GRADE Refrigeration LLC SP

("GRADE")

GENERAL TERMS AND CONDITIONS

for the Sale of Goods and Provision of Services

1 Applicability

1.1 These general terms and conditions apply to all offers, sales, deliveries made by GRADE, and all contracts entered into by GRADE for the sale of industrial refrigeration related equipment (**"Goods"**) or the provision of engineering, installation and commissioning services related to Goods supplied by GRADE or a third party (**"Services"**) to any customer (**"Customer"**). The term **"Works"** means any facilities of a Customer that incorporate Goods supplied and/or Services provided by GRADE. The term **"Project"** means the engineering, installing or commissioning of any equipment supplied by GRADE or a third party, or supervising such engineering, installation or commissioning.

1.2 These terms and conditions supersede any other general terms and conditions purporting to apply to a sale of Goods or supply of Services by GRADE. For the avoidance of doubt, any general terms and conditions presented by Customer for the purchase, leasing or procurement of Goods or Services are expressly excluded.

2 Offer, Acceptance and Formation of Contract

2.1 A contract between GRADE and a Customer is formed if and only if: (a) both parties sign a contract agreement (**"Contract Agreement"**) or (b) GRADE issues a quotation or offer (**an "Offer"**) and the Customer confirms its acceptance of that Offer; or (c) GRADE issues an order confirmation (**an "Order Confirmation"**) in response to a Customer order. In these general terms and conditions, the term **"Contract"** means either a Contract Agreement; an Offer that has been accepted by the Customer (**an "Accepted Offer"**); or an Order Confirmation as the case may be.

2.2 Unless expressly agreed otherwise by GRADE in writing, any Offer made by GRADE is budgetary, nonbinding, without engagement and revocable unless and until it has been accepted by the Customer.

2.3 Promises, undertakings or representations made by GRADE personnel before conclusion of the Contract are not binding on GRADE unless incorporated into the Contract. Promises, undertakings or representations made by GRADE personnel after conclusion of the Contract are not binding on GRADE unless confirmed by GRADE in writing.

2.4 GRADE agents and distributors are not authorized to make any representations concerning the sale of Goods and/or the provision of Services unless confirmed by GRADE in writing. The Customer acknowledges that it may not rely on, and waives any claim for breach of, any such representations that are not so confirmed by GRADE in writing.

2.5 Any deviation from the terms of the Contract is subject to the provisions of §10, *Change*.

2.6 Each of the following documents is an integral part of the Contract. In the event of any inconsistency between documents, the documents have precedence in the listed order:

- **a.** The Contract Agreement, Accepted Offer or Order Confirmation (if any)
- **b.** Project Schedule
- **c.** These general terms and conditions
- **d.** Tender Documents issued by or on behalf of the Customer if GRADE has agreed in writing that these will be incorporated into the Contract.
- **e.** Advance Payment Guarantee and/or
- **f.** Performance Bond

3 Scope

3.1 GRADE shall supply only the Goods and/or provide only the Services expressly specified in the Contract (collectively "Scope") and shall do so at the price specified in the Contract (the **"Contract Price"**) except as provided otherwise in the Contract.

3.2 Additional Goods or Services required for the correct functioning of Goods or Works so specified may be charged separately by GRADE as an addition to the Contract Price.

3.3 Any specification of or representation as to dimensions, weights, capacity, power consumption and other data (**"Specification"**) in any technical document, catalogue, picture, drawing or otherwise are not binding on GRADE unless that Specification is expressly stated in the Contract. GRADE is deemed to have complied with the relevant Specification if measurements taken by GRADE are within ±5% of the value stated in the Contract.

3.4 GRADE reserves the right at any time without prior notice to make minor changes to any Specification if the changes are required to conform with any applicable safety or other legal/regulatory requirements and the changes do not materially affect the quality and mechanical performance of Goods supplied by GRADE or Works.

3.5 With respect to any Project, GRADE is required to perform only those Services that are expressly stated in §11, *Installation and Commissioning* or in §12, *Supervision* below unless otherwise expressly stated in the Contract.

3.6 Marketing and other promotional material relating to the Goods or Services are illustrative only and do not form part of the Contract. The Customer acknowledges that, in submitting an order, it has not relied on any representation or statements by GRADE other than those expressly set out in the Contract.

