



# General Terms and Conditions of Sale for Products and Services

Version 2023

## 1. GENERAL

1.1. These General Terms of Sale (“GTS”) shall be applicable to any offer, quotation, proposal and/or order confirmation issued by Neways Electronics (“Neways” or “Party”), and any agreement entered into by Neways with any party (the “Customer” or “Party”) relating to the manufacture, supply, sale and/or delivery of Products and/or Services by Neways (the “Contract”), as well as any action or (legal) transaction in preparation of or related to such Contract.

1.2. The applicability of any general terms and conditions used by Customer is expressly rejected by Neways, unless such general terms and conditions are explicitly accepted in writing by Neways in respect of any specific transaction.

## 2. DEFINITIONS

2.1. “Anti-Corruption Law” means all applicable laws which prohibit the conferring of any gift, payment or other benefit on any person or any officer, employee, agent or advisor of such person.

2.2. “Confidential Information” means any and all information in any form that Neways provides to Customer, including without limitation all ideas, concepts, structures, costs, specifications, formulations, composition, documentation, designs, techniques, drawings, hardware, software, data, prototypes, processes, technology, knowhow, methods of design and/or development, inventions, and/or other technical, business, marketing, planning, commercial and/or financial information and/or data regardless of how such information is transmitted, that either (i) has been marked or designated as confidential or (ii) is of such nature that a reasonable person would view as confidential under like circumstances. Confidential Information does not include work products resulting from the Services and information which (a) is already known to Customer at the time of disclosure; (b) is independently developed without the benefit of the other’s Confidential Information; (c) is received from a third party that is not under any confidentiality obligation towards the owner of the information; or (d) has entered the public domain through no fault of the recipient.

2.3. “Intellectual Property Rights” means any and all tangible and intangible: (i) rights associated with works of authorship, including copyrights, moral rights, neighboring rights, and derivative works thereof, (ii) trademark and trade name rights, (iii) knowhow and trade secret rights, (iv) patents, design rights, and other industrial property rights, and, (v) all other intellectual property rights (of every kind and nature however designated) whether arising by operation of law, treaty, contract, license, or otherwise, together with all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof, in connection with the Products and/or Services.

2.4. “Products” means any hardware, supplies, accessories and other commodities provided by Neways under the Contract.

2.5. “Services” means the testing, assessment, per-diem or specific time-limited engineering services, installation, commissioning, start-up, configuration, repair and maintenance activities, and any development of application programs, customization, implementation, training and any other services agreed upon between the Parties, to be performed by Neways in connection with the Contract, or any other activities that may be agreed by Neways to be performed.

2.6. “Third Party Products” means products and/or software of a third-party vendor. If Third Party Products are supplied by Neways under the Contract, notwithstanding anything to the contrary, such supply is made on a “pass-through” basis only and is subject to the terms and conditions of the third party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto. Third Party Products are quoted subject to price changes imposed by third party vendors between the date of order encompassing such Third-Party Products and the date of Neways’ invoice related to that Third-Party Product.

## 3. OFFER AND ACCEPTANCE

3.1. Any offer from Neways is solely based on the specifications exchanged between the Parties in writing in or before the offer, which also includes:

- (a) Any expected specification and functionalities of the Products and/or Services;
- (b) Any installation and environmental conditions; and
- (c) The nature and conditions of tests to be conducted by the Customer.

3.2. Any Offer from Neways is free of obligation, meaning that Neways can withdraw the offer at any time, even after it has been accepted. Neways does not have an obligation towards the Customer until Neways (i) has issued an order confirmation, or (ii) has commenced performance of the relevant obligation.

3.3. Neways is completely free to reject an order from the Customer, without any reason being required for such rejection. If Neways decides to confirm an order, Neways may attach (further) terms to its order confirmation, including but not limited to an advance payment or adjusted price. Inaccuracies or undesired terms must be reported to Neways in writing within two (2) business days after the date of the order confirmation, in the absence of which the order confirmation is deemed to be an accurate and complete representation of the Contract.

#### 4. CHANGES

- 4.1. After conclusion of a Contract, Neways may request changes that affect the relevant scope, duration, delivery schedule or price, including changes in the Products or Services to be delivered or licensed. If Neways requests any such change, the Customer shall negotiate in good faith a reasonable and equitable adjustment to the Contract, including if necessary, any price and schedule adjustment and changes to the payment schedule and milestones, where relevant. With regard to any change requested by the Customer, Neways shall not be bound by any change until an amendment to the Contract has been agreed upon in writing, which is to be freely determined by Neways.

