## 1. Interpretation

1.1. The following definitions and rules of interpretation apply in these Condition.

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| Agreement IPR | means as defined in clause 12 |
| Business Day | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |
| Business Hours | the period from 9.00 am to 5.00 pm Monday to Thursday and the period from 9.00am to 12 noon on a Friday on days which fall on Business Days |
| Buyer | the person or firm who purchases the Goods or Services or Goods and Services from the Company. |
| Commencement Date | has the meaning given in clause 2.2 |
| Company | Eberspächer (U.K.) Limited registration number: 01320130, registered at Climate House, Yeoman Road, Ringwood, Hampshire, BH24 3FA |
| Company Materials | all documents, equipment, components and materials owned, licenced or created by the Company including the Documentation, and software |
| Conditions | these terms and conditions, as may be amended by the Company from time to time. |
| Confidential Information | means all confidential information (however recorded or preserved) disclosed by the Company or its employees, agents, sub-contractors to the Buyer and the Buyer's employees, agents, sub-contractors whether before or after the date of this Contract in connection with this Contract, including:<br>(a) the existence and terms of this Contract or any agreement entered into in connection with this Contract;<br>(b) the Know-how;<br>(c) all other Know-how relating to the manufacture or sale of the Goods;<br>(d) any information provided by the Company to the Buyer under clause 15.7; and<br>(e) any information (whether or not technical) that would be regarded as confidential by a reasonable business person. |
| Contract | the contract between the Company and the Buyer for the supply of Goods or Services or Goods and Services in accordance with these Conditions. |
| control | has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be interpreted accordingly. |
| Delivery or delivery | as defined in clause 4.4 |
| Documentation | all documents issued and/or created in respect of the Goods and/or Services including goods and services technical goods and services, specifications, manuals and proposals and quotations |
| Force Majeure Event | has the meaning given to it in clause 19. |
| Goods | the goods (or any part of them) set out in the Order. |
| Group Member | in relation to a company, any of its Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company |
| Goods Specification | any specification for the Goods, including any relevant plans or drawings, that is agreed by the Buyer and the Company. |
| Insolvency Event | (i) where the Buyer takes any step or action in connection with its entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;<br>(ii) the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or<br>(iii) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy |
| Intellectual Property Rights | patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including Know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and |

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| | 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. |
| Know-how | means all information not publicly known which is owned by the Company and /or used or required to be used by the Company in or in connection with its business existing in any form including that comprised or derived from data, specifications, formulae, experience, drawings, manuals, components lists, instructions, designs, brochures, catalogues and other descriptions including information related to:-<br>(a) the design, development, manufacture or production of any products;<br>(b) the operation of any process;<br>(c) the provision of any services;<br>(d) the selection, procurement, construction, installation, maintenance or use of raw materials, components, plant, machinery or other equipment or processes;<br>(e) the rectification, repair or service or maintenance of components, products, plant, machinery or other equipment;<br>(f) the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; or<br>(g) quality control, testing and/or certification. |
| Loading Location | has the meaning given in clause 4.2 |
| Order | the Buyer's order for the supply of Goods or Services, as set out in the Buyer's written acceptance of the Quotation, as the case may be. |
| Quotation | the Company's quote or proposal for the Goods and / or Services |
| Services | the services, including the Deliverables, supplied by the Company to the Buyer as set out in the Service Specification. |
| Service Specification | the description or specification for the Services provided by the Company to the Buyer. |
| Subsidiary and Holding Company | in relation to a company means "subsidiary" and "holding company" as defined in section 1162 of the Companies Act 2006 and "Subsidiaries" and "Holding Companies" shall be construed accordingly |
| Technology | all methods, techniques, discoveries, inventions (whether patentable or not), formulae, formulations, technical and Good Specifications, equipment descriptions, plans, layouts, drawings, computer programs, assembly, quality control, installation and operating procedures, operating manuals, technical and marketing information, designs, data, Know-how and other information |
| Warranty Period | the period stipulated in the Quotation commencing on Delivery. |

1.2. Interpretation

1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
1.2.2. A reference to a party includes its successors and permitted assigns.
1.2.3. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
1.2.4. Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
1.2.5. A reference to writing or written excludes fax but not email.

## 2. Basis of contract

2.1. The Order constitutes an offer by the Buyer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3. If any fixed term is stated in the Quotation, unless terminated in accordance with clause 16 the Contract will continue for that term and thereafter unless terminated by either party giving no less than 6 months notice.

2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5. Any quotation given by the Company shall not constitute an offer, and unless previously withdrawn is only valid for a period of 30 days from its date of issue.

