

## GENERAL TERMS AND CONDITIONS OF SALE AND INSTALLATION (T.C.S.I)

Definitions. In the Agreement, as defined below, the following words shall have the following meanings:

“Agreement”	means, collectively, (i) these General Terms and Conditions of Sale and Installation (“ <b>General Terms and Conditions</b> ”), (ii) the Seller’s Quotation signed by the Buyer for acceptance and (iii) all the Annexes to said documents.
“Seller”	means Vortex Hydra Srl.
“Buyer”	means a customer that signs for acceptance one or more Quotations issued by Vortex Hydra Srl.
“Quotation”	means the quotation or offer of Equipment and/or Services issued and signed by the Seller and signed by the Buyer for acceptance.
“Work Site”	means Buyer’s facilities where the Equipment will be installed.
“Equipment”	means brand new machinery, equipment and materials including any accessories thereto supplied by Seller, the specifications of which are detailed in a Quotation.
“Performance Criteria”	means the performance criteria, in terms of production output reached in Actual Production Time, as set forth in the Quotation.
“Actual Production Time” or “APT”	means the difference, expressed in minutes, between the total time (TT) of each shift of operation of the Equipment, less all the downtimes not attributable to the Equipment (DT), including but not limited to, the profile changeover time, the color change time and all general downtimes (stops for lunch and similar breaks, stops due to failure to maintain the Equipment in accordance with the Seller’s instructions, lack of proper raw materials or materials not complying the test specification like sand, cement, water, oil, paint, lack of skilled workers supplied by the Buyer, lack of energy) $APT = TT - DT$ .
“Price”	means the price for the supply of the Equipment and Services as set forth in the Quotation
“Services”	means, collectively, all services expressly listed in the Quotation and included in the Price, within the limits indicated in Article 5 below.
“Final Payment”	means any payment resulting in complete payment of the Price.
“Warranty”	means the warranty set forth in Article 7 (Warranty & Liability) below.

“Annexes”

means the Equipment layout, the performance test procedures, the form of Acceptance Document (as defined in Article 10.5 below) and any other documents (other than these General Terms and Conditions) attached to the Quotation, all of which shall be deemed to constitute integral parts of the Agreement.

In the event of conflict between the provisions of these General Terms and Conditions, the Quotation and/or the Annexes, the following order of priority shall apply, with any document higher in the order of priority prevailing over any document lower in the order of priority:

- 1) the Quotation excluding the General Terms and Conditions and any Annexes
- 2) the Annexes
- 3) these General Terms and Conditions.

## 1. PRICE & TAXES; PAYMENT

1.1 The Price for all Equipment and Services shall be as listed in the relevant Quotation and, except as otherwise expressly agreed in writing by the Buyer and the Seller, shall be deemed to be net of transportation costs, value added tax and any other taxes or duties imposed by the competent authorities in the Buyer's or the Seller's country.

1.2 Where the Equipment includes aluminium pallets, the price thereof as set forth in the Quotation (the “**Quoted Aluminium Pallet Price**”) shall be subject to adjustment by the Seller unless the Buyer pays said Quoted Aluminium Pallet Price to the Seller in full within 1 (one) month following the date of Buyer's acceptance of the Quotation. The price adjustment mechanism applicable to the Quoted Aluminium Pallet Price shall be the following: 50% (fifty percent) of the Quoted Aluminium Pallet Price shall be increased or decreased in proportion to the variation in the price of aluminium alloy on the London Metal Exchange (FT) between the date of the Buyer's acceptance of the Quotation and the date on which the Seller purchases the aluminium necessary to manufacture the pallets included in the Equipment, it being understood that the Seller shall inform the Buyer in writing of the date on which the Seller makes said purchase. There will be no price adjustment if the variation in the price of aluminium alloy on the London Metal Exchange during the relevant period is less than or equal to 3% (three percent).