#### 5. DELIVERY

- 5.1. Unless otherwise agreed upon in writing by Neways, deliveries of all Products are made Free Carrier (FCA) ICC Incoterms 2020 Neways' facility/warehouse.
- 5.2. If the Customer does not take possession of the Products on the scheduled delivery date or does not collect the Products upon Neways' (advance) notice, Neways may automatically rescind the relevant sales agreement upon notice, without prejudice to any damages that Neways may claim. Should Neways not exercise this right, Neways will hold the Products for the account and risk of the Customer.
- 5.3. If Customer fails to notify Neways of any material non-conformities in the Delivery of the Products, within a reasonable period following delivery, not to exceed thirty (30) calendar days, or is using those Products or Services in a production environment or for the regular conduct of its business, the Products or Services shall be deemed accepted, without prejudice to the warranty provisions hereunder.
- 5.4. The Products delivered shall conform with the Contract. The Products delivered conform with the Contract if the Products conform with the agreed specifications, provided that minor deviations and/or deviations that are customary in the sector are permitted. The Customer declares that the Products purchased are suitable for the use intended by the Customer if the Products supplied meet the agreed specifications/characteristics, including the corresponding permitted deviations.

#### 6. DELAYS IN DELIVERY/PERFORMANCE

- 6.1. Any indicated or agreed upon delivery/performance dates or periods are approximates only and the timing of delivery/performance is not of the essence for the Customer. If Neways does not deliver/perform a Product and/or Service on or within the applicable date or period, Neways will not be in default before the Customer has provided Neways written notice of default with a further delivery/performance period of at least fourteen (14) days and Neways has still not delivered/performed before the end of that further period.
- 6.2. Delivery/performance periods commence on the latest of the following: (i) Neways' order confirmation; (ii) Neways'

receipt of information which the Customer is responsible for providing where the commencement of the order fulfilment is conditional upon the provision of that information; or (iii) receipt of the agreed down payment.

- 6.3. In the event of a delay in delivery or performance for which Neways is in default (excluding any delay in delivery caused directly or indirectly by Neways' suppliers), the Customer will be entitled to a penalty equal to zero point two (0.2) % of the price of the Products and Services for which the delivery or performance is delayed for each full week that Neways is in default, it being hereby stipulated that this penalty shall not, in all cases, exceed two (2) % of the amount of this price. The Customer may not set off any penalty owed by Neways against any amounts owed by the Customer, without Neways' prior written consent. The aforesaid penalty shall constitute the sole remedy of the Customer for delays and shall only be payable by Neways if the delay is exclusively attributable to Neways.
- 6.4. If the Customer delays, prevents or impedes delivery/performance by Neways, Neways shall be entitled to an extension of time and to recover any additional costs incurred due to such delay, prevention or impediment including additional storage costs, de-mobilization/re-mobilization costs, travel and transportation costs, without prejudice to any other rights of Neways based on the delay, prevention or impediment.

#### 7. PRICES – PAYMENT – TAXES

- 7.1. The prices of the Products and/or Services are exclusive of taxes and Free Carrier (FCA) ICC Incoterms 2020, unless agreed otherwise between the Parties in writing.
- 7.2. If the Contract is concluded without the price having been agreed in writing, the Customer will owe the price usually stipulated by Neways at the time of delivery/performance.
- 7.3. Until Neways has invoiced the full price for a Products or Service, Neways shall be entitled to revise the prices applicable to the Contract as follows:
- (a) by one (1) weeks' written notice to the Customer in the event of:
    - (i) any fluctuation in the currency exchange rates applicable at the date of the Contract;
    - (ii) any increases in the cost of raw materials, transport, energy or labor;
    - (iii) any changes in legislation or technical standards; or
    - (iv) other events beyond its reasonable control that affect Neways' ability to perform or the cost of performance under the Contract; or
  - (b) by two (2) months' written notice to the Customer in all other cases.

- 7.4. The new prices provided in Article 7.3 shall take effect upon expiration of aforementioned notice period, or, if a later date is specified in such notice, on the date so specified.

- 7.5. Unless otherwise provided in the Contract, Neways shall be entitled to issue an invoice no later than the date of delivery/performance and Customer shall pay such invoices

within thirty (30) days of the invoice date by transfer to the bank account indicated by Neways in writing. If the creditworthiness of Customer is deemed insufficient by Neways, to be determined at Neways' full discretion and at any time, Customer will, upon Neways' request and terms, provide prepayment and/or a bank guarantee.

