

**EPP**  
**TERMS AND CONDITIONS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions and rules of interpretation apply to these Terms and Conditions ("**Conditions**").

<p><b>"Business Day"</b> means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.</p>	<p><b>"Contract"</b> means the contract between EPP and the Purchaser for the supply of Goods and/or Services in accordance with these Conditions.</p>	<p><b>"Intellectual Property Rights"</b> means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.</p>
<p><b>"Purchaser"</b> means the company who purchases the Goods and/or Services from EPP.</p>	<p><b>"EPP"</b> means European Process Plant Limited (company number 01042804), whose registered address is at EPP House, 8/9 Epsom Business Park, Kiln Lane Epsom, Surrey, KT17 1JF and Somers Hill (EPP Ireland) Limited (company no. 648234) trading as EPP Ireland, whose registered address is 1 Castlewood Avenue, Rathmines, Dublin 6, D06 H685, Ireland.</p>	<p>Order Confirmation and Specification. Use of the term 'Goods' shall apply to both Capital Equipment and Spare Parts except where application to the other is specified.</p>
<p><b>"Force Majeure Event"</b> means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Contract including, but not limited to, acts of God, flood, drought, earthquake, fire or other natural disaster, epidemic or pandemic, terrorist attack, explosion, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, any law or any action taken by a government or public authority, non-performance by suppliers or subcontractors, any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).</p>	<p><b>"Manufacturer"</b> means a third party manufacturer or supplier of the Goods and/or Services.</p>	<p><b>"Order"</b> means an order the Purchaser issues against a Quotation as acceptance of that Quotation.</p>
<p><b>"Goods"</b> means Capital Equipment and/or Spare Parts sold or supplied by EPP as more fully described in the</p>	<p><b>"Order"</b> means an order the Purchaser issues against a Quotation as acceptance of that Quotation.</p>	<p><b>"Quotation"</b> means a document submitted to the Purchaser by EPP specifying the Goods and/or Services (including any Specification) and the cost of providing such Goods and/or Services.</p>
	<p><b>"Services"</b> means engineering services supplied by EPP and/or the Manufacturer to the Purchaser as set out in the Quotation and Order Confirmation.</p>	<p><b>"Specification"</b> means a statement of work or other similar document describing the Goods and/or Services to be provided by EPP and/or the Purchaser.</p>

**1.2 Interpretation**

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (c) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (d) A reference to writing or written includes email.

**2. APPLICATION OF THESE CONDITIONS**

- 2.1 These Conditions apply to and form part of the Contract between EPP and the Purchaser. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 All of these Conditions shall apply to the supply of both Goods and Services except where application to one of the other is specified.
- 2.3 On request from the Purchaser for Goods and/or Services, EPP will issue a Quotation. A Quotation is only valid for a period of 30 days from its date of issue.
- 2.4 The Purchaser will issue an Order confirming acceptance of the Quotation. An Order shall only be deemed accepted by EPP when EPP issues written acceptance of the Order ("**Order Confirmation**") and the Purchaser pays the deposit specified in the Quotation at which point and on which date the Contract shall come into existence.
- 2.5 The Purchaser understands that EPP is a reseller of Goods and/or Services supplied by the Manufacturer. The Purchaser is therefore exclusively responsible for accepting the Specification of any Goods,

for ascertaining the use to which they will be put and for determining their ability to function for that purpose. By returning the signed Order Confirmation, the Purchaser is confirming acceptance of the Specification.

- 2.6 Where there are any inconsistencies between these Conditions and an Order Confirmation, the Order Confirmation shall prevail.

