rectify the defect; and

b) the cause of the defect is directly and solely attributable to Madern; and

c) Madern is notified of the defect in writing within 14 days of the time when it could reasonably have been discovered; and

d) any additions or alterations to the Goods supplied or the services performed, repairing of faults or maintenance activities have been carried out by Madern or with Madern's prior written consent and are compliant with Madern's specifications and manuals.

6.2 The warranty period ends 12 (twelve) months after the date on which

a) the Works have been taken into use in accordance with clause 9.11; or

b) a trial run has been found successful; or

c) the Works have been taken over.

or 18 (eighteen) months after delivery according clause 5.1, whichever comes first. If delivery is delayed due to no fault of Madern, the warranty period expires 18 (eighteen) months after originally scheduled delivery date. No warranty shall apply for parts subject to wear and tear.

6.3 Parts are supplied under a limited warranty, expiring six (6) months after the date of shipment from Madern's premises.

6.4 Costs incurred for transport, disassembly and assembly of the Goods under warranty are for Buyer's account and excluded from Madern's warranty obligations. Madern may request that an item needing repair be returned to its address or to an address specified by it free of charge. Madern is entitled to rectify defects on its own initiative. Any components that become available as a result of a replacement shall remain/become Madern's property. The abovementioned

obligation to rectify defects also applies to defects in repairs for a period of three months after the repair is carried out and for parts for a period of six months after the good is shipped, but up to the end of the original period of 12 months as a very minimum.

6.5 Throughout the validity of the warranty period, Madern shall have the right to free and unhindered access the Site.

6.6 The warranty obligation does not include consequential costs, such as but not limited to hoisting equipment, electricity, scaffolding, assisting work, docking, demounting, and mounting. Madern bears only the material costs and the costs of working time required under normal conditions, as would be incurred when the warranty obligation would have been carried out at Madern's premises.

6.7 Life time expectancy and design criteria, mentioned in Madern's documents, if any, shall neither construe any warranty on life time of the Goods nor extension of the warranty period. It shall only be an indicator for the design principles.

6.8 Terms or wording and the legal implications thereof such as fit for (the intended) purpose, guarantee, fine, penalty, time is of the essence, turn-key, highest or latest norm, standard, and the like, shall not apply and are explicitly excluded.

6.9 No warranty obligation will be enforceable until Buyer has complied with all its payment obligations.

6.10 Any inspection or servicing activities by Madern shall impose no obligation on Madern except to perform said activity in a workmanlike manner and shall imply no warranty as to the completeness of the inspection or service or as to the overall performance of the product or system.

7. SUSPENSION

7.1 Buyer may at any time suspend, at its absolute discretion, the performance of all or part of the Works by giving written notice to Madern.

7.2 Buyer shall keep Madern informed of the date of the likely resumption of the Works.

7.3 Buyer may request resumption of the Works at any time following the notice of suspension and Madern shall as soon as practicable resume the Works.

7.4 If the execution of any part of the Works is prevented for a continuous period of thirty (30) days by reason of suspension by Buyer, Madern may request Buyer's permission to proceed. If Buyer does not give permission, without undue delay after being requested to do so, Madern may terminate the Contract by sending a written notice of termination to Buyer.

7.5 Upon such termination, Buyer shall compensate Madern in accordance with clause 8.2 of these Conditions.

7.6 Madern may, after giving not less than fourteen (14) days prior notice to Buyer, suspend (part of) the Works if any event occurs which is preventing or hindering Madern in the performance of its Works under the Contract and such event is not solely attributable to Madern, and/or if Buyer breaches or fails to timely fulfill any of its obligations under the Contract, such as however not limited to:

a) responding to written requests of Madern;

b) approval and/or release of (technical) documents;

c) completion of the civil works in accordance with Madern's interface requirements or other works for which Buyer is responsible;

d) obtaining of all necessary permits required for the execution of Madern's Works outside the United States of America and on Site;

e) providing sufficient working area and all required facilities such as, tools, equipment,



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water, electricity, and the like, at the work site in Buyer's country;

f) assuring availability of and free access to the work site as specified or as otherwise may be required by Madern;

g) timely fulfillment of payment obligations;

h) issuing of payment securities;

7.7 In the event that such suspension of the Works, partly or in whole, lasts for more than thirty (30) days after the date of Madern's notice of suspension, Madern shall be entitled to terminate the Contract, partly or in whole, unilaterally.

7.8 If Buyer substantially fulfils its obligations as described in Madern's written notice, Madern shall resume the Works as soon as is reasonably practicable.