- 7.6.** Neways can issue invoices by regular post, (e)mail or electronically in a PDF or XML format. An EDI payment process can be established by Neways. In case of a non-standardized demand or requirement by the Customer, all required development costs will be borne by the Customer. In no event shall such non-standardized demand relieve the Customer from its payment obligations as defined in these GTS.
- 7.7.** The Customer shall pay all amounts due under the Contract in full without any setoff, counterclaim, deduction or suspension of payment (except for any deduction or withholding required by law). Neways may at any time, without limiting any other rights or remedies it may have, set off any amount owed to the Customer against any amount payable by the Customer to Neways.
- 7.8.** The Customer must send complaints regarding the correctness of the invoice in writing to Neways within ten (10) days of the date of the invoice. The right of the Customer to complain about the correctness of the invoice lapses upon the expiry of this period. If the Customer complains in good time and with good reason, Neways will, as the sole remedy for the Customer, credit the incorrect invoice and send a new invoice to the Customer.
- 7.9.** The Customer hereby gives Neways prior consent to transfer or pledge the claims that Neways has against the Customer.
- 7.10.** In case of any delayed payment by Customer, Customer will immediately be in default without any notice or grace period being required, and:
- (a)** Customer shall be obliged to pay the statutory commercial interest rate (article 6:119a Dutch Civil Code) applicable at the due date plus 4%, and
  - (b)** Customer shall be obliged to pay the debt collection costs of Neways, in accordance with the applicable mandatory statutory provisions, and
  - (c)** all (other) amounts, even if not yet due, shall automatically become payable by the Customer, and
  - (d)** Neways shall, next to the above, be entitled to all other contractual or statutory remedies, including but not limited to compensation of additional damages, suspension of performance and termination.

**8. RETENTION OF TITLE AND PASSING OF RISK**

- 8.1.** Unless otherwise agreed upon in writing, Neways will retain title to any Product until the Customer has paid the price for the Product in full. The subject to retention of title delivered Products will be for the account and risk of the Customer.
- 8.2.** If Products are transformed or incorporated into other goods, Neways shall have a lien on the transformed

Products or the goods in which they have been incorporated until full payment of the price. The Customer undertakes to confirm the existence of this retention of title to third parties to whom it may sell the Products in their original condition or incorporated in other goods.

- 8.3.** Should Products be returned, under this Article 8 any down payments received by Neways will vest in Neways, without prejudice to any damages which Neways may claim.
- 8.4.** Neways' rights contained in this Article 8 will survive expiry or termination of the Contract however arising.
- 8.5.** As from delivery, the Customer assumes all the risks relating to the possession, custodianship and/or use of the Products as per the applicable Incoterm and shall from said date be liable for any damages caused to or by the Products.

**9. MARKING AND PACKAGING**

- 9.1.** The prices set out in the proposal include ordinary packaging in accordance with Neways' standard practice. If the Customer wishes to use a different type of packaging from the packaging normally used by Neways, an extra packaging fee will be charged. Neways does not take back packaging, in any circumstances whatsoever.

**10. CARRIAGE – CUSTOMS – EXPORT CONTROL**

- 10.1.** The Deliverables provided by Neways under the Contract may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Customer acknowledges and agrees that its handling, resale and/or usage of the Products and Services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under the Contract shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations.
- 10.2.** Unless the applicable export license(s) has/have been obtained from the relevant authority and Neways has approved the license(s) in writing, the Products shall not (i) be exported and/or re-exported to any destination and/or party (which may include but is not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Customer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not be limited to chemical, biological or nuclear weapons.

- 10.3.** If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Neways from fulfilling any Contract, or would in Neways' judgment otherwise expose



Neways to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the Contract, Neways shall be excused from all obligations under such Contract.

**10.4.** Neways disclaims all liability for any late deliveries and other consequences caused by the implementation of and amendments to applicable laws and regulations.

**10.5.** Either Party shall execute and deliver to the other any documents as may be required to effect or evidence compliance with applicable laws and regulations.

**10.6.** The Parties may correspond and convey documentation via the Internet unless Customer expressly requests otherwise. Neways shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption or alteration of any communication over the Internet due to any reason beyond Neways' reasonable control.

## **11. ENVIRONMENTAL REGULATIONS**

**11.1.** For Products delivered after the publication of the candidate list of substances for authorization as defined in REACH Regulation No. 1907/2006 and its various updates, and in accordance with Article 33(1) of that Regulation, Neways hereby informs the Customer of the presence of those candidate substances in an amount of more than 0.1% (zero point one per cent) weight by weight compared to the total weight, to allow the said Products to be used safely.

**11.2.** Neways represents that the substances, used alone or contained in preparations or Products integrated by it for the relevant production, were used in accordance with the registration, authorization and restriction provisions of that Regulation. Neways shall inform the Customer of any changes to the composition of the relevant Products/items of which it becomes aware.

