

# GENERAL TERMS AND CONDITIONS

as of 03/2019



## 1. General Provisions and Scope of Application

- (1) These General Terms and Conditions (hereinafter "GTC") apply exclusively. The Supplier (hereinafter "sera") shall not be bound by any other diverging or conflicting terms and conditions of the Buyer unless **sera** expressly acknowledges in writing that such terms and conditions shall apply. The same shall apply for amendments of already existing agreements.
- (2) These GTC shall apply for any subsequent orders and the supply of spare parts without the requirement for further notices and references.
- (3) Subsidiary agreement, warranties and representations as well as changes or amendments whatsoever must be made in writing and agreed in order to be valid.

## 2. Offers and Order Confirmation

- (1) In principle, our offers are subject to confirmation. Offers are only binding if a period of acceptance has been stipulated. All orders are subject to the written consent and approval of **sera**.
- (2) No acceptance by **sera** of any order shall be deemed to be an acceptance of any provision of the Buyer order form. This writing constitutes the entire agreement between the Buyer and **sera** at the date of acceptance by **sera**, and shall not be modified thereafter in any way except by writing executed by a person duly authorized by **sera** to execute the same.
- (3) **sera** reserves the ownership rights and copyrights to illustrations, drawings, calculations and other offer-related documents, including similar data in tangible or intangible form or in an electronic format; they may not be made accessible to third parties and require the express written approval of **sera** before forwarding them to third parties and must be returned to **sera** immediately, if no order will be issued to **sera** and so requested by **sera**.
- (4) Supporting documents such as illustrations, drawings, calculations, descriptions, and performance, weight and dimensional data should be regarded as non-binding information only, unless they have been explicitly referred to as binding.

## 3. Scope of Supply and/or Services

- (1) Supplies and Services are agreed by both parties in writing. If no agreement has been declared, the written order confirmation and these GTC of **sera** shall apply. In the case of sales agreements, the agreed delivery clauses are to be understood in accordance with the applicable Incoterms valid at the date of the closing of the contract.
- (2) Any information given in brochures, catalogs or general technical documents shall be binding only if expressly referenced in writing.
- (3) Unless otherwise agreed, costs for arranged erection and assembly, including all necessary incidental costs such as travel or transport costs for tools or personal baggage, are to be separately paid for by the Buyer.
- (4) The Buyer shall be granted a non-exclusive right to use any software supplied within the scope of supply and services. The Buyer may duplicate or process the software only to the extent permissible by law.
- (5) Partial deliveries are allowed to the extent that they have been agreed between **sera** and the Buyer or can be considered reasonable taking into account the interests of both parties.
- (6) The duties of **sera** as regards deliveries abroad are subject to the granting of required export licenses.

## 4. Packing

Shipments are always packed with standard packaging items of **sera**. **sera** is entitled to choose the required type of packing at its own discretion. Any related costs are the responsibility of the Buyer.

## 5. Prices, Conditions and Terms of Payment

- (1) All prices shall be in RAND unless otherwise stated. For supply transactions, prices are "ex works" (EXW), excluding packaging.
- (2) Shipping costs are at the expense of the receiver and/or Buyer. Packaging costs are calculated separately. Packing materials are not taken back.
- (3) The prices do not include any sales tax (VAT). The amount shall be

shown separately in the invoice according to the statutory rate applicable on the date of invoice.