2.6. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

2.8. If there are any conflicts or inconsistencies between these Conditions and any other paperwork of the Company's including without limitation quotation, specification or acknowledgment of order to the extent of any conflict or inconsistency the following order or priority shall be given:

2.8.1. acknowledgement of Order
2.8.2. the Quotation
2.8.3. these Conditions
2.8.4. the Order
2.8.5. any other documents

## 3. Goods

3.1. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer, the Buyer shall indemnify the Company 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.1 shall survive termination of the Contract.

3.2. The Company reserves the right to amend the Goods Specification without liability if required by any applicable statutory or regulatory requirement, and the Company shall notify the Buyer in any such event.

3.3. In circumstances where the Company supplies Goods to the Buyer for incorporation with or use ancillary to, any composite or other Goods to be produced, manufactured, processed or supplied by the Buyer ("**Relevant Goods**") used in conjunction with goods/services to be provided by the Buyer or a third party then: -

3.3.1. the Buyer shall forthwith on demand produce for inspection by the Company copies of all written instructions, information and warnings to be supplied by the Buyer in relation to the Relevant Goods, provided that such inspection or right to inspect shall not of itself constitute acceptance or approval by the Company of such instructions, information or warnings;

3.3.2. the Buyer undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any of the Relevant Goods or batches of Goods which contain the Relevant Goods from the retail or wholesale markets. These records shall include records of deliveries to Buyers (including batch numbers, delivery date, name and address of Buyer, telephone number, fax number and email address);

3.3.3. the Buyer shall, at the Company's cost, give any assistance that the Company shall reasonably require to recall, as a matter of urgency the Relevant Goods from the retail or wholesale market;

3.3.4. the Buyer shall indemnify the Company and keep the Company indemnified and hold the Company harmless 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 professional costs and expenses) suffered or incurred by the Company in respect of any claim or claims are made against the Company relating to the Relevant Goods in circumstances in which the Goods supplied by the Company are either:-

(i) not the defective part of the Relevant Good; or
(ii) are only rendered the defective part or become a defective product by reason of acts or omissions of acts of the Buyer or a third party; or
(iii) are only rendered the defective part or became a defective product by reason of instructions or warnings given by the Buyer or other supplier of the composite or other products; or
(iv) are supplied in accordance with a specification or drawings furnished by, or on behalf of the Buyer.

3.4. For the purposes of clause 3.3 only, the word defective shall be interpreted in accordance with the definition of defect contained in Part 1 of the Consumer Protection Act 1987.

## 4. Delivery of Goods

4.1. The Company shall ensure that:

4.1.1. each delivery of the Goods is accompanied by a delivery note which shows the date of acceptance of the Order, the type and quantity of the Goods (including the part number of the Goods, where applicable), special storage instructions (if any); and

4.1.2. if the Company requires the Buyer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.

4.2. The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Loading Location**") at any time after the Company notifies the Buyer that the Goods are ready.

4.3. If the Loading Location is the Company's premises, the Buyer shall collect the Goods from the Company's premises or such other location as may be agreed with the Buyer before delivery within three Business Days of the Company notifying the Buyer that the Goods are ready.

4.4. Delivery of the Goods shall be completed on the completion of loading of the Goods at the Loading Location.

4.5. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7. If the Buyer fails to take or accept delivery of the Goods within three Business Days of the Company notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:

4.7.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Company notified the Buyer that the Goods were ready; and

4.7.2. the Company shall store the Goods until actual delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

4.8. If ten Business Days after the day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted actual delivery of them, the Company may resell (if saleable) or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

4.9. The Buyer shall only be entitled to claim for loss or shortages (if and subject to clause 15 below): -

4.9.1. the Buyer inspects the Goods within five Business Days of the date of Delivery; and

4.9.2. a written complaint specifying the loss or shortage is made to the Company either by a qualified signature on the delivery note or within five Business Days of Delivery in the event or partial loss, damage or non delivery of any separate part of a consignment, or within ten Business Days of the notified date of despatch in the event of non-delivery of a whole consignment or, in either event, within such shorter period as the carrier's conditions (if applicable require); and

4.9.3. The Company is given the opportunity to inspect the Goods and investigate any complaint before any use or alteration or interference of the Goods.

4.10. The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

## 5. Quality of Goods

5.1. The Company warrants that during the Warranty Period, the Goods shall conform in all material respects with the Goods Specification.