## **12. CUSTOMER'S OBLIGATIONS**

**12.1.** Customer is solely responsible for the implementation and maintenance of a comprehensive security program ("**Security Program**") that contains reasonable and appropriate security measures and safeguards to protect its computer network, systems, machines, and data (collectively, "**Systems**"), including those Systems on which it runs the Products or which it uses with the Services, against Cyber Threats. "**Cyber Threat**" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Customer's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of Customer's Systems, including any data, including through malware, hacking, or similar attacks.

**12.2.** Without limiting the foregoing, Customer shall at a minimum:

- (a) have qualified and experienced personnel with appropriate expertise in cybersecurity maintain Customer's Security Program, and have such personnel

regularly monitor cyber intelligence feeds and security advisories applicable to Customer's Systems or Customer's industry;

- (b) promptly update or patch its Systems or implement other appropriate measures based on any reported Cyber Threats and in compliance with any security notifications or bulletins, whether publicly disclosed by Neways on its website or otherwise provided to Customer;

- (c) regularly monitor its Systems for possible Cyber Threats;
- (d) regularly conduct vulnerability scanning, penetration testing, intrusion scanning, and other cybersecurity testing on its Systems; and

- (e) meet the recommendations of Neways' recommended cybersecurity best practices and then-current industry standards.

**12.3.** If Customer identifies or otherwise becomes aware of any vulnerabilities or other Cyber Threats relating to the Products or Services, Customer shall promptly notify Neways of such vulnerability or other Cyber Threat(s) and provide Neways with any reasonably requested information relating to such vulnerability (collectively, "**Feedback**"). Neways shall have a non-exclusive, perpetual and irrevocable right to use, display, reproduce, modify, and distribute the Feedback (including any confidential information or intellectual property contained therein) in whole or part, including to analyze and fix the vulnerability, and to otherwise modify its Products or Services, in any manner without restrictions, and without any obligation of attribution or compensation to Customer; provided, however, Neways shall not publicly disclose Customer's name in connection with such use or the Feedback (unless Customer consents otherwise). By submitting Feedback, Customer represents and warrants to Neways that Customer has all necessary rights in and to such Feedback and all information it contains, including to grant the rights to Neways described herein, and that such Feedback does not infringe any proprietary or other rights of third parties or contain any unlawful information.

**12.4.** If Neways is to perform Services on Customer's work site, Customer shall be responsible for obtaining all applicable permits, visas or other governmental approval required. Customer shall be responsible for ensuring the safety of work conditions at its site and the safety of Neways' personnel.

**12.5.** Customer agrees to cooperate with Neways in the performance of the Contract, including, without limitation, providing Neways with reasonable facilities, timely access to data, information and personnel of Customer and a safe working environment. Customer acknowledges and agrees that Neways' performance is dependent upon the timely and effective satisfaction of Customer's responsibilities hereunder and timely decisions and approvals of Customer where required.

**12.6.** Customer acknowledges and agrees that Neways may, in performing its obligations, be dependent upon or use data, material, and other information furnished by Customer without any independent investigation or verification



thereof, and that Neways shall be entitled to rely upon the accuracy and completeness of such information in performing its obligations.

### 13. ANTIBRIBERY AND CORRUPTION

13.1. The Customer acknowledges that Neways is committed to eliminating all risk of bribery and corruption, influence peddling, money laundering and tax evasion or the facilitation thereof in its business activities and Customer shall adhere to Neways' Code of Conduct, a copy of which is available at [www.newayselectronics.com](http://www.newayselectronics.com). The Customer must immediately notify Neways of any suspected, or known, breaches of Anti-Corruption Law. The Customer may raise this alert through their point of contact at Neways.

13.2. The Customer warrants towards Neways that none of the its employees, beneficial owners, shareholders, or any other person who is involved in or will benefit from the performance of the Contract or has an interest in the Customer:

- (a) is a civil servant, public or governmental official;
- (b) is an official or employee of Neways or one of its affiliates; or
- (c) has been convicted of, or otherwise been subjected to any administrative sanction or penalty for, any offence involving fraud, bribery, corruption, influence peddling, money laundering, or any other criminal offence involving dishonesty as an element. Customer will immediately notify Neways if any such individuals are the subject of any investigation into any such offenses.

13.3. The Customer undertakes and covenants to Neways that it shall not, alone or in conjunction with any other person, directly or indirectly, offer, pay, give, promise to pay or give, or authorize the payment or giving of any money, gift, undue advantage, or anything of value to any employee, official or authorized representatives of Neways.