- (4) The prices quoted are based on the rate of exchange determined by the SA Reserve Bank at the date of the proposal, all prices are subject to modification should the exchange rate vary materially between the date of this proposal/offer and the time at which payment is received by the **sera** unless written instruction has been given by the Buyer for **sera** to obtain forward cover. Such forward cover shall be obtained by **sera** and all charges, including bank charges, shall be for the Buyers account.
- (5) The prices quoted are based on importation under duty free tariffs unless indicated to the contrary in the specification. In the event of the tariff or tariff heading of the equipment in question being changed prior to clearing, any custom duties or increase in custom duty will be for the buyers account.
- (6) Our quotes are based with no liability for any taxes, licenses, or other fees imposed by Municipality, Provincial or other Government Authority upon production, sale, shipment and/or use of equipment or service covered by this proposal/offer. Payments applicable to this section will be charged for by **sera** unless suitable exemption certificates are furnished by the Buyer at the time of placing the order.
- (7) The deduction of cash discounts shall require a separate written agreement.
- (8) Notwithstanding any other provisions stipulated in the quotation, the purchase price shall be paid net (without any deductions) within thirty (30) days from the date of invoice.
- (9) In the event that the Buyer is in default of its payment obligations, the Buyer is obliged to pay default interest at a rate of prime plus 2 percentage per annum, which interest is calculated daily and compound monthly as well as any collection fees. Any further damage claims are reserved.
- (10) Payments shall be regarded as received on the day the funds are at the disposal of **sera**.
- (11) Unless otherwise agreed, Supplies to be delivered abroad require the issuance of an irrevocable letter of credit by the Buyer in favor of **sera**, which is confirmed by a South African bank.
- (12) In the event of payment default, **sera** is entitled to notify the Buyer in writing of its intention to suspend the performance until the receipt of payments.
- (13) The Buyer may set off claims or assert a right of retention only if such claims are either indisputable or legally binding.
- (14) A minimum net order value of RAND 400.00 excluding VAT is required on all orders accepted by **sera**. Any order below this value will be subject to a RAND 400.00 net handling fee.

## 6. Deadlines for Supply and Services

- (1) Deadlines shall require the mutual written consent of the parties or a written order confirmation by **sera**. Compliance with deadlines for deliveries and services presumes timely receipt of all supporting documents to be provided by the Buyer as well as the submission of necessary authorizations and releases, in particular, drawings and plans, and compliance with the agreed terms of payment and other duties of the Buyer.
- (2) The delivery period commences with the final technical and commercial acceptance.
- (3) If these prerequisites are not fulfilled in a timely manner, the deadline will be extended accordingly, unless the delay is attributable to **sera**.
- (4) The agreed delivery periods shall be extended accordingly, if their non-compliance is due to force majeure such as war, mobilization, civil disorder or similar events, e.g. strike or lockout.
- (5) **sera** shall endeavour to ensure delivery of the equipment within the time stipulated. It must however be stressed that delivery times are given in good faith, based on manufacturers schedules to hand and previous experience. Under no circumstances can **sera** be held responsible for late deliveries resulting from acts or omissions by persons

or events not under the direct control of **sera**.

- (6) If the agreed services do not include erection and assembly, the deadline is met, if the operational goods have been dispatched or collected within the agreed delivery or performance time limit. If shipment is delayed on account of circumstances attributable to the Buyer, the term for delivery is deemed met when a notice is issued that the shipment is ready for dispatch within the agreed term.
- (7) If the Buyer demands the amendment of technical or commercial contract terms after **sera** has indicated delivery deadlines, such periods of time shall be prolonged accordingly, without the needs for further notices by **sera**. In this event all caused additional costs and charges will be for the Buyers account.
- (8) If the Buyer requests delayed shipment or delivery of more than a month after a notice has been issued that the shipment is ready for dispatch, the Buyer may be charged storage costs of 1 % of the total net invoice value of the goods per each begun month according to the sales contract. The parties to the contract are at liberty to furnish proof of higher or lower storage costs.
- (9) Orders may be cancelled by the Buyer only with **sera**'s written consent and upon payment of reasonable and proper cancellation charges, including factory costs and expenses incurred by **sera** in carrying the order to **sera**'s agreement to terminate. If the order or any part thereof has been shipped from the shipping point, the equipment shall be returned only when specifically authorised and credit for this returned equipment shall be determined by **sera** or its Manufacturing Principle after factory inspection.
- (10) If at any time before shipment the financial responsibility of the Buyer be impaired or unsatisfactory to **sera**, cash payment or satisfactory security may be required by **sera** before shipment, and in the event of bankruptcy or insolvency of the Buyer, or in the event any proceeding is brought by or against the Buyer under the bankruptcy or insolvent laws **sera** shall be entitled immediately to suspend or cancel any order and delivery as well as the performance of operating contract and shall receive reimbursement and proper cancellation charges.
- (11) **sera** is in default, if the agreed delivery deadline is exceeded and the Buyer has notified **sera** accordingly in writing.
- (12) The Buyer's right to cancellation upon futile expiration of grace periods granted by **sera** remains unaffected, if attributable to **sera**.
- (13) The grace period must be reasonable and be at least four weeks.

