

# GAP Engineering Ltd (“GAP”)

## General terms of business (“ABG”) ABG2014

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### 1 Validity

Provided no other written agreements have been executed, these General Terms of Business (AGB) apply to all contracts, quotations, services rendered and goods provided by GAP, in particular in conjunction with product and process developments, consulting, assessments and arbitration, investigations and testing, also the manufacture and supply of equipment, sample parts and other products (□goods and services□). If any part of these AGB is judged to be invalid, all other parts thereof are unaffected and remain in force.

### 2 Conclusion and Content of Contracts

Contracts come into being as a result of written confirmation of the customer's order by GAP or by the customer accepting a written quotation from GAP. Quotations, specifications and details offered verbally by GAP are subject to change and are not binding. Special characteristics and properties, changes in and additions to contracts and agreements are binding only in written form. When the order has been placed with GAP, at the latest however on acceptance of any part of GAP services by the customer, the latter acknowledges and accepts these AGB. Any other conditions specified by the customer are valid only if they have been explicitly accepted by GAP.

### 3 Subject and Scope of the Goods and Services

GAP renders goods and services through skilled personnel with the diligence normally practised by GAP and based on the specifications that are listed in the order confirmation or in the GAP quotation. If orders are issued verbally or services are performed verbally by GAP, the customer bears the risk of possible communication errors and misunderstanding. Unless specific assurance is given to that effect, GAP does not warrant that the goods and services are suited to the purpose intended by the customer or that they produce the success intended by the customer. Technical advice and recommendations that are not the subject of the agreed goods and services, are provided by GAP with due diligence, however, outside any contractual obligation and any assurance and liability. Analogously, test results and reports provided by GAP apply only to the test objects and documents supplied by the customer. GAP does not warrant that the test results and reports also apply to other material deliveries or to other applications.

### 4 Prices and Terms of Payment

All prices are quoted in Swiss francs, and exclude VAT and other duties, taxes and fees. Dates and deadlines for payment are specified in the GAP quotation or order confirmation. If the customer defaults in his payments, GAP may after a reasonable period of grace give written notice that the unfulfilled part of the contract will be rescinded, and that all parts of orders that have been confirmed but not yet executed will be cancelled, whereby the customer is required to reimburse all costs in full and will be held liable for all damages. Offsetting claims by the customer by the amount owed requires prior written consent.

### 5 Delivery and Performance Conditions

Unless stipulated otherwise, performance deadlines are planned goals and are considered to be only approximate. In the event that deliveries by GAP are delayed due to unforeseen or unusual events or due to events outwith their control (force majeure) that affect the business of GAP, the deadlines shall be reasonably extended. Events occurring outwith the control of GAP release GAP from the terms of contract without incurring any liability for costs or damages towards the customer. GAP is entitled to provide partial delivery of goods and services. From delays in partial deliveries customers may not deduce any rights with respect to the remaining deliveries. Unless agreed otherwise, the inspection of any GAP deliveries which are subject to special controls or testing at GAP shall be at the expense of the customer. Benefits and risk are transferred to the customer from the point of shipment from GAP or with the preparation for collection from GAP.

### 6 Experimental Tools and Items for Testing

Experimental tools, models and moulds including gauges (“experimental tools”) required for contractual performance along with any relevant proprietary rights remain the property of GAP. Experimental tools paid for by the customer in full or in part are to be used only for the customer or for third parties designated by him. The customer shall notify GAP in writing if test items he has supplied are to be returned to him. Unless stipulated otherwise, GAP is not liable for the destruction or damage of test items and is authorised to dispose of all experimental tools and test items at the expense of the customer two years after completing the contractual requirements.

### 7 Proprietary Rights

Unless stipulated otherwise, the commercial proprietary rights, in particular patent, design and model rights along with the copyright to all results submitted to the customer accruing from the services performed (such as drawings, designs, evaluations, reports, samples and models) remain with GAP. If the services performed by GAP are based on drawings, models or other specifications, the customer warrants that the acceptance and execution of the order does not violate any proprietary rights, in particular that no patent rights, copyright, design and model rights owned by third parties are violated. The customer shall hold GAP harmless against any relevant claims raised by third parties. Unless stipulated otherwise, GAP is authorised to exploit further the knowledge and experience which GAP has gained from fulfilment of its contractual obligations.

#### 7.1 Intellectual property, re-use

The Buyer recognizes that the intellectual property of GAP and particularly in the documents, drawings, specifications, software and all other know-how, shall remain the exclusive property of GAP and may be used only within the limits of the Contract, that is for the installation, erection, operation, maintenance and improvement of the equipment by the buyer or by other companies appointed by the buyer.

The intellectual property of GAP may under no circumstances be divulged or made available to any other third parties and cannot be reused for the construction of a same, complete or even partial, installation.

For operations of maintenance or improvements of the installation, is left free to the buyer the use of documents, drawings, specifications and software were passed on by GAP.