### 14. INTELLECTUAL PROPERTY

14.1. Except as agreed upon between the Parties in writing, all Intellectual Property Rights, whether already existing before conclusion of the Contract or arising thereafter, are, will remain or will become exclusively owned by Neways, and nothing shall be deemed to transfer or grant to the Customer any right to the Intellectual Property Rights. The Customer undertakes not to infringe or to attack Neways' Intellectual Property Rights in any way, and acknowledges that Neways is the beneficiary with regard to these rights.

14.2. Customer fully indemnifies Neways in relation to any infringement of (third party) intellectual property, if such infringement is caused or contributed by specifications, instructions, design, engineering, materials and/or tooling provided by Customer to Neways.

### 15. WARRANTY, REMEDIES AND COMPLAINTS

15.1. Neways warrants that, for a period of twelve (12) months after delivery/performance by Neways ("warranty

period"):

- (a) Products are of the quantity, quality and description agreed upon in writing; and
- (b) Services will be performed with reasonable care, skill and diligence.

15.2. In the event of any incorrect/non-conforming Product or Service, the sole and exclusive obligation of Neways shall be to either (a) re-perform the Services or repair or replace the non-conforming Products or part of the Products, or (b) to replace the non-conforming Products, at Neways' sole discretion. Neways shall have no other obligations with regard to defective/non-conforming products.

15.3. This warranty shall not apply to: (a) Third Party Products, (b) Services not provided by Neways, (c) Products or Services that have been repaired or altered by anyone other than Neways so as, in Neways' judgment, affects the same adversely, (d) Neways' conformance with Customer's design of the Products or Services; (e) Products or Services that appear to be subjected to negligence, accident or damage by circumstances beyond Neways' control or improper or any non-Neways operation, maintenance or storage, or to other than normal use or service, (f) malfunctioning of the Products or Services owing to materials or components supplied or imposed by the Customer, (g) defects/non-conformities caused by normal wear and tear, or (h) defects/non-conformities caused by acts in contradiction to Neways' instructions, indications or advice. The foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, dismantling and reassembling the Product or any other expenses that may be incurred in connection with repair or replacement.

15.4. Neways shall bear no responsibility for the performance, repair or warranty of any Third Party Products and Customer shall look solely to third party vendor for all remedies and support with regard to such Third Party Products. If such Third Party Product is expressly procured by Neways to Customer under the Contract, that Third Party Product shall be warranted only in accordance with the warranties given to Neways in respect thereof by the relevant third party vendor and to the extent that Neways has the right to assign or transfer such warranties.

15.5. These warranties, conditions, exclusions are exclusive and in lieu of all other express or implied warranties, conditions, representations and guarantees (except warranties of title), including but not limited, to implied warranties of merchantability, merchantable quality, targets and fitness for a particular purpose. Neways makes no warranty that the Products or Services will meet any other requirements or that Customer's use of the Products or Services will be uninterrupted, secure, or error-free. Neways does not represent, warrant, or guarantee that the Products or Services will be secure or free from vulnerabilities, corruption, attack, viruses, interference, hacking, or other security intrusions or cyber threats and Neways disclaims any liability in relation thereto. Except as may be provided in writing by Neways, Neways shall not be subject to any other obligations or liabilities whatsoever than as stated

above with regard to Products and Services sold by Neways to the Customer. By purchasing the Products or Services, the Customer understands these limitations and agrees that the Customer accesses and uses the Products and Services at the Customer's own discretion and risk and that the Customer will be solely responsible for any damages to the Customer's systems or assets or losses that result from such access or use.

- 15.6.** The repairing of, changes to, or replacement of the Product or part of it during the Warranty Term shall in no case cause the Warranty Term to be extended, with the exception of a defect corrected less than three (3) months before the expiry of the Warranty Term. In such case, the warranty covering the repaired, changed or replaced Product will be extended for up to three (3) months, as of the date of the delivery of the repaired, changed or replaced Product to the Customer.
- 15.7.** The Customer's claims for defects shall be subject to the Customer's compliance with its statutory and contractual duties to inspect.
- 15.8.** The Customer can no longer invoke any rights based on non-conformity of Products or incorrect performance of Services, if the Customer does not notify Neways thereof in writing: (a) for visible issues, within ten (10) days after delivery/performance, (b) for hidden issues, within ten (10) days of the moment at which the Customer discovered the issue of should reasonably have discovered it (whichever is earlier).
- 15.9.** All warranties provided herein are personal to, and intended solely for the benefit of, Customer and do not extend to any third party.