#### 7. Transfer of Risk

Irrespective whether the deliveries were made free of charge, the risk of loss and of deterioration of the Supplies and Services provided by **sera** shall pass to the Buyer as follows:

- (1) If the Supplies do not include assembly or erection, including partial deliveries, at the time when the Supplies are shipped or picked up.
  - (2) In principle, at the latest when leaving the factory of **sera**.
  - (3) If the Supplies include erection or assembly, at the day of acceptance at the Buyer's premises or, if so agreed, after a fault-free trial run.
  - (4) The risk shall immediately pass on to the Buyer if dispatch, shipping, the start or performance of erection or assembly, the acceptance in the Buyer's premises or the trial run is delayed for reasons attributable to the Buyer or if the Buyer has otherwise failed to accept the Supplies.
- The same shall apply if the Delivery Items have not been shipped yet and are still located at the factory of **sera**.

#### 8. Insurance

Upon request and at the expense of the Buyer, Supplies by **sera** shall be insured against the usual risks of transport. If such insurance has been taken out, **sera** shall be immediately notified of any damages during transit.

#### 9. Retention of Title

- (1) **sera** retains title to all Delivery Items until all claims for payment against the Buyer under the business relationship including any future receivables against the Buyer in connection with the goods subject to retention of title have been settled.
- (2) The retention of title applies also to confirmed trade balances to the extent that **sera** accounts receivables against the Buyer in a current account.
- (3) Permissible claims for retention of title, in particular if a claim is enforced by redemption of goods, in the case of default or if our ownership rights are at risk, shall not constitute rescission of the contract.
- (4) **sera** is entitled to cancel the contract immediately without notice, if Delivery Items are taken back.
- (5) Any proceeds from the sale of Delivery Items, which **sera** has taken back, shall be credited to the Buyer's payment liability minus appropriate depreciation and disposal costs.
- (6) The Buyer's rights to resale, use or the installation of deliveries to which title has been retained, shall cease upon the suspension of payments, application for insolvency or opening of bankruptcy proceedings or other judicial or extrajudicial settlement proceedings.
- (7) **sera** shall then be entitled to immediately demand the return of the goods subject to retention of title. The assertion of a right of retention shall be excluded.
- (8) The Buyer agrees that any person authorized by **sera** with the collection of goods to be picked up, may be granted access to the premises and the building where the collectable goods are located. Without prejudice to the payment obligation of the Buyer, **sera** is, in principle, entitled to sell or auction off returned goods at its own discretion.
- (9) **sera** is entitled to cancel the contract immediately without notice, if Delivery Items are seized or pledged. In the event of an attachment order or any other intervention by a third party, the Buyer shall notify **sera** in writing and without delay so that **sera** can arrange for the order. To the extent that the third party is unable to reimburse the legal costs or out-of-court costs incurred by **sera**, the Buyer shall be liable for such costs.
- (10) The Buyer shall be entitled to resell the Delivery Items as part of its normal course of business but transfers to **sera** here and now all claims to payments that the Buyer may have against its clients or third parties from such resale, up to the amount of the invoice value (including VAT), regardless of whether or not the Delivery Items have been further processed before being resold. The Buyer shall remain authorized to collect these claims, even after the assignment. The Buyer has no rights whatsoever to any other disposal, in particular pledging or the assignment as collateral.
- (11) The right of **sera** to collect the claim itself remains unaffected. However, **sera** is not entitled to collection as long as the Buyer fulfills its payment obligations without being in default. If this is the case, **sera** shall have the right to require the Buyer to inform **sera** of its assigned receivables and the respective debtors, to provide all information necessary for collecting payment, to surrender all related documents, and to inform its debtors (third parties) of the assignment.
- (12) Any processing or conversion of the Delivery Items by the Buyer shall always be deemed to have been carried out on behalf of **sera**. If the Delivery Items are processed together with other items which are not **sera**'s property, **sera** shall be deemed to have acquired co-ownership over the new items in the same proportion (pro rata) as the value of the Delivery Items to the value of the other processed items at the time of processing. Any items created by such processing shall then be subject to the same restrictions as all other goods supplied under retention of title. The Buyer shall also transfer its claim to payment to **sera** as collateral for **sera**'s receivables against the Buyer which the Buyer may have against a third party due to the combination of the Delivery Items with a parcel of land.
- (13) If the Delivery Items are processed together with other items which are not **sera**'s property and form new items which are combined inseparably, **sera** shall be deemed to have acquired co-ownership