1.3 Except as otherwise expressly agreed by the parties in writing, the Price shall be paid by the Buyer to Seller in Euro currency as follows:

1.3.1. 30% of the total Price shall be paid by the Buyer within .... days following the date of Buyer's acceptance of the Quotation (“**Down Payment**”)

1.3.2. 70% of the total Price shall be paid by irrevocable Letter of Credit (the “**Letter of Credit**”), in compliance with Publication no. 600 of the International Chamber of Commerce, divisible and confirmed by a primary Italian bank satisfactory to the Seller within one month following the date of Buyer's acceptance of this Quotation. Said Letter of Credit shall be valid for at least twelve (12) months following the date of delivery of the Equipment as set forth in the Quotation and shall be payable at sight at the counters of said Italian bank, as follows:

1.3.2.1. 65% of the total Price against presentation of the Seller's commercial invoice and

1.3.2.2. 5% of the total Price against presentation of: (a) the Seller's commercial invoice and, only in those cases in which final performance testing of the Equipment is contemplated by the Agreement (b) either the Acceptance Document signed in accordance with the provisions of Article 10 below or Seller's written declaration that final performance testing could not be successfully carried out for reasons not directly attributable to the Seller.

1.4 Without prejudice to the provisions of Article 4.2 below, if the Buyer does not comply with the agreed payment terms (including but not limited to any deadline for opening the Letter of Credit or issuing a bank guarantee), or if the Buyer fails to provide the technical information (for example, building layout, electrical power voltage available, transport details) or any other information requested by the Seller for purposes of manufacturing and supplying the Equipment, the Seller shall be entitled (i) to postpone the timeframe for delivery in accordance with the Seller's new production schedule, as determined by the Seller at the time in which the Buyer finally does comply with the agreed payment terms or provide the information, as the case may be and (ii) to recover from the Buyer all reasonable costs incurred by the Seller as a result of the delay, including but not limited to those relating to increases in the cost of raw materials and components.

1.5 In the event of late payment, in addition to compensation for any damage suffered by Seller, Seller shall be entitled to receive interest on late payments at a rate equal to the three months EURIBOR rate plus 3%, without giving any notice of default.

1.6 All payments pursuant to the Agreement shall be made by the Buyer to the bank account of the Seller indicated in the Quotation or such other bank account as Seller may designate by written notice to the Buyer. Any payment made by the Buyer to third parties (e.g., agents, distributors, consultants) shall not relieve the Buyer of the Buyer's payment obligations to the Seller pursuant to the Agreement.

## **2. EQUIPMENT AND SERVICES/ DRAWINGS / MANUALS**

2.1 The Seller will supply the Equipment and Services in accordance with the terms of the Agreement. Although the Quotation may specify certain exclusions from the scope of supply, the parties acknowledge and agree that Seller shall not be required to supply the Buyer with any equipment or services other than those expressly indicated in the Quotation.

2.2 Any change or addition to the Equipment, the Services or the other terms of the Agreement shall be valid only if made in writing and signed by both parties. As a partial exception to the foregoing, the Seller shall be free, in the Seller's sole discretion and upon written notice to the Buyer, to make modifications to the Equipment which improve the performance of the Equipment.

2.3 It is the Buyer's responsibility to ensure that the Seller has correct and complete information concerning the voltage variation (max / min) required for the Equipment and that the Quotation reflects said information. Any cost resulting from the Buyer's failure to ensure that the information concerning voltage, on which the Quotation is based, is correct and complete, shall be borne by the Buyer alone.

2.4 It is the Buyer's responsibility to provide the Seller with reliable drawings of buildings and civil works at the Work Site, including undated electrical diagrams, and to ensure that the Quotation reflects said drawings and updated electrical diagrams. Any cost resulting from the Buyer's failure to ensure that the drawings of buildings and civil works at the Work Site and the electrical diagrams, on which the Quotation is based, are correct and complete, shall be borne by the Buyer alone.

## **3. WORK SITE PREPARATION**

Prior to the installation of the Equipment, Buyer shall, at Buyer's sole cost and expense (i) procure all building, erection and other licenses, permits, authorizations and inspections required in connection with the Work Site, (ii) prepare the Work Site in compliance with the Seller's instructions and (iii) comply, and cause all of its consultants, contractors, subcontractors, employees and

agents to comply, with all applicable building, electrical, environmental, worker safety and other applicable laws, codes or regulations relating to such preparation and Work Site conditions.

#### **4. DELIVERY / SHIPMENT / INSTALLATION**

4.1 Except as otherwise expressly agreed by the parties in writing, Seller shall deliver the Equipment Ex Works (Fossalta di Copparo, Ferrara, Italy), it being understood that said delivery term and any other delivery term agreed upon in writing by the parties shall have the meaning given to it in the most recent version of Incoterms®, International Chamber of Commerce). From the time the Equipment has been placed at the Buyer's disposal at the Seller's premises in Fossalta di Copparo (Ferrara) or any other premises indicated in writing by Seller, said Equipment shall be transported at the risk and peril of the Buyer. The Buyer shall, at its own expense, adequately insure the Equipment against all risk of loss or damage in transit. The Seller shall not enter into any transportation agreement with respect to the Equipment except upon the express order of and at the expense of the Buyer.