**16. LIABILITY AND INDEMNITY**

- 16.1.** The Contract (including these GTS) sets out Neways' entire liability towards the Customer, provided that nothing shall limit or exclude Neways' liability:
- (a) for damage resulting from the willful intent or deliberate recklessness of Neways or of individuals charged with the management of Neways;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) insofar such limitation of liability violates any mandatory law.
- 16.2.** Subject to Article 16.1, Neways shall not have any liability to the Customer (whether for breach of contract, tort, misrepresentation, restitution or otherwise) including pursuant to any indemnities for any a) loss of profits; b) loss of bargain; c) loss of contract opportunity or expectation; d) loss of use; e) loss of revenue; f) loss of anticipated savings; g) loss of tender and/or bid costs; h) loss of re-tender and/or re-bid costs; i) loss of or corruption of data or information; j) loss of sales; k) losses arising out of increased operating costs; l) loss resulting from third party claims; m) loss of reputation; n) depletion of goodwill or similar losses; or o) pure economic loss (in each case whether direct or indirect) or for any (other) special, indirect, or consequential loss costs, damages, charges or expenses whatsoever and

howsoever arising.

- 16.3.** Subject to Article 16.1 and Article 16.2, Neways' total liability arising out of or in connection with the Contract whatsoever and howsoever arising shall in all circumstances, including pursuant to any indemnities and whether or not expressly made subject to this Article 16, be limited to 30% of the annual amount (calculated over the previous 12 month period from the moment the claim occurred) invoiced by Neways to the Customer (exclusive of taxes).
- 16.4.** Causes of action and defenses based on facts that would justify the assertion that the Customer has suffered damage for which Neways is liable, lapse after a period of one (1) year calculated from the day on which the damage arose.
- 16.5.** Customer indemnifies Neways against any claims and impending claims by third parties against Neways, the costs (including reasonable legal fees) of defense against such claims, and any obligations Neways has to third parties if such claims, costs and/or obligations arise from or in connection with any act or omission, or any use of the Products, by Customer (or any third party engaged or employed by Customer), and/or any failure by Customer to properly perform any term of the Contract.
- 17. SUSPENSION AND TERMINATION OF THE CONTRACT**
- 17.1.** Neways may suspend the performance of its obligations if the Customer has not (timely and correctly) performed any of its obligations, including but not limited to non-payment by the Customer of Neways' invoice, or if Neways has indications that the Customer will not do so.
- 17.2.** If the Contract is suspended for a reason that is not exclusively attributable to Neways, the Customer shall reimburse all costs and damages suffered by Neways as a result of such suspension. If the performance of the Contract is suspended for more than ninety (90) days for any reason whatsoever, Neways will be entitled to terminate the Contract and the Customer shall reimburse all costs referred to above, without prejudice to any other (additional) statutory or contractual right.
- 17.3.** Neways may terminate this contract immediately by giving written notice to that effect to the Customer, if the Customer:
- (a) Fails to (timely) fulfil any of its payment obligations towards Neways;
  - (b) Breaches any other obligation towards Neways (including but not limited to failing to deliver input data or validate deliverables issued by Neways), and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of the Customer being notified in writing to do so;
  - (c) Becomes bankrupt or requests suspension of payment;
  - (d) has a receiver, administrator or provisional liquidator appointed;
  - (e) is subject to a notice of intention to appoint an administrator;
  - (f) passes a resolution for its winding-up (save for the purpose of a solvent restructuring);