over the new items in the same proportion (pro rata) as the value of the Delivery Items to the value of the other combined items at the time of combination. If the combination is carried out with the result that the Buyer's product is regarded as the main component, it is hereby agreed that the Buyer shall transfer co-ownership rights pro rata to **sera**. The Buyer is obliged to store said property on behalf of **sera**. The Buyer shall insure said property against normal risks such as fire, theft and water damages at the usual rates. The Buyer hereby cedes its claims to damages from the above-mentioned risks against insurance companies or other parties liable for damages to **sera** in proportion to his receivables.

#### 10. Warranty and Defects in Quality

- (1) All Supplies or services by **sera** showing a defect in quality within the statutory period of limitation as they do not comply with agreed specifications or are not suitable for the intended or agreed purpose, shall be reworked, replaced or be provided again free of charge within the statutory period of limitation and at the discretion of **sera**, provided that the cause of the defect was already present at the time of passing of risk.
- (2) The Buyer shall notify **sera** immediately in writing of any defects found as a result of circumstances prior to the transfer of risk.
- (3) **sera** shall first be given the opportunity to cure the defect by supplementary performance within a reasonable period of time. The Buyer shall give **sera** the opportunity and required time span to do so. If the Buyer refuses to comply with this provision, **sera** shall be relieved of any liability for the defect.
- (4) If supplementary performance fails, the Buyer shall be entitled to withdraw from the contract or reduce the remuneration. The Buyer is not entitled to claim reimbursement of futile expenses.
- (5) The warranty period shall be twelve months from commissioning (single shift operation of up to 8 hours daily) and is limited to fourteen months after the transfer of risks (see Section 7). Multi-shift operation shall reduce the warranty period accordingly. The warranty period of the initial delivery shall apply for rework or supplied replacement parts. In appropriate cases, the warranty period may be extended up to a maximum of 60 months, if the Buyer has entered a maintenance agreement for the corresponding period with **sera**.
- (6) Claims based on defects in cases of insignificant deviations from the agreed or presumed quality, of only minor impairment of usefulness, of natural wear and tear or damages arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment or replacement material, faulty construction work or unsuitable site conditions or from particular external influences not assumed under the contract, unfavorable chemical, electrochemical or electrical effects, adverse weather conditions or unsuitable operating conditions, faulty assembly or commissioning by the Buyer or third parties, non-compliance of the instruction manual provided by **sera** as well as due to non-reproducible software errors, are excluded. In addition, the Buyer is not entitled to demand the defect to be rectified if the defect is attributable to the following causes: Inappropriate or incomplete statement of works and/or description of services or instructions issued by the Buyer; materials or components supplied or stipulated by the Buyer.
- (7) Claims based on defects attributable to improper modifications or repair work carried out by the Buyer or third parties and the consequences thereof shall be likewise excluded. In this case, the warranty provided by **sera** ceases with immediate effect.
- (8) **sera** shall not assume additional costs of travel and transport, labor and material unless doing so complies with the intended use of the Supplies. The liability for consequential costs arising from defects, in particular costs for operational failure or property damages, is excluded.
- (9) The Buyer is always obliged to take all reasonable steps to keep expenses for subsequent performance as low as possible. **sera** shall share any recall costs only if required according to the factual and legal situation. The Buyer is obliged to return defective products to **sera** or, at the discretion of **sera**, to make such products accessible for inspection and examination.