5.2. Subject to clause 5.3 and clause 5.4.1 if:

5.2.1. the Buyer gives notice in writing to the Company during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and

5.2.2. the Company is given a reasonable opportunity of examining such Goods; and

5.2.3. the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,

5.2.4. the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3. The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

5.3.1. the Buyer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3.2. the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3. the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;

5.3.4. the Buyer alters or repairs such Goods without the written consent of the Company;

5.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

5.3.6. the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4. Where the Goods are installed by the Buyer or any third party on behalf of the Buyer **(Third Party Installation)**:

5.4.1 the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Goods failure to comply with the warranty as a result of Third Party Installation;

5.4.2 the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Third Party Installation, including any time inspecting the Goods and investigating any fault.

5.5. Except as provided in this clause 5, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1

5.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

5.7. For Goods that are not repaired or replaced by the Company under this clause 5, the Company reserves the right to charge a re-stocking fee at its prevailing rates from time to time.

## 6. Title and risk

6.1. The risk in the Goods shall pass to the Buyer on completion of delivery.

6.2. Title to the Goods shall not pass to the Buyer until the earlier of:

6.2.1. the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Buyer, in which case title to the Goods shall pass at the time of payment of all such sums; and/or

6.2.2. the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.

6.3. Until title to the Goods has passed to the Buyer, the Buyer shall:

6.3.1. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;

6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

6.3.4. notify the Company immediately if it becomes subject to an Insolvency Event; and

6.3.5. give the Company such information as the Company may reasonably require from time to time relating to:

(i) the Goods; and

(ii) the ongoing financial position of the Buyer.

6.4. Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:

6.4.1. it does so as principal and not as the Company's agent; and

6.4.2. title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

6.5. At any time before title to the Goods passes to the Buyer, the Company may:

6.5.1. by notice in writing, terminate the Buyer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

6.5.2. require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## 7. Supply of Services

7.1. The Company shall supply the Services to the Buyer in accordance with the Service Specification in all material respects.

7.2. The Company shall use reasonable endeavours to meet any performance dates for the Services specified in any Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3. The Company reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.

7.4. The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.

## 8. Buyer's obligations

8.1. The Buyer shall:

8.1.1. ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;

8.1.2. co-operate with the Company in all matters relating to the Services;

8.1.3. provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;

8.1.4. provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

8.1.5. prepare the Buyer's premises for the supply of the Services in line with the Company's written or verbal instructions, including in relation to installation services provide appropriate space, power, ducting and environment to install the Goods and to ensure there is the available resource at the installation site with the required skill set to resolve any issues, that may arise during installation services;

8.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

8.1.7. comply with all applicable laws, including health and safety laws;

8.1.8. keep all materials, equipment, documents and other property of the Company at the Buyer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;

8.1.9. comply with any additional obligations as set out in the Service Specification or the Goods Specification or both; and

8.1.10. provide signs offs/ approvals where required including as may be required in relation acceptance of the Goods and/or Services ("**Sign Off**"). Where Sign Off for acceptance is required, the Buyer cannot refuse Sign Off unless the Buyer can demonstrate in writing that the Goods and/or Services do not materially comply with the relevant specification ("**Buyer Notice**"). Any minor faults cannot prevent acceptance or sign off but will be recorded and a timetable for resolution will be agreed. Where no such Sign Off for acceptance is provided or a Buyer Notice is not received the Company shall be able to deem the Goods and/or Services as accepted.

8.2. If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):

8.2.1. without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;

8.2.2. the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2; and

8.2.3. the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

## 9. Charges

9.1. The price for Goods:

9.1.1. shall be the price set out in the Order; and

9.1.2. shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Buyer.

9.2. The charges for Services are as detailed in the Order.

9.3. The Company shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.

9.4. The Company reserves the right to increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:

(i) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(iii) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Company adequate or accurate information or instructions in respect of the Goods.

## 10. Payment

10.1. In respect of Goods, the Company shall invoice the Buyer prior to shipment. In respect of Services, the Company shall invoice the Buyer upon performance.

10.2. The Buyer shall pay each invoice submitted by the Company:

10.2.1. in accordance with any credit terms agreed by the Company and confirmed in writing to the Buyer; and

10.2.2. in full and in cleared funds to a bank account nominated in writing by the Company, and

10.2.3. time for payment shall be of the essence of the Contract.

10.3. All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.

10.4. If the Buyer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 16, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.4 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

10.5. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 11. Change Control

11.1. If during the term of the Contract the Buyer requests any changes to the Goods or Services including changes to delivery date(s), quantities or types of Goods ordered, specifications which in the Company's reasonable opinion gives rise to: -

11.2. a service which the Company has not already agreed to provide to the Buyer; or

11.3. a change to Goods or specifications that the Company has already agreed to provide to the Buyer

then: -

11.4. the Company will endeavour to notify the Buyer as soon as possible of any impact on Goods or Services the Company is currently providing in relation to estimated timescales and prices and where relevant will issue a change control note;

11.5. where it is reasonably possible the Company will endeavour to notify the Buyer of any additional costs before the Company commences any work; and

11.6. unless otherwise agreed any work carried out by the Company which is outside the scope of any agreed Goods or Services will be charged at the Company's prevailing time and materials rates in place from time to time.