4.2 Any timeframe for delivery of the Equipment indicated in the Quotation shall be calculated starting from the later of (i) the date of Seller's receipt of all payments to be made by the Buyer prior to delivery of the Equipment, (ii) the date of delivery to Seller of all letters of credit contemplated by the Agreement and (iii) the date on which Seller has received from Buyer all information concerning the Work Site, the existing plant to be upgraded (if applicable) and other data Seller requests from Buyer for purposes of manufacturing and supplying the Equipment. The Seller shall exercise reasonable efforts to effect delivery within the timeframe specified in the Quotation. Time of delivery shall not be of the essence and no liability of the Seller shall arise if, notwithstanding the Seller's efforts, there is a delay in delivery. The Seller shall inform the Buyer in writing as soon as possible of any delay in delivery of the Equipment as compared with the delivery dates indicated in the Quotation.

4.3 The Buyer shall collect the Equipment, or shall have the Equipment collected, within 10 (ten) days of receipt of written notice from the Seller indicating that the Equipment is ready for collection. Should the Buyer fail to collect the Equipment, or have the Equipment collected, within such time, the Seller shall be entitled, at Seller's sole discretion, either (i) to transport the Equipment to the Work Site, where Buyer shall be obligated to store the Equipment, all at the Buyer's sole risk and expense or (ii) to receive from Buyer a storage fee to be paid by Buyer monthly at sight of the relevant invoice. The Price payment terms as set forth in the Agreement shall remain binding on the Buyer, even if the Buyer fails timely to collect the Equipment.

4.4 It is the Buyer's responsibility to check that the Equipment is complete and undamaged at the time of delivery. If any part of the Equipment is found to be damaged and/or missing at the time of delivery, the Buyer shall inform the Seller in writing within 24 (twenty-four) hours of delivery and, if Buyer requests Seller to replace the missing or damaged part or parts of the Equipment, Seller will arrange for the earliest possible manufacture and delivery to the Buyer DAP – delivered at place – of such part or parts in an effort to avoid delay in installation. In those cases in which the Seller is responsible for shipment of the Equipment, the question of whether the Buyer shall be required to pay the Seller for the replacement part or parts shall be settled when the responsibility for the damage or short delivery has been established; should it be proved that Seller is not responsible for the damaged or missing parts, Buyer shall pay Seller the price for the replacement parts in question, as specified in the Quotation, subject to the provisions of Article 1 above concerning adjustment of the price of aluminium pallets.

4.5 The Buyer shall be responsible for maintaining on hand at all times an adequate stock of spare parts for the Equipment, at least in such quantities as may be indicated in the Quotation or by the Seller in writing. In no event shall Seller be liable for damages resulting from the Buyer's failure to maintain said stock of spare parts.

## **5. SELLER'S ENGINEERS**

5.1 Seller's engineers cannot work for too many hours without prejudice to their health and safety, due to the natural drop of attention. Seller's engineers' normally work 8 (eight) hours per day, beginning at 7:30 am, and their work schedule may be extended to up to a maximum of 10 (ten) hours per day (i.e, until 6 pm at the latest, including a 30 minute break during the course of the day). Different working times may be agreed directly by the Buyer with the Seller when contingency requires, taking into account both the Buyer's needs and the needs, health and safety of the Seller's engineers.

For each day in which Seller 's engineers are present at the Work Site, they will issue a daily report stating the number of hours they have worked and the Buyer shall sign each said report in order to enable the parties to maintain a common accounting of the installation schedule.

5.2 The Buyer shall ensure at all times that the Seller's engineers have access to the various parts of the Equipment supplied, so as to enable the Seller's engineers to fine tune and regulate the Equipment and to make any other adjustments to the Equipment that Seller's engineers deem necessary in their sole discretion. In particular, but without limiting the generality of the foregoing, until such time as the successful performance testing of the Equipment has been carried out in accordance with the provisions of Article 10 below, the Buyer agrees to stop the Equipment from operating whenever the engineer appointed by the Seller determines, in his sole discretion, that stoppage is necessary. The parties hereby acknowledge and agree that the sole priority of the Seller's engineers at the Work Site during the Equipment installation phase will be to ensure compliance with the applicable Performance Criteria and that said goal may be in conflict with the Buyer's interest in meeting production demands prior to completion of performance testing. However, Seller's engineers will make an effort to reduce production downtime to the extent reasonably possible, without prejudicing or delaying successful performance testing of the Equipment.