7.9 After resumption of the Works as described in clause 7.3 and 7.8, the price, time schedule and all other consequences shall thereupon be adjusted by way of a variation order, agreed between and signed by Parties in accordance with article 10.

7.10 Buyer shall compensate Madern for all documented costs that are attributable to such suspension, including all costs necessary for the preservation, storage and safety of the Works.

7.11 For the avoidance of doubt and notwithstanding any provision under the Contract, Buyer's compensation obligation hereunder shall also include Madern's costs such as down-time and stand-by costs, during the suspension period and costs for which Madern will be liable to pay to any of its subcontractors as a direct consequence of the suspension.

8. TERMINATION

8.1 Buyer shall have the right at any time and at its absolute discretion to terminate the Contract by serving Madern a notice of termination.

8.2 In the event of receipt of such notice of termination, Madern shall deliver to Buyer all Works performed by Madern up to the date of receipt of the notice of termination, and Buyer shall compensate Madern for:

a) all Works or part thereof performed by Madern up to the date of receipt of the notice of termination;

b) all documented costs and expenses in connection with commitments entered into by Madern with other parties or incurred by Madern and which arise as a direct result of the termination;

c) any other cost or liability which in the circumstances was reasonably incurred by Madern in the expectation of completing the Work;

d) the cost of removal of temporary works and Madern Equipment from the Site and the return of these items to Madern's premises;

e) a termination compensation for loss of profit for the value of the terminated part of the Work.

8.3 Either Party shall have the right, by giving a thirty (30) days prior written notice to the other Party, to terminate the Contract, for any of the following reasons:

a) the other Party becomes insolvent, in receivership, bankruptcy, in administration, in composition or arrangement with its creditors, voluntary winding-up or any equivalent act or thing under any applicable law; or

b) the other Party's material breach of any provision of the Contract to which that Party has not commenced remedial activities as soon as may reasonably be expected after written notifications.

8.4 Any claims for termination must be received by notified Party in writing, within fourteen (14) days after the occurrence of the default event.

8.5 In case of termination due to default of Madern, Buyer shall be entitled to and, if Madern so requires, be obliged to take over that part of the Works which is completed and is free from defects. Buyer shall pay Madern a reasonable price for such part of the Works, with regard to the Contract Price and the circumstances of the case.

8.6 In case of termination due to default of Buyer, Madern shall deliver the Works performed by it until the date of its written notice of termination and be entitled to a compensation as stated in clause 8.2.

9. INSPECTION AND TAKING OVER

9.1 Madern shall notify Buyer latest 5 days in advance of any hold, witness or other inspections or tests planned in accordance with the agreed inspection and test plan that require presence of Buyer or of an inspection agency nominated by Buyer.

9.2 Should Buyer or an inspection agency nominated by Buyer not be present at the planned inspection or test date, Buyer's right to inspection and/or testing shall be deemed to be waived and the inspection/test shall be carried out by Madern in order not to impede or delay the Works. An inspection or test report shall be made and submitted to Buyer for reference only.

9.3 Buyer shall have no right to inspect or audit Madern's financial records.

9.4 When erection has been completed, Madern shall notify Buyer that the Works are ready for the taking-over tests in accordance with clause 9.1. The taking-over test shall, unless otherwise agreed, be carried out to determine whether the Works are as required for taking-over according to the Contract.

9.5 Taking-over of the Works takes place:

a) when the taking-over tests have been satisfactorily completed or are regarded under clause 9.4 as having been satisfactorily completed, or

b) where the Parties have agreed not to carry out taking-over tests, when 9.6 Buyer has received a notice from Madern that the Works have been completed according to the Contract.

Buyer shall bear all costs of inspections and taking-over tests. Buyer shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the taking-over tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labor or other assistance necessary for carrying out the taking-over tests.

9.7 The taking-over tests shall be carried out during normal working hours as stipulated in clause 5.7.

9.8 If the taking-over tests show the Works not to be in accordance with the Contract, Madern shall remedy the deficiencies. If Buyer so requires, he shall notify Madern without undue delay in writing, and new tests shall be carried out in accordance with this article 9.

9.9 The provisions of clause 9.8 shall not apply when the deficiency was insignificant. Minor deficiencies which do not affect the efficiency of the Works shall not prevent taking-over, however will be administered on a punch list and remedied by Madern within reasonable period.

9.10 If, after having been notified in accordance with clause 9.1, Buyer fails to fulfil his obligations under clause 9.6 or otherwise prevents the taking-over tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the date for taking-over tests stated in Madern's notice.