## 12. Intellectual property rights

12.1. All Intellectual Property Rights in the Company Materials and/or the Goods and/or the Services and/or the Technology arising out of and/or in connection with the Goods and Services (other than Intellectual Property Rights in any materials owned by the Buyer at the commencement of the Contract) shall be owned by the Company or its licensors ("**Agreement IPR**").

12.2. The Buyer acknowledges and agrees that the Buyer has no existing Intellectual Property Rights in the Company IPR.

12.3. Accordingly, as, as between the Buyer and the Company, the Agreement Company IPR shall remain the exclusive property of the Company (or, where applicable, the third party licensor from whom the Company derives the right to use them).

12.4. The Company grants to the Buyer or shall procure the direct grant to the Buyer of, a non-exclusive, royalty-free licence to use the instruction manuals for the purpose of using or maintaining the Goods in its business or organisation in the jurisdiction into which the Goods were intended for use at the time of the Contract.

12.5. Subject to clause 12.4, the Company grants to the Buyer, a non-exclusive, non-transferrable royalty-free licence during the term of the Contract to use the Company Materials in relation to the Goods and/or Services (excluding materials provided by the Buyer) provided under this Contract for the purpose of this contract.

12.6. The Buyer shall not sub-license, assign or otherwise transfer the rights granted by this clause 12.

12.7. The Buyer shall not attempt to reverse compile, disassemble, reverse engineer all or any part of the Goods or any part or component or part of them including any software as the Goods may contain (without prejudice to the foregoing the Buyer shall not attempt to reduce any software or code to the human readable form).

12.8. The Buyer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Buyer to the Company for the term of the Contract for the purpose of providing the Goods and/or Services to the Buyer.

## 13. Exports

13.1. Where Goods are supplied by the Company for export outside of the United Kingdom, the provisions of this clause 13 shall apply.

13.2. Goods are supplied in accordance with Incoterms Rules published by the International Chamber of Commerce' relevant version as detailed in the Order ("**Incoterms**").

13.3. Subject as provided in the Incoterms, the Buyer shall be responsible for complying with any legislation or regulations or restriction including those of UK, the EU and the USA, where applicable and provided that compliance does not violate mandatory legal provisions governing:

13.3.1. the importation of the Goods into the country of destination and for payment of any duties thereon; and
13.3.2. compliance of the Goods in general including in relation to product safety, packaging and labelling in the country of destination.

13.4. The Buyer must perform clearance in line with the Incoterms 2020 shipping terms stated on the order acknowledgement. Tariff codes displayed on invoices of the Company are for UK export only and it is the importers obligation to advise their clearing agent of goods commodity codes pertinent to their importing countries classifications. The Company reserves the right to invoice for any penalties incurred following the Buyer's failure to complete customs obligations in a timely manner.

13.5. In particular, the Buyer shall therefore neither itself nor through third parties, i.e. neither directly nor indirectly, export or re-export Goods to a country or to a person, organization or company to which such export/re-export is restricted or prohibited, unless a corresponding government permit is available (e.g. export license or other official authorization).

13.6. The Buyer is aware that the EU and other states have imposed restrictive measures (including sanctions) against Russia and Belarus. It undertakes to comply with all internationally existing sanctions, embargoes and regulations relating to Russia and/or Belarus. In particular, it undertakes and certifies with ordering as long as these sanctions, embargoes and regulations exist not to export or sell any Goods supplied by the Company to Russia or Belarus or for use in Russia or Belarus. It shall also not carry out indirect transactions via third parties, so-called circumvention transactions. It therefore also undertakes and certifies with ordering not to sell any products supplied by the Company to third parties unless they themselves have given an undertaking to the Buyer to refrain from selling or exporting them to Russia or Belarus or for use in Russia or Belarus.

13.7. The Buyer represents and warrants that its owners to include the ultimate beneficial owner are not subject to any sanctions, restrictive measures, embargoes and regulations relating to Russia and/or Belarus.

13.8. The Buyer shall be fully liable to the Company for damages in the event of an intentional or negligent breach of these obligations. In case of a breach of these obligations, the Company is entitled to terminate the Contract with immediate effect.