5.3 Buyer will provide the necessary qualified personnel to assist the Seller's engineers with the Installation of the Equipment and any other work in which the Seller's engineers are engaged at the Work Site.

5.4 Until such time as the Warranty has expired, the Buyer shall perform daily maintenance operations on the Equipment, in accordance with any instructions provided to the Buyer by the Seller and/or the Seller's engineer present at the Work Site, and shall provide the Seller with a written report of all said maintenance operations.

5.5 Until such time as the Warranty has expired, the Buyer and the Seller shall agree on all mix formulas used with the Equipment and the Buyer shall report to the Seller daily in writing the mix formulas used. The mix formulas to be used for performance testing shall be agreed on by the Buyer and the Seller in writing.

5.6 Following completion of successful performance testing of the Equipment, at the Buyer's request, the Seller shall provide training courses for the Buyer's personnel on the use, maintenance and repair of the Equipment. All costs and expenses relating to the organization and holding of such courses shall be borne exclusively by the Buyer and the Seller's rates for such training courses shall be those currently charged by the Seller for such activities at the time of the Buyer's request, unless otherwise expressly provided in the Quotation.

5.7 If at any time the Seller, in its sole discretion, deems it unsafe for the Seller's engineers to be present at the Work Site, the Seller may cancel the Seller's engineers' visit to the Work Site or withdraw the Seller's engineers from the Work Site, as the case may be, without incurring any

liability to the Buyer. If the unsafe conditions at the Work Site, as perceived by the Seller, persist for more than 8 weeks, the Seller may terminate the portion of the Agreement relating to installation of the Equipment, upon written notice to the Buyer.

## **6. INSURANCE AND RISK OF LOSS**

Upon delivery of all or any part of the Equipment in accordance with the terms of the Agreement, Buyer shall, at its expense, obtain and maintain "installation floater" insurance in an amount at least equal to the portion of the Price not yet paid by the Buyer, covering all risks of damage to or loss of the Equipment and any and all associated expenses. Such installation floater insurance shall name Seller as an insured party and Buyer shall be responsible for and shall bear any and all risk of loss or damage to the Equipment following delivery in accordance with the terms of the Agreement.

## **7. WARRANTY & LIABILITY**

7.1 Seller hereby warrants that upon payment in full of the portion of the Price not dependent on presentation of the signed Acceptance Document (as defined in Article 10 below), Seller will transfer to Buyer good and assignable title to the Equipment, free and clear of all liens, charges or encumbrances, except for any liens, charges or encumbrances incurred by Buyer or resulting from Buyer's acts or omissions.

7.2 Except as otherwise expressly agreed in writing by the parties, the Seller warrants to Buyer that, at the time of delivery, the Equipment shall be brand new and that, for a period of 12 (twelve) months from the date of delivery, the Equipment shall be:

- a) free from defects in design, material and workmanship; and
- b) correspond to the description of the Equipment in the Quotation.

Buyer's remedies and Seller's obligations in connections with any warranty shall be limited solely to the repair or replacement of the defective and/or damaged parts. Consumable parts of the Equipment are not covered by the Seller's warranty.

The Buyer loses the right to rely on a lack of conformity of the Equipment if Buyer does not give notice to the Seller specifying the nature of the lack of conformity within 30 (thirty) days after Buyer has discovered it or reasonably ought to have discovered it.

7.3 The defective parts shall be shipped to the Seller, at Buyer's cost, for inspection, and the Seller shall decide whether to replace said parts, free of charge. In all cases, transportation and installation costs are excluded from the Seller's warranty. The replacement of any part by the Seller shall not be deemed to constitute acceptance of any claim or acknowledgement of responsibility on the Seller's part. In the case of commercial components, the Seller shall also extend to the Buyer the complete warranty granted to the Seller by Seller's supplier. Transport and installation costs are excluded from the warranty.

7.4 Buyer shall be responsible for the normal maintenance and repair of the Equipment (as per Seller's operator's manual) and shall perform the same in accordance with generally accepted maintenance procedures or such other reasonable procedures as may be set forth in maintenance and repair instructions provided by Seller to Buyer. Except as otherwise agreed by the Seller in writing, the Seller shall not be responsible for or obligated to pay or to reimburse Buyer for (i) any work or repairs performed on the Equipment by third parties, (ii) any materials furnished by third parties for use in connection with the Equipment, (iii) any loss or damage arising from improper



operation or maintenance of the Equipment, (iv) any failure to operate the Equipment in accordance with Seller's operating specifications, or (v) ordinary wear and tear.