**3. PRICE AND PAYMENT**

- 3.1 The price for the Goods and/or Services shall be as set out in the Order Confirmation ("**Price**").
- 3.2 All sums stated in an Order Confirmation exclude value added tax (unless otherwise stated) which shall also be payable by the Purchaser at the rate prevailing from time to time.
- 3.3 EPP reserves the right to increase the Price with immediate effect by written notice to the Purchaser to reflect any increased cost to EPP of supplying the Goods and/or Services which is due to any factor beyond its control.
- 3.4 If the Purchaser uses a finance company to fund the purchase of Goods, EPP will charge an administration fee as set out in the Order Confirmation.
- 3.5 The Purchaser shall pay the Price for the Goods and/or Services to the bank account nominated by EPP and on the dates and in the currency specified.
- 3.6 In the event that the Purchaser fails to make any payment properly due to EPP, then EPP, provided that it has given the Purchaser 7 days' notice to make payment on the overdue sum, shall be entitled to, without limiting its other rights:
  - (a) charge the Purchaser interest on such overdue sum at the rate of 3% per annum above the base rate of the Bank of England in force from time to time. Interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment; and

- (b) recover any costs incurred by EPP in recovering any overdue sum including administrative costs, any costs incurred with lawyers, court applications or debt collection agencies.

#### 4. SPECIFICATION

- 4.1 All Goods shall be made available to the Purchaser by EPP and shall be supplied in accordance with the relevant Specification attached to the Order Confirmation.
- 4.2 To the extent that the Goods are manufactured in accordance with a Specification supplied by the Purchaser, the Purchaser shall indemnify EPP against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by EPP in connection with any claim made against EPP for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with EPP's use of such Specification.
- 4.3 EPP reserves the right to amend any Specification that is the subject of an Order Confirmation.

#### 5. DELIVERY AND RISK

- 5.1 EPP shall deliver the Goods to the location set out in the Order Confirmation or such other location as the parties may agree at any time after EPP has notified the Purchaser that the Goods are ready for delivery ("Delivery Location").
- 5.2 EPP shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only. EPP will keep the Purchaser updated should the date for delivery and/or performance be delayed. Time is not of the essence in relation to the performance or delivery of the Goods/Services.
- 5.3 The Purchaser shall be responsible for ensuring that there are adequate personnel and equipment at the Delivery Location and for unloading and positioning the Goods.
- 5.4 EPP shall not be liable for any delay in or failure of performance caused by:
  - (a) the Purchaser's failure to make the Delivery Location available;
  - (b) the Purchaser's failure to prepare the Delivery Location in accordance with EPP's instructions;
  - (c) the Purchaser's failure to provide EPP with adequate instructions for performance or delivery;
  - (d) Force Majeure.
- 5.5 If the Purchaser fails to take or accept delivery of the Goods within ten Business Days of EPP notifying the Purchaser that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by EPP's failure to comply with its obligations in respect of the Goods:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the tenth Business Day following the day on which EPP notified the Purchaser that the Goods were ready; and
  - (b) EPP shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance).
- 5.6 EPP will rely on notification from its selected courier as proof that the Goods have been delivered to the Delivery Location.
- 5.7 If fifteen Business Days after the day on which EPP notified the Purchaser that the Goods were ready for delivery the Purchaser has not taken or accepted actual delivery of them, EPP may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods.
- 5.8 Unless otherwise stated in the Order Confirmation, risk in any Spare Parts shall pass to the Purchaser on a DPP basis (as defined within the Incoterms 2020).
- 5.9 Unless otherwise stated in the Order Confirmation, risk in any Capital Equipment shall pass to the Purchaser on a DAP basis (as defined within the Incoterms 2020).

#### 6. INSPECTION, TESTING, INSTALLATION AND COMMISSIONING

##### Inspection and Testing

- 6.1 Upon reasonable notice, the Purchaser shall be entitled at all reasonable times during manufacture to inspect, examine and test the Goods at the Manufacturer's premises.
- 6.2 Prior to delivery of the Goods EPP shall aim, where possible, to give 14 days' notice in writing to the Purchaser that the Goods will be available, on a specified date, at the Manufacturer's premises for

inspection, examination and tests to demonstrate that the Goods comply with the Specification and are ready for installation.

- 6.3 Where the Order Confirmation includes the installation of Goods, EPP will provide a detailed programme of works for the installation, together with the name, if applicable, of the Manufacturer carrying out such installation for the Purchaser to approve. Approval of such programme shall not be unreasonably withheld or delayed.