13.9. Clause 5.1 shall not apply and the Company shall have no liability unless and to the extent specified in the Goods Specification for any claim in respect of any defect which would be apparent on inspection and which is made after delivery takes place pursuant to the Incoterms.

## 14. Data protection

14.1. The Company shall process personal data in accordance with its privacy policy which can be accessed at https://go.eberspaecher.com/privacy-information-business-partners-ebuk

## 15. Limitation of liability

15.1. The limits and exclusions in this clause reflect the insurance cover the Company has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess liability.

15.2. References to liability in this clause 15 include every kind of liability arising under or in connection with the Contract including liability in contract, breach of statutory duty, tort (including negligence), misrepresentation, restitution or otherwise.

15.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

15.3.1. death or personal injury caused by negligence;
15.3.2. fraud or fraudulent misrepresentation;
15.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
15.3.4. defective products under the Consumer Protection Act 1987.

15.4. Subject to clause 15.3 and clause 15.5, the Company's total liability to the Buyer shall in all circumstances be limited to the value of the Goods or Services to which the claim relates.

15.5. Subject to clause 15.3, the following types of loss are wholly excluded:

(i) loss of profits;
(ii) loss of sales or business;
(iii) loss of agreements or contracts;
(iv) loss of anticipated savings;
(v) loss of use or corruption of software, data or information;
(vi) loss of or damage to goodwill; and
(vii) indirect or consequential loss.

15.6. The Company has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.7. The Company may from time to time provide the Buyer with skilled or experienced staff, agents or sub-contractors to assist the Buyer, ("Technical Assistance"). Unless the Buyer has specifically purchased from the Company Consultancy Services detailed in the Order (in which case such consultancy services shall be Services for the purposes of this Contract), the Company shall not be liable to the Buyer for Technical Assistance whether in contract, tort (including negligence), for any collateral contract or any other grounds.

15.8. The Buyer agrees and acknowledges that it has had the opportunity to inspect the Goods Specification, the Service Specification and examine any plans, other specifications, configurations, proposals prepared or explained by the Company ("**Specs**"), as meeting its requirements. Accordingly, the Buyer agrees and understands that the Company shall have no liability in respect of such Specs not meeting the Buyer's requirements.

15.9. This clause 15 shall survive termination of the Contract.

## 16. Termination

16.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

16.1.1. the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so.

16.2. Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:

16.2.1. the Buyer fails to pay any amount due under the Contract on the due date for payment; or
16.2.2. there is an Insolvency Event;
16.2.3. there is a change of control of the Buyer.

16.3. Without affecting any other right or remedy available to it, the Company may immediately suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Company if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to any Insolvency Event or the Company reasonably believes that the Buyer is about to become subject to any of them.

## 17. Consequences of termination

17.1. On termination or expiry of the Contract:

17.1.1. the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
17.1.2. the Buyer shall return all of the Company Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

17.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 18. Confidentiality

18.1. Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, assets, affairs, buyers, clients or customers of the other party or any Group Member, except as permitted by clause 18.2.

18.2. The Buyer may disclose the Company's Confidential Information:

18.2.1. to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the Buyers rights or carrying out its obligations under or in connection with the Contract. The Buyer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Company's Confidential Information comply with this clause 18; and

18.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3. The Buyer shall not use the Company's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 19. Force majeure

19.1. The Company shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly.

## 20. General

20.1. Assignment and other dealings

20.1.1. The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

20.1.2. The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

20.2. Notices.

20.2.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

(iii) Company: gb.orders@eberspaecher.com

20.2.2. Any notice shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

20.2.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20.3. 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 clause 20.3 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.

20.4. Waiver.

20.4.1. Except as set out in clause 2.7, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.4.2. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

20.5. 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.

20.6. Entire agreement.

20.6.1. The Contract constitutes the entire agreement between the parties.

20.6.2. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

20.7. Third party rights.

20.7.1. 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.

20.7.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

20.8. The Company enters into this Contract for itself and as agent for its Group Members. Accordingly, for the purposes of enforcing this Contract, the Company's losses shall include any harm or loss suffered by each Group Member caused by the Buyer's default under this Contract and the Buyer grants to the Company the right to enforce rights and remedies on behalf of all Group Members in relation to this Contract.

20.9. At its own expense, the Buyer shall, and shall use best endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract.

20.10. If a dispute arises between the parties in relation to the Contract in any way, (except in relation to the Company's confidential information or the Company's Intellectual Property Rights in relation to which the Company reserves the right to take immediate legal action if required) the parties shall first try in good faith to amicably resolve the dispute within 28 days of the dispute arising.

20.11. 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.

20.12. 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.