7.5 To maintain the warranty provided in this article, Buyer shall (i) use the Equipment in accordance with the Seller's operator's manual, (ii) use in connection with the Equipment original spare parts purchased from Seller, or alternative parts approved by Seller in writing, (iii) follow Seller's prescribed maintenance criteria in accordance with the Seller's operator's manual or with other written instructions provided by the Seller, (iv) employ suitably trained personnel and use proper raw materials in accordance with the formula provided in the Seller's operator's manual, (v) fully comply with the Buyer's payment obligations to the Seller and (vi) not modify the Equipment, including any software, without Seller's prior written approval.

7.6 The Buyer hereby acknowledges that, due to the high level of humidity inside the chambers, any curing racks included in the Equipment will require preventive maintenance, to be implemented by the Buyer at the Buyer's sole cost and expense, with a view to extending the life span of the steel and coating.

7.7 To Seller's knowledge, the software developed by the Seller and included in the Equipment (the "Seller Software") does not infringe the intellectual property rights of any third party. Seller hereby makes a non-exclusive assignment to Buyer of Seller's right, title and interest in and to all assignable or transferable warranties with respect to third party software included in the Equipment and that part of third party hardware that consists of strappers, wrappers and servo-drives, gearboxes and the like.

7.8 In operating the Equipment, the Buyer shall be entitled to use the tile profiles designed by the Seller, conditional on the Buyer's written approval of said tile profiles, it being understood that the Seller shall remain the sole owner of said tile profiles; in particular, but without limitation, the Buyer shall not patent any such tile profile or design. The Buyer alone shall be responsible for ensuring that all tile designs or profiles selected by the Buyer are suitable for manufacture and sale in the jurisdictions in which the Buyer does business.

7.9 Where new tile products and/or new tile finishes are developed by the Seller at the Buyer's request, the Buyer acknowledges and agrees that, once said new tile products and/or finishes have been tested at the Seller's factory and accepted by the Buyer, the Buyer alone shall be responsible for (i) ensuring that said new tile products and/or finishes comply with any specifications and/or construction, materials and/or market requirements applicable in the jurisdictions in which the Buyer does business and (ii) ensuring the necessary production criteria (such as raw material types and ratios), curing conditions and finish, machinery set-up and maintenance. In no event shall the Seller be liable for any production and/or quality problem relating to said new tile products and/or finishes.

7.10 Except as otherwise expressly agreed by the Buyer and the Seller in writing, the Equipment shall be designed and manufactured in accordance with the legislative requirements, if any, in force in the country of the Seller at time of the Buyer's signature of the Quotation for acceptance. The Seller makes no representation or warranty as to the compliance of the Equipment with the applicable laws, safety regulations and/or technical standards of the country in which the Work Site is located (the "Destination Country"). The Buyer alone shall be responsible for ensuring that the Equipment complies with said laws, regulations and standards. The Buyer shall indemnify the Seller and hold the Seller harmless from and against any and all claims against the Seller and/or costs to the Seller arising out of or relating to any failure by the Buyer to ensure that the Equipment complies with the applicable laws, safety regulations and/or technical standards of the Destination Country.

7.11 Notwithstanding any other provisions of the Agreement, Seller shall not be liable to Buyer or anyone claiming through Buyer for any special, indirect, incidental or consequential damages of any kind whatsoever including, without limitation, loss of profit, production or reputation incurred or suffered by Buyer or such other party, or any punitive or exemplary damages, whether such damages arise out of the design, use, inability to use, failure, delay in delivery, or non delivery and/or non conformity of the Equipment, any termination of the Agreement, the breach of any warranty, the failure of the essential purpose of the exclusive remedy, or otherwise.

7.12 The parties hereby agree that in any and all cases the Seller's liability to the Buyer in connection with the Agreement (including but not limited to the Seller's liability for restitution of the Price) shall be limited to the sum received by the Seller from the Buyer pursuant to the Agreement.