9.11 If Buyer commences use of the Goods or any portion of the Goods for their intended purpose,

other than for the express purpose of training or testing as mutually agreed upon by Madern and Buyer in writing prior to taking over, the Goods or the applicable portion of the Goods shall be deemed accepted and taken over by Buyer. The warranty period for the Goods shall be deemed to have commenced concurrently with the use of the Goods or the applicable portion of the Goods for their intended purpose.

10. VARIATIONS

10.1 Buyer is entitled to request variations to the scope, design and construction of the Works until the Works have been taken over.

10.2 Requests for variations shall be submitted to Madern in writing and shall contain an exact description of the variation required.

10.3 Within reasonable period after receipt of a request for a variation, Madern shall notify Buyer whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for completion and all other terms of the Contract.

10.4 Buyer shall, as soon as practicable however within 5 days after receiving such proposal respond with approval, disapproval or comments. Unless otherwise agreed, Madern shall not delay any work whilst awaiting a response.

10.5 If completion of the Works is delayed as a result of disagreement between the Parties on the consequences of variations, Buyer shall pay any part of the Contract Price which would have become due if the Works had not been delayed.

10.6 Save as provided in clause 10.7, Madern shall not be obliged to carry out variations required by Buyer until either the Parties have agreed on how the variations will affect the Contract Price, the time for completion and other terms of the Contract, or the dispute has been settled in accordance with clause 16.2.

10.7 Buyer shall carry out any variation work caused by changes in laws, regulations and rules referred to in clause 3.2, or in their generally accepted interpretation, occurring between the dates of submission of the tender and taking-over. Buyer shall bear the extra costs and other financial consequences resulting from such changes, including variation work.

11. CONFIDENTIALITY AND IP RIGHTS

11.1 Neither Party shall, without the prior written approval of the other Party, disclose to any third party any Confidential Information of the other Party, nor shall make any promotional display, announcement or advertisement relating to the Contract, without the prior written approval of the other Party.

11.2 These provisions shall not apply to information within the following categories:

a) information which, prior to the time of disclosure, was lawfully in the public domain;

b) information which through no fault of the disclosing Party enters into the public domain;

c) information obtained by the disclosing Party from a third party who was lawfully in possession of such information;

d) information which a Party is obliged to disclose by applicable law, rules or regulations.

11.3 The Parties undertake to monitor the distribution of proprietary information as described here above within its organization only on a need-to-know basis to ensure the commitments hereunder are duly met.

11.4 All intellectual property rights, including but not limited to, all drawings, designs, (technical) documentation, building specifications, computer programs, as well as the carriers on which such rights are laid down (hereafter jointly: "I.P.-rights"), delivered or developed under the



Contract will at all times remain vested in and the property of Madern and will be returned to Madern upon first request or immediately upon fulfillment of the contractual obligations of both Buyer and Madern. Madern grants to Buyer a limited, non-exclusive, non-transferable, royalty free, irrevocable and perpetual license to use the I.P.-rights to the extent necessary to enable Buyer to use the Goods in accordance with the Contract.

11.5 Notwithstanding any provision in any document under the Contract, and regardless of the priority of documents, Madern's Works are excluding and undelivered of any:

a) software source codes; and
b) detailed engineering and/or calculations and/or specifications of components and/or workshop/production drawings.

11.6 The software provided by Madern will be fully sufficient for daily operation of the Goods. Buyer acknowledges and respects the copyright of Madern, vested in the software, and shall not challenge these rights. Buyer recognizes that Madern's software is proprietary to Madern and its title remains vested in Madern

11.7 In the event and to the extent any of the Goods contain or are sold with third party software, Buyer acknowledges and agrees that such software is sold to Buyer subject to the terms and conditions of either the applicable software provider's license agreement between Buyer and a third-party software provider or the relevant terms and conditions in the Agreement with Madern. Madern will undertake that for each such software program a relevant license is granted by the third-party licensor, along with any printed documentation that is part of the software.

11.8 Any warranties with respect to Software shall run directly from the third-party software provider to Buyer pursuant to such third-party software provider's license agreement.

11.9 Madern provides the software "as is" without any warranty of any kind, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular use.

11.10 Madern shall, in no event be liable for any damages, including direct or consequential, general or special damages arising out of the use or inability to use the software including but not limited to the loss of data or data being rendered inaccurate or losses sustained by user or any third party or failure of the software to operate and/or communicate with any other software.

12. FORCE MAJEURE

12.1 If a Party is or will be prevented from performing any of its obligations under the Contract by a Force Majeure event, then it shall, without undue delay, give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented.