##### Installation and Commissioning

- 6.4 The Purchaser agrees to ensure the following prior to the installation of the Goods:
  - (a) to ensure that it has in place all links, connections, foundation works appropriate for the assembly and installation of the Goods;
  - (b) comply with any health and safety measures indicated to it by EPP;
  - (c) it has undertaken any enabling works, including the provision of unhindered access;
  - (c) to make available any of its own technicians that may be required to assist with the installation; and
  - (d) implement any other measures notified to it by EPP.
- 6.5 The Purchaser is responsible for the provision of connection of services once the Goods have been delivered and for the removal and disposal of any packaging material.
- 6.6 If applicable, once installation of the Goods is completed, EPP and/or the Manufacturer shall demonstrate to the satisfaction of the Purchaser that the Goods meet the Specification and are operational and ready for immediate use.
- 6.7 EPP and/or the Manufacturer shall remove all of its tools, materials and other property from the Delivery Location and shall leave it clean, tidy and in as good as condition as it were prior to the installation of Goods. For the avoidance of doubt, EPP and/or the Manufacturer is not responsible for leaving the Goods and/or the Delivery Location in a food safe condition, this is purely the responsibility of the Purchaser.

#### 7. TITLE

- 7.1 Title to the Goods shall not pass to the Purchaser until EPP has received payment in full for the Goods.
- 7.2 If, at any time before title to the Goods has passed to the Purchaser, the Purchaser informs EPP, or EPP reasonably believes, that the Purchaser has or is likely to become subject to any of the events specified in clauses 14.1(a) to 14.1(d) or 14.2(a) to 14.2(m), EPP may:
  - (a) require the Purchaser at the Purchaser's expense to re-deliver the Goods to EPP; and
  - (b) if the Purchaser fails to do so promptly, enter any premises where the Goods are stored and repossess them.

#### 8. WARRANTIES

##### Spare Parts

- 8.1 EPP warrants that, for a period of six months from delivery or installation, the Spare Parts and/or Services shall:
  - (a) conform in all material respects to any sample, their description and to the Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) If Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (d) if Services, be supplied with all reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s.13.
- 8.2 The Purchaser warrants that it has provided EPP with all relevant, full and accurate information as to the Purchaser's business, needs and intended use of the Goods.
- 8.3 As the Purchaser's sole and exclusive remedy, EPP shall, at its option, correct, repair, remedy, re-perform or refund any Spare Parts that do not comply with clause 8.1, provided that the Purchaser:
  - (a) serves a written notice on EPP not later than five Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
  - (b) such notice specifies that some or all of the Spare Parts do not comply with clause 8.1 and identifying in sufficient detail the nature and extent of the defects; and
  - (c) gives EPP a reasonable opportunity to examine the claim of the defective Spare Parts.

8.4 The provisions of these Conditions shall apply to any Spare Parts that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Spare Parts.

8.5 EPP shall not be liable for any failure of the Spare Parts to comply with clause 8.1:

- (a) where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Spare Parts;
- (b) to the extent caused by the Purchaser's failure to comply with EPP's and/or the Manufacturer's instructions in relation to the Spare Parts, including any instructions on installation, operation, storage, cleaning or maintenance;
- (c) to the extent caused by EPP following any specification, instruction or requirement of or given by the Purchaser in relation to the Spare Parts;
- (d) where the Purchaser modifies any of the Spare Parts without EPP's prior written consent or, having received such consent, not in accordance with EPP's instructions; or
- (e) where the Purchaser uses any of the Spare Parts after notifying EPP that they do not comply with clause 8.1.

#### Capital Equipment

8.6 In so far as possible, EPP will pass on to the Purchaser the benefit of any warranty given to EPP by the Manufacturer on the Capital Equipment and will, on request, supply to the Purchaser details of the terms and conditions of such warranty. The Purchaser shall be solely responsible, to the entire exclusion of EPP, for complying with these.

8.7 Except as set out in this clause 8, EPP:

- (a) gives no warranty and makes no representations in relation to the Goods; and
- (b) shall have no liability for their failure to comply with the warranty in clause 9.1, and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

#### 9. INDEMNITY

9.1 The Purchaser shall indemnify, and keep indemnified, EPP from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by EPP as a result of or in connection with the Purchaser's breach of any of the Purchaser's obligations under the Contract.