## **8. FORCE MAJEURE AND HARDSHIP**

8.1 In the event of any condition or contingency, existing or future, which is beyond the reasonable control of Seller or Buyer, as the case may be, which prevents or delays the performance by Seller or Buyer of any of its obligations under the Agreement other than the payment of money (an "Event of Force Majeure"), the party claiming the Event of Force Majeure shall be entitled to a reasonable extension of time for performance of such obligation. An Event of Force Majeure shall include acts of God, fire, floods, transport delays, late delivery or non-delivery of materials by suppliers, local or national strikes or organized labor disputes, embargos, interference by civil or military authorities and similar events. As soon as practicable after an Event of Force Majeure and its effects upon a party's ability to perform become known to the same party, said party shall give written notice to the other party of such impediment and its effects on the first party's ability to perform. Notice in writing shall also be given when the Event of Force Majeure ceases.

If an Event of Force Majeure occurs, the party claiming the Event of Force Majeure shall take measures that are within that party's reasonable control to mitigate and minimize the effect of such event in order to continue with the performance of its obligations under the Agreement; provided, however, that the settlement of a strike or organized labor dispute shall not be deemed to be within such party's reasonable control.

If an Event of Force Majeure prevents Buyer from collecting the Equipment following written notice from the Seller indicating that the Equipment is ready for collection, section 4.3 above shall apply.

8.2 If at any time during the term of the Agreement i) continued performance by the Seller of its obligations under the Agreement becomes excessively onerous due to an event beyond the Seller's reasonable control, which the Seller could not reasonably have been expected to have taken into account at the time of the signature of the Agreement, and ii) the Seller could not reasonably have avoided or overcome said event or its consequences, the parties shall, within thirty (30) days following written notice by the Seller to the Buyer to that effect, negotiate alternative contractual terms in order to alleviate or mitigate the effects of such hardship. If the parties are unable to reach an agreement as to said alternative contractual terms, the Seller shall be entitled to terminate the Agreement and to retain the portion of the Price already paid by the Buyer, by way of partial compensation for the expenses incurred by the Seller in connection with the Agreement.

## **9. ASSIGNMENTS**

The Seller is entitled to subcontract part of the performance of the Agreement and to assign all its related credits. Except as otherwise expressly provided in this Article 9, neither Seller nor Buyer may assign the Agreement and/or any of its obligations or rights under the Agreement, without the prior written consent of the other party.



## 10. PERFORMANCE ACCEPTANCE CRITERIA

- 10.1 Performance testing of the Equipment shall be carried out in accordance with the testing procedures set forth in the relevant annex to the Quotation, if any. The Parties shall cooperate fully with one another to this end and, as soon as the Seller believes that the Equipment is ready for the final performance test it shall provide the Buyer with five (5) working days written notice thereof, unless otherwise agreed upon in writing by the parties, it being understood that, in such former case the final performance test shall begin in the morning of the sixth (6th) working day from such notice and, unless otherwise agreed upon in writing, shall continue without interruption until completion.
- 10.2 The Buyer shall be responsible for providing suitable foundations, buildings, lifting gear, skilled and other labor, water, power and effluent connections, raw materials and all other material, labor, services and facilities as specified by Seller, which are reasonably necessary to permit the Seller's engineer(s) to perform said performance testing.
- 10.3 If the test reveals that the Equipment does not comply with the Performance Criteria, the Seller will promptly begin to correct any such non-compliance at the Seller's expense and again notify the Buyer as indicated in section 10.1 above; testing will take place again and the Acceptance Document will be signed and delivered to the Seller in accordance with the provisions of this Article 10.
- 10.4 If there is disagreement between the parties as to whether or not the Equipment meets the Performance Criteria and/or is in compliance with the Agreement, then the existence and extent of the alleged failure of the Equipment to meet the Performance Criteria will be evaluated at the written request of either party by a board of three (3) persons. Said board shall be composed of one (1) person nominated by the Seller (for example, the Seller's Project Manager), one (1) person nominated by the Buyer (for example, the Buyer's Project Manager) and a third party expert to be agreed upon by the first two; if the third party expert has not been agreed upon within fifteen (15) days following written notice by one of the parties to the other (whether or not both parties have appointed their respective person), he/she shall be appointed in accordance with the Rules for Expertise of the International Chamber of Commerce.
- It is understood that all members of the board, however appointed, shall act at all times in compliance with said Rules. Based on the boards' evaluation, the third party expert, however appointed, shall make findings in a written expert's report prepared and signed by the third party expert only, all in compliance with said Rules. If the third party expert's report finds that the Equipment fails to meet the Performance Criteria then the Seller shall take reasonable steps as may be advised by the expert to cause the Performance Criteria to be met as soon as reasonably possible under the circumstances and again notify the Buyer in compliance with section 10.1 above.
- 10.5 If the Equipment meets the Performance Criteria during the final performance test (whether or not the Buyer participates in such test), then the Seller will be provided by the Buyer or by the third party expert appointed pursuant to section 10.4, with written acceptance of the Equipment substantially in the form of the acceptance certificate attached to the Quotation (the "Acceptance Document").
- 10.6 If the Performance Criteria cannot be reached, for reasons not directly attributable to Seller, within 4 (four) months from the date of Ex Works delivery of the Equipment, the Performance Criteria shall be deemed to have been met in any case and the Equipment shall be deemed to have been accepted by the Buyer.