- (10) The Buyer's claim for damages or reimbursement of expenses based on breach of obligations or any other legal reason shall be excluded. The above limitation shall not apply in the event of liability under statutory regulations for damages to life and limb, bodily injury, or harm to health.
- (11) **sera**, or its Principle, shall in no event be liable for any amount exceeding the purchase price of the equipment and transportation charges thereon.
- (12) The warranty provided by **sera** for legitimate claims within South Africa is limited to the repair of defective parts in our plant or the delivery of replacement parts.
- (13) Outside of South Africa, the warranty obligations of **sera** are restricted to the delivery of replacement parts. Replaced parts become our property.
- (14) **sera** makes no guarantee whatsoever with respect to equipment, material or parts supplied or manufactured by others, and such equipment, materials or parts will be repaired or replaced only to the extent of the original suppliers or manufacture's guarantee.

#### 11. Guarantee and Product Description

- (1) Guarantee provisions are only binding if they are given in written form.
- (2) Information provided in catalogs, offers and other printed matter as well as general advertising statements do not constitute an offer to enter into a warranty agreement.

#### 12. Other Claims for Damages

- (1) Any claims for damages and reimbursement of expenses the Buyer may have for any reason whatsoever, including infringement of contractual obligations and claim in tort, shall be excluded.
- (2) For all products having a network connection, the risk of loss or alteration of data and the risk of faulty data transmission shall pass to the Buyer at the first network interface point of the product. In the case of software, the risk of loss or alteration of data and the risk of faulty data transmission shall pass to the Buyer upon installation of the software. Despite careful monitoring of data, **sera** assumes no liability for data which are transmitted over an open network interface or other systems into the Buyer's system.
- (3) However, claims for damages arising from a breach of material contractual obligations shall be limited to the foreseeable damage with contracts of this type, unless caused by intent or gross negligence or arising from liability for injury of life, body or health or an express assurance has been given in relation to the existence of a particular property. The liability for consequential costs arising from defects, in particular costs for operational failure or property damages, is excluded.

#### 13. Industrial Property Rights and Copyright, Defect of Title

- (1) Unless otherwise agreed, **sera** shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "industrial property rights") in the country of delivery only.
- (2) If a third party asserts a justified claim against the Buyer based on an infringement of industrial property rights with respect to the Supplies made by **sera** and then used in conformity with the contract, **sera** shall be liable to the Buyer within the time period stipulated in Section 10.5 as follows:
  - a) **sera**, at its discretion and at its own expense, is entitled to secure a license for the Supplies concerned or modify such Supplies so that no industrial property rights are violated or replace such Supplies. If this would be unreasonable to demand from **sera**, the Buyer may withdraw from the contract or reduce the remuneration pursuant to the applicable statutory provisions. The Buyer is not entitled to claim reimbursement of futile expenses.
  - b) **sera**'s liability to pay damages shall be governed by Section 12.
  - c) The above obligations of **sera** shall only apply if the Buyer (i) immediately notifies **sera** of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of **sera**. If the Buyer ceases to use the Supplies in order to reduce the damage or for other good reason, the Buyer shall be obliged to inform the third party that no acknowledgement of the alle-

ged infringement may be inferred from the fact that the use has been discontinued.