- (g) has a winding up order made by a court in respect of it;
- (h) enters any composition or arrangement with creditors (other than relating to a solvent restructuring);
- (i) ceases to carry on business; or
- (j) has any steps or actions taken in connection with any of these procedures, and the Customer will notify Neways immediately upon the occurrence of any such event or circumstance.
- 17.4.** If the Contract is a continuing performance agreement with an indefinite duration, then either Party is entitled to terminate the Contract for its convenience upon written notice, taking into account a notice period of one (1) month per contract year (a contract year being twelve (12) consecutive months), provided that the required notice period will never be more than three (3) months. Apart from the foregoing, Customer is not entitled to terminate the Contract for its convenience unless accepted by Neways in writing.
- 17.5.** Investments of either Party in connection with the execution of the Contract shall be at the own risk and expense of that Party. In the event of a lawful termination of the Contract by one of the Parties, the other Party shall not be entitled to any compensation in connection with this termination.
- 17.6.** Following expiry or termination of this Contract:
- (a) any conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and
- (b) all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 17.7.** Upon termination of the Contract, other than termination for convenience by Neways, Customer shall compensate Neways for all works performed and ancillary costs including:
- (a) all costs of materials produced or under production prior to the effective date of the termination,
- (b) all costs of materials, components, items and services ordered for the performance of the Contract and delivered to Neways or for which Neways is compelled to accept delivery,
- (c) all costs of study, design and development, prototyping and type-testing incurred by Neways if these costs have not been separately paid by Customer prior to the termination and were due to be recouped as and when the Contract was to be performed and goods delivered in the agreed quantity.
- 17.8.** Within ten (10) days after the date of expiry or termination of the Contract the Customer will:
- (a) return to Neways all Confidential Information (including all copies and extracts) and all other property (whether tangible or intangible) of Neways in its possession or control; and
- (b) cease to use the Confidential Information of Neways; provided that the Customer may retain any Confidential Information of the other Party which it has to keep in order to comply with any applicable law or which it is required to retain for insurance, accounting or taxation purposes. Article 19 will continue to apply to retained Confidential Information.
- 17.9.** Unless agreed otherwise between the Parties in writing, the Parties waive the right to terminate the Contract outside the provisions of this Article 17, which includes the right (all fully or partly) to annul, rescind or dissolve, or cancel the Contract in whole or in part, or to institute a claim at law for the annulment, rescission, dissolution or cancellation of the Contract (all fully or partly).
- 18. DATA PROTECTION**
- 18.1.** Neways reserves the right to save and process the Customer's data for its own purposes in compliance with current data protection legislation. The Customer, its officers, employees, agents and representatives will keep all information and data relating to Neways and the Contract safe and secure. The Customer warrants towards Neways that the Customer will comply with all data protection legislation, and the Customer fully indemnifies for any claim towards Neways in this regard.
- 19. CONFIDENTIALITY**
- 19.1.** Neways retains ownership of its Confidential Information.
- 19.2.** Customer agrees to (i) protect Neways' Confidential Information in the same manner as it protects the confidentiality of its own proprietary and confidential materials but in no event with less than reasonable care; (ii) use the other's Confidential Information only to the extent necessary for the performance of the Contract.
- 19.3.** Upon termination of the Contract or a relevant order or upon written request submitted by the disclosing Party, whichever comes first, the Customer shall return or destroy, at Neways' choice, all of Neways' Confidential Information.
- 19.4.** The Customer agrees that it shall (i) not acquire, use or disclose the Confidential Information outside the scope of the Contract, (ii) keep secret the Confidential Information, (iii) not reverse engineer, disassemble, decompile or assess the composition of the material or any tangible or intangible items or objects which embody the Confidential Information and (iv) disclose the Confidential Information only to its employees, independent contractors or other third parties who have a need to know such information to perform the Contract.
- 19.5.** Unless otherwise agreed in an order, these confidentiality obligations shall terminate five (5) years after the expiration of the relevant order or termination of the Contract, whichever comes first.
- 20. FORCE MAJEURE**
- 20.1.** Except for the Customer's payment obligations, neither Party shall be liable for delays caused by conditions beyond their reasonable control or events occurring in or affecting Neways' premises or business or those of its subcontractor and/or its suppliers, which may disrupt the organization or business activity of the company, ("**Force Majeure**"),



provided notice thereof is given to the other Party. Force Majeure shall include without limitation, act of God, lockouts, strikes, illness, epidemic, pandemic, war, insurrection, riot, civil commotion, act or threat of terrorism, embargos, lightning, earthquake, fire, flood, storm or extreme weather condition, theft, malicious damage, lockout, industrial dispute (whether affecting the workforce of a Party and/or any other person) breakdown or failure of plant or machinery or machinery accident, rejection of parts during the manufacturing process, interruption or delay in the transportation or procurement of raw materials or components, allocation, lack of raw materials, governmental measures/restrictions, transport issues, shortcomings by third party suppliers, or any other event outside the control of Neways, its subcontractors and/or its suppliers.

**20.2.** All such Force Majeure conditions preventing performance shall entitle the Party hindered in the performance of its obligations hereunder to an extension of the date of delivery of the Products and Software or completion of the Services by a period of time equal to the period of delay incurred as a result of the Force Majeure or to any other period as the Parties may agree in writing.

**20.3.** If the period of Force Majeure lasts longer than ninety (90) days, Neways will be entitled to terminate the Contract.

#### **21. SUPPLY DISRUPTION**

**21.1.** All or part of the Products and/or the Services to be delivered and/or performed, according to the present Contract are produced, delivered, performed in, and/or sourced from areas that are or may become affected by shortages or interruption or delay in the transportation or procurement of raw materials, power and/or components (“Circumstances”).

Such Circumstances, even if known at the time of issuing or signing the present Contract, may trigger stoppage, hindrance, or delays in Neways’ ability to produce, deliver, perform and/or source the raw material, components, Products and/or Services. Consequently, notwithstanding any other provision of the Contract or order:

The delivery and/or performance schedule and/or lead times shall be deemed to be indicative and are provided for information purposes only. Neways shall inform the Customer of any changes.