## **11. TERMINATION**

### 11.1 Events of Termination:

The Agreement between the parties may be terminated as provided below upon the occurrence of any of the following events:

(i) Except as provided in paragraph (ii) below, in the event that prior to Final Payment, either party shall breach or fail to comply with any material provision of the Agreement and such breach or failure shall continue for a period of forty-five (45) days after the non-breaching party gives notice of such breach to the other party, the non-breaching party may terminate the Agreement with immediate effect by giving notice of termination to the breaching party.

Notwithstanding the foregoing provision of this paragraph (i), if the Buyer fails to respect the agreed payment terms (including but not limited to the deadlines for opening the Letter of Credit, issuing the bank guarantee or any other form of payment contemplated by the Agreement) within fifteen (15) days after Seller has given to Buyer notice of such failure, Seller may terminate the Agreement with immediate effect by giving notice of such termination to Buyer.

(ii) If an Event of Force Majeure occurs prior to Final Payment and continues for a period greater than six (6) months, either party may terminate the Agreement by giving written notice thereof to the other party.

### 11.2 Effect of Termination.

In the event of termination of the Agreement pursuant to section 11.1(i) above where Seller is the breaching party, Buyer may return the Equipment to Seller provided that the Equipment is in the same condition in which it was at the time of delivery to the Buyer. In any and all cases, the Seller's liability to the Buyer shall remain limited as provided in Article 7 above.

In the event of termination of the Agreement pursuant to section 11.1(i) above where Buyer is the breaching party, without prejudice to any other rights and/or remedies the Seller may have under the Agreement or applicable law, Seller shall be entitled, at Seller's election, to have Buyer, at Buyer's expense (A) return to Seller all or any portion of the Equipment, or (B) deliver all or any portion of the Equipment to the third party or parties designated by the Seller in writing.

In the event of termination pursuant to section 11.1(ii) above, due to an embargo and/or legislative or governmental or administrative act having equivalent effect in the jurisdiction in which the Work Site is located, then the Seller shall be entitled to retain the portion of the Price already paid by the Buyer, by way of partial compensation for the expenses incurred by the Seller in connection with the Agreement.

### 11.3 Loss of Right to Terminate the Agreement

The Buyer loses the right to terminate the Agreement if it is not possible for the Buyer to return the Equipment in the same condition in which it was at the time of delivery to the Buyer.

## **12. CONFIDENTIALITY & LICENSE OF USE**

12.1 Confidentiality of Each Party's Information. Each party acknowledges that information about the other party or its business (and, in addition, as to Seller, information about the Equipment or its design) constitutes trade secrets or other confidential or proprietary information of the other party. Accordingly, each party shall keep all of such information of the other party confidential and shall not disclose any of such information without the consent of the other party except to the extent otherwise provided in this Section. Neither party shall use any of such information of the other party except as expressly contemplated by the Agreement. A party shall not have any obligation of

confidentiality under this Section to the extent that (i) information of the other party has become part of the public domain through no fault of covenanting party, its employees, agents, contractors, subcontractors or advisors, (ii) information of the other party has been obtained by the covenanting party from a third party who has the right to disclose such information to the covenanting party without breach of any obligation of confidentiality to the other party, or (iii) information of the other party is required by legal process to be disclosed. In the event of a disclosure required by legal process, the covenanting party shall give to the other party reasonable advance notice of such required disclosure so that the other party may seek, if it so elects, injunctive relief or other appropriate remedy as to such required disclosure.

**12.2 Ownership of Documentation Supplied by Seller.** All designs of the Equipment, parts thereof and/or products to be manufactured using the Equipment (e.g., tiles and pallets), illustrations, drawings, software, plans, computations, manuals, tile profiles and names and the like, furnished by the Seller to the Buyer with reference the Equipment, shall remain the property of the Seller alone, shall be used by the Buyer solely in connection with the Equipment and shall not be copied by the Buyer or used for any other purpose without Seller's express prior written consent.