- (3) Claims of the Buyer shall be excluded to the extent that the infringement of an industrial property right is attributable to the Buyer. Claims of the Buyer shall also be excluded if the infringement of the industrial property right is caused by specifications made by the Buyer, to a type of use not foreseeable by **sera** or to the Supplies being modified by the Buyer or being used together with products not provided by **sera**.
- (4) Otherwise, with respect to claims by the Buyer pursuant to Section 13.2 (a) above, the provisions of Section 10.3 and 10.10 shall apply mutatis mutandis in the event of an infringement of an industrial property right. Where other defects in title occur, Section 10 shall apply likewise. Any other claims or further claims of the Buyer against **sera** or its agents than claims provided for in this Section 13 based on a defect of title shall be expressly excluded.

#### 14. Impossibility of Performance, Revision of Contract

- (1) If the delivery is impossible to **sera**, the Buyer is entitled to claim damages, unless the impossibility of performance is not attributable to **sera**. The Buyer's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. The above shall not apply in the event of statutory liability due to deliberate acts, gross negligence and bodily harm. The Buyer's right to withdraw from the contract shall remain unaffected. The liability for consequential costs arising from defects is excluded.
- (2) Section 6 (deadlines for Supplies and services) shall apply in the event that the impossibility is of a temporary nature.
- (3) If unforeseeable events for the purposes of Section 6.4 above substantially change the economic importance or the contents of the Supplies or considerably affect **sera**'s business, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, **sera** is entitled to withdraw from the contract. If **sera** intends to exercise its right to cancel the contract, it shall notify the Buyer thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Buyer.

#### 15. Repair Terms

- (1) The Buyer undertakes to issue a legally binding declaration of decontamination whereby the devices or parts that are to be repaired or maintained will be subject to an expert cleaning, in order to exclude any risk of recontamination to the contractor and/or **sera**. The devices shall be shipped to **sera** free of all flammable, poisonous, caustic, harmful, irritant or otherwise unhealthy materials. The declaration of decontamination must be fixed to the outside of the shipment container of the devices. If the shipment is not accompanied by a declaration of decontamination, **sera** may refuse the acceptance of the shipment.
- (2) Products and parts which are sent to **sera** for the purposes of repairs, shall be sent "Free Works" and must be accompanied by a delivery note or packing docket. Prior to any shipment, a shipping advice stating the order number shall be sent to **sera**.
- (3) The Buyer may be charged with the costs incurred in preparing cost estimates irrespective of the fact, whether a repair order is issued thereafter or not. The Buyer is charged with the costs incurred in troubleshooting if an order can not be carried out due to the following reasons:
  - a) The claimed defect was not detected using state-of-the-art rules;
  - b) the order has been cancelled during troubleshooting.
- (4) The period of warranty for all work services (repairs) and any replaced and/or installed material is 6 months. Otherwise, the warranty terms for Supplies and Services stipulated under Section 10 shall apply.
- (5) The terms of payment under Section 5 shall apply. Furthermore, the following retention of title is agreed:
  - a) As far as the spare parts or other components fitted during repairs do not become essential components, the contractor retains the ow-

nership to such installed parts until all of the contractor's receivables arising from the contract have been paid in full.

- b) **sera** may demand from the Buyer to surrender the item for the purpose of removal of the installed parts, if the buyer is in default or does otherwise not comply with its obligations under the retention of title. The Buyer shall bear the full costs of redemption and removal.
- c) If the repairs are taking place at the Buyer's premises, the Buyer shall give **sera** the opportunity to carry out the removal at the Buyer's premises. Labor and travel expenses shall be borne by the Buyer.
- (6) If the Buyer is considered a merchant, venue for all disputes arising from the contract is the place of **sera**'s registered office. However, **sera** is also entitled to file a lawsuit at the Buyer's registered office.