#### 10. LIMITATION OF LIABILITY

10.1 Nothing in this Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) any act, omission, matter or liability for which may not be excluded or limited under law.

10.2 Subject to clause 10.1, EPP's total liability to the Purchaser in contract (including under any indemnities), tort (including negligence and breach of statutory duty, howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract, and whether under a claim or series of claims in the aggregate, shall be limited to 100% of the price actually paid for the Good and/or Services by the Purchaser under this Contract.

10.3 EPP shall not in any circumstances be liable in contract (including under any indemnities), tort (including negligence and breach of statutory duty, howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, sales, agreements, reputation or goodwill;
- (b) any loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time);
- (c) any loss or liability (whether direct or indirect) under or in relation to any other contract;
- (d) any loss or corruption of software, data or information; or
- (e) any indirect, special or consequential loss or damages.

#### 11. USE OF NAME

The Purchaser agrees that EPP may use the Purchaser's name, trade mark, logo and/or symbol and details of the services EPP has provided to the Purchaser on its website or in any marketing materials (press

releases, brochures, presentations and so on) unless the Purchaser informs EPP otherwise in writing.

#### 12. CONFIDENTIALITY

12.1 Each party undertakes that it shall not during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, Manufacturers, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
- (c) as permitted under clause 11.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

#### 13. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a "Force Majeure Event"). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months the party not affected may terminate the Contract by giving 30 days written notice to the affected party.

#### 14. TERMINATION

14.1 EPP may terminate the Contract at any time by giving notice in writing to the Purchaser if:

- (a) the Purchaser commits a material breach of the Contract and such breach is not remediable;
- (b) the Purchaser commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
- (c) the Purchaser has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after EPP has given notification that the payment is overdue; or
- (d) any consent, licence or authorisation held by the Purchaser is revoked or modified such that the Purchaser is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

14.2 EPP may terminate the Contract at any time by giving notice in writing to the Purchaser if the Purchaser:

- (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if EPP reasonably believes that to be the case;
- (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (d) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- (e) becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- (f) becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- (g) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (h) has a resolution passed for its winding up;
- (i) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- (j) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- (k) has a freezing order made against it;

- (l) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- (m) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 14.2(a) to 14.2(m) including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 14.3 If the Purchaser becomes aware that any event has occurred, or circumstances exist, which may entitle EPP to terminate the Contract under this clause 14, it shall immediately notify EPP in writing.
- 14.4 On termination of this Contract howsoever arising:
- (a) the Purchaser shall immediately pay any outstanding unpaid invoices and interest and, in respect of the Services and Goods supplied but for which no invoice has been submitted, EPP may submit an invoice, which shall be payable by the Purchaser immediately on receipt; and
- (b) the Purchaser shall return any Goods which have not been fully paid for. If the Purchaser fails to do so, then EPP may enter the Purchaser's premises and take possession of them. Until they have been returned, the Purchaser shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 14.5 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.6 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 15. GENERAL**
- 15.1 **DISPUTE RESOLUTION PROCEDURE.** In the event that any claim or dispute arises out of or in connection with this Contract, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 14 calendar days after such notice or by such later date as the parties may otherwise agree in writing). If the parties are unable to resolve the dispute or claim in accordance with this clause 15.1, either party may commence proceedings in accordance with clauses 15.9 and 15.10.
- 15.2 **NO PARTNERSHIP OR AGENCY.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 15.3 **ASSIGNMENT.** The Purchaser shall not be entitled to assign its rights or obligations or delegate its duties under this Contract without the prior written consent of the EPP.
- 15.4 **SEVERANCE.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this 15.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 15.5 **WAIVER.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.6 **ENTIRE AGREEMENT.** This Contract contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.
- 15.7 **NO THIRD PARTIES.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.8 **VARIATION.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.9 **GOVERNING LAW.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.10 **JURISDICTION.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.