GAP declines any responsibility in case of misuse made by the buyer.

#### 7.2 Software license

The software used on installation delivered by GAP is subject to a software license. Any copy of any part of the software to run on another equipment is strictly forbidden. The source code of the software (PLC and SCADA) can be used by the Licensed User only for the maintenance under following rules:

- The sources are a confidential Software and may be used only internally by the Licensed User. No copies can be made.
- Software modifications may be executed by the Licensed User only after written acceptance by GAP.
- If the Licensed User makes itself any modifications without a written acceptance from GAP, the guarantee will expire immediately and the buyer takes all the responsibilities of the consequences of these modifications on safety and machine function.

### 8 Confidentiality

Manufacturing and business secrets as well as documents and information that have been designated as confidential, or which under the circumstances are recognisable as confidential and which have been obtained by either party in connection with the fulfilment of the contract by GAP, shall be used and exploited only for the purpose for which they have been released, and may not be disclosed or made accessible to third parties.

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### 9 Warranty

The warranty period is 12 months. It begins on the day of delivery by GAP or with the inspection and release of the delivery by the customer. The customer shall inspect the GAP deliveries as quickly as possible. Any deficiencies, defects, or the absence of agreed characteristics shall be reported immediately to GAP in writing. The warranty becomes null and void if the customer fails to perform the inspection on time or if notice of deficiencies etc., is not given immediately or within the warranty period. GAP may at its own discretion repair or replace defective items at no cost to the customer, or refund the purchase price paid for the goods or services in question. If goods or services are replaced, the replaced items become the property of GAP. All other warranty claims by the customer and liability of GAP are subject to the limitation of liability in article 10 below.

### 10 Warranty and remedy

- Except where otherwise mentioned, the seller warrants that the equipment supplied under the contract shall be free from defect in design or manufacture, unless the design or manufacture were imposed by the customer, for a period of twelve (12) months from the delivery, or for a period of fifteen (15) months after date of ready to ship whichever occurs first.
- If within the warranty period, the equipment furnished under contract is shown not to conform with this warranty, owing to verifiable fault on the part of the seller in relation to the materials used or the design employed, and the customer promptly notifies thereof in writing after being aware of the defect, then the seller shall, upon the customer making the equipment available for correction, correct any non conformity either, as its option, by repairing, replacing or modifying such defect as required to meet the equipment warranty. The warranty shall be limited to rectification of such faults to the exclusion of all other rights and claims. The repaired or replaced part shall further be warranted to be free from defects in design and manufacture for a period not exceeding 18 months from the date of delivery of initial part. Parts replaced shall be immediately transferred to the ownership of the seller.
- The warranty includes only parts (standard exchange or repair) and correction of errors in the software. The transportation costs will be charged to the customer.
- For each repair or software correction on site, the travel and accommodation expenses according to the usual prices (as described above) are charged to the customer.
- Any unmotivated (no anomaly or error detected) repair or correction requested by the customer will be charged to the customer.
- If the equipment or the software is modified without written consent from the seller, then the warranty is automatically cancelled.
- The seller declines any other responsibilities for damages of any kind resulting from the use of equipment or software delivered by the seller.

The following events are excluded from the warranties:

- Normal wear and tear
- Violations of the designated use limits, improper treatment or inadequate maintenance.
- Defaults due to negligence in the handling, storage, installation, operation and monitoring of the equipment for which the seller is not liable.
- The defect due to the repair or modification of the equipment by the customer or any third party without the prior written consent of the seller.
- Insulation and refractory of the casting launder.
- Consumables (wiper system, bags, pins, plugs...).

### 11 Liability and Limitation of Liability

GAP's liability for damage to property and assets of the customer resulting from the goods and services delivered is limited to an amount that is in reasonable relationship to the agreed price for the goods or services in question and may under no circumstance exceed that price. The liability for direct, indirect and consequential damages resulting, for example, from lost orders and profit, unrealised savings, recall costs, interruption of business, or claims by third parties, is waived as far as this is legally admissible. This limitation of liability applies also to the contractual liability of GAP resulting from the violation of ancillary duties, lack of diligence, for delays and other cases of poor or non-fulfilment not covered in these AGB, including withdrawal from the contract.

### 12 Product Liability

Also after expiry of the warranty, both parties shall inform the other of any claims raised by third parties based on possible shortcomings in the services or goods supplied by GAP and actively support each other in the defence against unwarranted claims.

### 13 Assignment

The assignment or transfer of contractual rights of either party requires the prior written consent of the other party.

### 14 Place of Fulfilment

The place of fulfilment is the domicile of GAP.

### 15 Applicable Law and Place of Jurisdiction

The relationship between GAP and the customer is subject to Swiss law. The place of jurisdiction is CH – 3960 SIERRE. GAP reserves the right to raise pecuniary claims also at the domicile of the customer.