**12.3 Restricted Use.** Upon Final Payment, Seller grants to the Buyer a non-exclusive right and license to use any Seller Software in final version and documentation associated with it, with respect to the Equipment. The Seller Software and any associated documentation supplied by the Seller to the Buyer, and all copies or for the Buyer of the Seller Software, may be used only with respect to the Equipment listed in the Quotation and only in accordance with the terms of this Section. No other use of the Seller Software and/or documentation is authorized unless specifically agreed to in a writing signed by the Seller. In particular, but not by way of limitation, they cannot be used for copying machinery without Seller's express prior written consent.

### **13. TRANSFER AND RESERVATION OF TITLE**

**13.1** Upon Seller's receipt of payment in full of the portion of the Price not dependent on delivery to Seller of the signed Acceptance Document, title to the Equipment shall transfer to Buyer. For the avoidance of doubt, notwithstanding the transfer of possession of the Equipment by Seller to Buyer, Seller shall retain legal title to the Equipment until Seller's receipt of payment in full of the portion of the Price not dependent on delivery to Seller of the signed Acceptance Document. Until such time as title to the Equipment passes to the Buyer in accordance herewith, the Equipment shall be kept labelled as property of the Seller. The Buyer shall not i) deliver to third parties, ii) give as security or iii) in any way dispose of the Equipment subject to retention of title by Seller; furthermore, the Buyer shall promptly inform the Seller of any rights which third parties may have acquired over said Equipment. In the event of default by the Buyer, the Seller shall be entitled, without any formalities, including notifying the Buyer of the default, to repossess all of the Equipment with respect to which title has not yet passed to the Buyer, wherever said Equipment may be. In addition, the Seller reserves the right to seek any other judicial remedies available to it in respect of the damages suffered.

### **14. DISPUTES**

**14.1** In the event of any dispute or difference arising between the parties in connection with the Agreement, senior representative(s) of the parties shall, within 10 days of a written request from either party to the other, meet in a good faith effort to resolve the dispute through consultation without recourse to legal proceedings.

**14.2** In the event an amicable settlement is not reached through said consultation, such dispute shall be submitted to mediation in accordance with the Mediation Rules of the International Chamber of Commerce, unless the parties agree otherwise. The parties shall be free to agree upon the appointment of a mediator and the costs of mediation shall be shared equally by the parties.

14.3 In the event the dispute is not resolved by mediation within 90 (ninety) days after either party notifies the other party that it desires to submit the dispute to mediation, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The place of arbitration shall be Lugano – Switzerland. The language of arbitration shall be English. The arbitration award shall determine the party or parties required to pay the cost of arbitration. Any such decision shall be final and binding upon the parties and may be entered as a final judgment in the jurisdiction of domicile of either party or any jurisdiction in which such party has assets.

**15. GENERAL**

15.1 The Agreement shall be governed by and construed in accordance with the laws of Italy and, in particular, the United Nations convention on contracts for the international sale of goods signed in Vienna on April 11, 1980.

15.2 Any notice required or permitted to be given by either party to the other under the Agreement shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice and sent by registered or certified mail, return receipt requested.

15.3 The Agreement constitutes the sole agreement of the Buyer and the Seller concerning the Equipment and Services and supersedes any and all prior agreements between the Buyer and the Seller with respect thereto. No amendment to the Agreement shall be valid unless in a writing signed by both the Buyer and the Seller. Absent written agreement of both parties to the contrary, all offers, acceptances of orders and deliveries by the Seller in respect of the Equipment and/or Services shall be deemed made on the terms and conditions of the Agreement. Any general conditions of the Buyer shall not be applicable, in whole or in part, unless they are approved in writing by the Seller.

15.4 If, at any time, any terms and provisions of the Agreement shall be or become invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining terms or provisions of the Agreement shall not in any way be affected or impaired thereby. The parties shall use their best endeavors to replace any invalid, illegal or unenforceable term or provision with a valid, legal and enforceable provision which achieves, to the extent possible and permissible by law, the economic and other purposes of the invalid, illegal or unenforceable provision(s).

On behalf of

On behalf of Vortex Hydra s.r.l.

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Data (\_\_\_\_\_)

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Data (\_\_\_\_\_)