12.2 The Party shall, having given notice, be excused from performance of such obligations for so long as such Force Majeure prevents it from performing them.

12.3 Notwithstanding any other provision in these conditions, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

12.4 Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

12.5 The affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

12.6 If Madern is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given and suffers delay and/or incurs cost by reason of such Force Majeure event, Madern shall be entitled to:

a) an adjustment of the time schedule for any such delay, if completion is or will be delayed, and
b) adjustment of the Contract Price for any such cost

12.7 If the execution of substantially all the Works is prevented for a continuous period of sixty (60) days due to a Force Majeure event of which notice has been given, or for multiple periods which total more than sixty (60) days due to the same notified Force Majeure event, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect fourteen (14) days after the day the notice has been given.

12.8 Upon such termination, Buyer shall compensate Madern for the value of the performed Works in accordance with the provisions of clause 8.2.

13. NOTICES

13.1 All notices and other communications given or made pursuant to this Contract shall be in writing and shall be deemed effectively given:

a) upon personal delivery to the Party to be notified;
b) when sent by electronic mail if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day;
c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid;
d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.

13.2 All communications shall be sent to either Party's representative as defined in the Contract.

13.3 The language for communications under the Contract shall be English.

14. LIMITATION OF LIABILITY

14.1 MADERN'S LIABILITY FOR PROPERTY DAMAGE AND PERSONAL INJURY SHALL BE LIMITED TO 50% OF THE ORIGINAL CONTRACT PRICE, OR USD 2,500,000, WHICHEVER IS THE LOWEST, UNLESS THE AMOUNT PAID OUT UNDER THE RELEVANT INSURANCE POLICY OF MADERN IS LOWER, IN WHICH CASE THE PAID-OUT AMOUNT SHALL BE THE LIMITATION OF LIABILITY.

14.2 MADERN SHALL HAVE NO LIABILITY FOR ANY LOSSES, COSTS, EXPENSES, LIABILITIES AND DAMAGES (INCLUDING BUT WITHOUT LIMITATION TO LOSS OF USE OR PROFITS, DAMAGE TO PERSONS OR PROPERTY, ALL LIABILITIES OF BUYER OR THIRD PERSONS, OR ALL OTHER SPECIAL OR CONSEQUENTIAL DAMAGES) WHETHER DIRECT OR INDIRECT, AND WHETHER OR NOT RESULTING FROM, OR CONTRIBUTED TO BY THE DEFAULT OR NEGLIGENCE OF MADERN, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS, WHICH MIGHT BE CLAIMED AS THE RESULT OF THE USE OR FAILURE OF THE PRODUCT DELIVERED, WHETHER ARISING IN CONTRACT OR NOT. MADERN MAKES NO FURTHER WARRANTY, EITHER EXPRESS OR IMPLIED OR BY TRADE USAGE IN CONNECTION WITH THE DESIGN, SALE OR USE OF ANY OF THE PRODUCTS FURNISHED HEREUNDER, AND MADERN'S LIABILITY ON ITS WARRANTY SHALL IN NO EVENT EXCEED ITS COSTS OF CORRECTING THE DEFECTS IN THE PRODUCT SOLD OR REPLACING THE SAME WITH NON-DEFECTIVE PRODUCT. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL

OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

15. APPLICABLE LAW AND DISPUTE RESOLUTION

15.1 These Conditions and all transactions between Madern and Buyer are governed by the laws of the State of North Carolina in the United States, without reference to conflict of laws principles. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

15.2 Any legal action to enforce the Terms shall be brought either in the Circuit Court of Wake County or North Carolina District Court 10. Buyer hereby consents to the jurisdiction of the courts of or in the State of North Carolina in connection with any dispute, controversy, action or other matter relating to or arising out of the Terms. Compliance with any local governmental laws or regulations relating to the location, use or operation of the products, or its use in connection with other equipment, shall be the sole responsibility of the Buyer.

15.3 In the event that Buyer fails to make payment of the amounts as set forth in Section 3 above or any balance of Buyer or corresponding cash value not yet delivered, Buyer hereby irrevocably authorizes and empowers any attorney-at-law of any court of record in the State of North Carolina to enter Madern's appearance in such court, to waive process and service of process and to confess judgment against Buyer for such amounts as may be due Madern as evidenced by an affidavit signed by an officer of Madern setting forth the amount then due, together with all costs and attorneys' fees, and interest from the date the confession of judgment is entered at the rate of twelve percent (12%) per annum, or the maximum permitted by law. Buyer agrees to waive and release all errors and waive all rights of appeal from any judgment entered and further agrees that execution on any judgment entered may be received without delay.