Such Circumstances shall be considered as a cause for excusable delay. Neways shall not be liable for any claims, costs or losses resulting from such delays including, without limitation, for delay penalties, liquidated or other damages. In addition, such delays shall not constitute grounds for termination for default.

**21.2.** If such Circumstances render the performance of the Contract or order burdensome and/or more onerous for Neways (including increased costs to perform), both Parties shall meet to adjust the Contract or order conditions, including pricing and scheduling conditions. In the event

that the Parties are unable to agree such adjustments within 30 days of a request for a meeting from Neways, Neways shall be entitled to terminate the affected Contract or order, without liability. In such case, Neways shall be paid for all Products and/or Services then already delivered or performed.

#### **22. VARIATIONS**

**22.1.** No variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

#### **23. ASSIGNMENT**

**23.1.** The Customer will not be entitled to assign, transfer, charge, hold in trust for any person or deal in any other manner any of its rights under the Contract without the written approval of Neways. Neways will be entitled to assign, transfer, charge, hold in trust for any person or deal in any other manner any of its rights under the Contract.

#### **24. WAIVER**

**24.1.** A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial, exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the Party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

#### **25. SEVERANCE**

**25.1.** If any provision of these GTS or the Contract (including any exclusion from, or limitation of liability) is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such provision will be deemed to be severed from the other provisions of these GTS or the Contract and this will not affect these other provisions, which will continue in full force and effect.

#### **26. NON-SOLICITATION**

**26.1.** Neither Party shall, during the terms of the Contract and for one (1) year after its termination, solicit for hire as an employee, consultant or otherwise any of the other Party’s personnel who have had direct involvement with the Products and/or Services, without such other Party’s express prior written consent.

#### **27. PRESS RELEASES**

**27.1.** Neither party shall issue any press release concerning Neways’ work without the other Party’s consent. Notwithstanding the foregoing, Neways may identify Customer as a client of Neways, use Customer’s name and logo and release an announcement regarding the award of the Contract. Neways may generally describe the nature of



the Services in Neways' promotional materials, presentations, case studies, qualification statements and proposals to current and prospective clients.

**28. NO PARTNERSHIP OR AGENCY**

**28.1.** Nothing in these GTS or the Contract and no action taken by the Parties in connection with it or them will create a partnership or joint venture or relationship of employer and employee between the Parties or give either Party authority to act as the agent of or in the name of or on behalf of the other Party or to bind the other Party or to hold itself out as being entitled to do so.

**29. THIRD PARTY RIGHTS**

**29.1.** The Parties do not intend that any term of these GTS or the Contract will be enforceable by any person other than a Party to the Contract.

**30. RIGHTS AND REMEDIES**

**30.1.** Neways' rights and remedies set out in these GTS and the Contract are in addition to and not exclusive of any rights and remedies provided by law.

**31. APPLICABLE LAW – DISPUTES**

**31.1.** The legal relationship(s) between Neways and the Customer, including the Contract and these GTS (and their existence and validity) and (further) related agreements (and their existence and validity) concluded between them, are governed by Dutch law, to the exclusion of its conflict in laws provision and of the 1980 Vienna Convention on the International Sale of Goods (“**CISG**”).

**31.2.** Neways and the Customer hereby designate the District Court of Oost-Brabant (the “**Designated Court**”) on an exclusive basis to take cognizance of disputes that have arisen or will arise in connection with the legal relationship(s) existing between them, without prejudice to Neways' right to lodge claims to which it is entitled with (i) the Netherlands Arbitration Institute (NAI) in accordance with the then current Arbitration Rules, for the rendering of a decision by arbitration or (ii) the court of the country in which the Customer has its registered office or place of business (the “**Alternative Fora**”), instead of via the Designated Court.

**31.3.** In the event that Neways submits its claims to the NAI, the arbitral tribunal shall be composed of three (3) arbitrators. The place of arbitration shall be Eindhoven, the Netherlands. The arbitral procedure shall be conducted in the English language.

**31.4.** In the event that Neways submits its claims to one of the Alternative Fora, the Customer will acquire, by operation of law, the right to lodge a counterclaim with the Alternative Fora selected by Neways.

**31.5.** If a case is brought before the Designated Court, then any other court seized at an earlier stage will stay its judgment until the Designated Court declares that it does not have

any jurisdiction.

**31.6.** Provisional or protective measures may only be requested at the Designated Court, without prejudice to Neways' right to request provisional or protective measures at the district court that has jurisdiction in the country in which the Customer has its registered office or place of business.

**31.7.** This Article 31 regarding the applicable law and designation of jurisdiction constitute stipulations that are separate from the other provisions of the Contract (including these GTS). The validity of these stipulations cannot be contested solely on the ground that (a provision in) the Contract (including these GTS) is not valid.