#### 16. Erection and Assembly

Erection, assembly and installation of devices and equipment of **sera** shall be carried out by specialists in compliance with the guidelines of **sera** and the relevant technical norms only. Unless otherwise agreed in writing, erection and/ or assembly by **sera** shall be subject to the following provisions:

- (1) The Buyer shall assume at its expense the following costs and provide the following in due time:
  - a) all earth and construction work and other ancillary work outside the scope of the industry, including the necessary skilled and unskilled labor, construction materials and tools,
  - b) equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels, lubricants and chemicals.
  - c) energy and water at the point of use, including connections, heating and lighting,
  - d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the assembly personnel, including sanitary facilities as are appropriate in the specific circumstances. Otherwise, the Buyer shall take all measures to protect **sera**'s property and the assembly personnel on site as it would take for the safeguarding of its own property.
  - e) Any required protective clothing and guards due to particular conditions prevailing on the specific site.
- (2) Before the commencement of assembly works, the Buyer shall make available any information required concerning the location of hidden electric power, gas and water lines or of similar installations as well as the necessary structural data.
- (3) Prior to erection or assembly, the materials and equipment necessary for the commencement of works must be available on site and any preparatory work must have advanced to such a degree that erection/ assembly may commence as agreed and carried out without interruption. Access roads and the erection/ assembly site itself must be level and clear.
- (4) The Buyer shall be obliged to pay for the reasonable costs incurred for idle times and any additional travelling of assembly personnel, if erection, assembly or commissioning is delayed due to circumstances not attributable to **sera**.
- (5) The Buyer shall provide proper storage in accordance with the guidelines of **sera**, if the installation of equipment can not commence immediately after delivery.
- (6) The Buyer shall attest to the hours worked by the assembly personnel at weekly intervals and shall confirm in writing and without undue delay once erection, assembly or commissioning has been completed.
- (7) Commissioning may be carried out by technicians authorized by **sera** and according to **sera**'s regulations only. The technicians are entitled to refuse the commissioning of equipment if the operating conditions to be provided by the Buyer do not allow for safe operation. The Buyer has to bear all costs incurred by **sera** due to the delay in commissioning.
- (8) If, after completion, **sera** demands the acceptance of the Supplies and Services, the Buyer shall comply within two weeks. In default thereof, acceptance is deemed to have taken place after the expiration of this period of time. Likewise, acceptance is also deemed to have been



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effected if the Supplies and Services are put to use after completion of an agreed test phase, if any, or have been put into service or operation by the Buyer.

### 17. Place of Performance, Venue, Applicable Law

- (1) Place of Performance for all obligations of **sera** (Seller) and the Buyer is **sera**'s registered office, if the Buyer is considered a merchant.
- (2) If the Buyer is considered a merchant, venue for all disputes arising from the contract is the place of **sera**'s registered office. However, **sera** is also entitled to file a lawsuit at the Buyer's registered office.
- (3) The law of the Republic of South Africa shall apply exclusively.
- (4) In the event of any dispute as to any matter or thing arising under the scope of **sera**'s supply, services or works, or the interpretation thereof, the matter shall be, at **sera** option, referred to the Courts of the Republic of South Africa which shall have the exclusive jurisdiction or shall be referred for arbitration to a single arbitrator to be mutually agreed. Failing such agreement a single Arbitrator shall be appointed, upon the application by either party, by the Chairman for the time being of the South African Association of Arbitrators, or his nominee. Arbitration proceedings shall be conducted in accordance with the current „Rules for the Conduct of Arbitration“ issued from time to time by the South African Association of Arbitrators. No dispute or reference to arbitration shall entitle the Client to discontinue or suspend the execution of any work under the service contract.
- (5) The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

### 18. Severability

The invalidity of individual provisions and conditions of this contract shall have no effect on the validity of the remaining provisions. If a provision is invalid either in part or in whole, the parties to the contract shall immediately endeavor to achieve the intended economic purpose of the invalid provision by other, legally permitted means.

**sera ProDos SA (PTY) Ltd.**

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