4 Delivery of Goods and Provision of Services

4.1 Unless expressly agreed otherwise in the Contract, GRADE will use its reasonable efforts to meet delivery dates, but such dates are approximate only based on the then-current engineering and manufacturing capacity of the supplier from whom GRADE procures industrial refrigeration related equipment (**"Seller"**). Time of delivery is not of the essence and GRADE is not liable for any delay in delivery of the Goods, the provision of Services or the completion of Works howsoever caused. No delay damages are payable for failure to meet a targeted delivery date.

4.2 Unless otherwise expressly stated in the Contract, delivery of Goods shall be made EXW (as that term is defined in *Incoterms 2020*) (unpackaged) at a location nominated by GRADE. If there is an inconsistency between *Incoterms 2020* and the Contract, the Contract prevails. Where GRADE is to provide Services in

addition to supply, the provisions on delivery and transfer of risk of §11, *Installation and Commissioning* and §12, *Supervision* apply.

4.3 GRADE may at its discretion make delivery in parts.

4.4 Upon duly tendered delivery of any Goods, risk for those Goods pass to Customer and all payments to be made on delivery become due. If duly tendered delivery is not accepted by Customer, GRADE may store deliverable Goods in a third-party warehouse at the risk and cost of Customer.

4.5 Where GRADE is to provide Services, the Parties shall agree upon a date and/or schedule for the provision of such Services. If the Parties fail to agree such date and/or schedule, GRADE may unilaterally decide all necessary particulars.

4.6 GRADE is not obligated to compensate Customer in respect of any delay in delivery of Goods or any late completion of Works unless (a) the Contract expressly specifies a firm date and place for delivery of Goods, or a firm date for the provision of Services, and (b) GRADE is solely responsible for the delay. In any event, GRADE's maximum liability to the Customer is 0.25% per week of the Contract Price for those Goods delivered late or those Works completed late, up to a maximum of 5% of the Contract Price. One single such payment shall be the sole and exclusive compensation for Customer in the event of any late delivery of Goods or any late completion of Works.

4.7 The provisions of clause 4.6 also apply if GRADE is acting as subcontractor to a main, prime or general contractor (**a "Contractor"**). In addition, such Contractor is not entitled to receive from GRADE any liquidated or other damages on account of delay unless

- **a.** such Contractor is required to pay liquidated damages for delay under its own contract and
- **b.** such Contractor's delay is directly attributable to delay caused exclusively by GRADE.

4.8 The quantity, quality and description of and any Specification for the Goods or provision of Services shall be those set out in the Contract.

5 Contract Price and Payment

5.1 Unless stated otherwise, the Contract Price does not include VAT or any other applicable taxes or levies. The Customer shall compensate and hold harmless GRADE from all taxes, VAT, customs duties or other imposts levied against either party in Customer's country.

5.2 Where applicable law requires the Customer to withhold tax or make a deduction from any payment due to GRADE in relation to any taxes, duties, government assessments or charges, the Customer shall increase the payment to be made such that the net payment received by GRADE is equal to the Contract Price without any such deduction.

5.3 The Customer must pay the Contract Price plus the value of any and all Change Orders in full without any deductions.

5.4 The Customer must pay each invoice submitted by GRADE, including invoices for advance payment, in the agreed currency within 30 days of the date of invoice without discount or set-off.

5.5 If payment is late, Customer is considered to be in default without notice of default being required. Late payments are subject to a late payment fee at the rate of 5% of the Contract Price or the maximum rate permitted by applicable law whichever is less. For the avoidance of doubt, Force Majeure does not excuse late payments.

5.6 Customer shall provide a form of security for payment in accordance with the requirements of the Contract. Failure of Customer to provide such security, including any agreed advance payment, constitutes a breach of the Contract by Customer and entitles GRADE to (a) suspend further performance of its contractual obligations until full payment by the Customer of all its outstanding payments or (b) terminate the Contract, seek damages or enforcement of any other right it may have under the Contract or otherwise.

5.7 If GRADE at any time has reasonable grounds to doubt Customer's ability to make any payment, GRADE may require Customer to provide additional security for payment subject to the provisions of §5.6 above.

5.8 As far as the law allows, GRADE shall retain title to all Goods delivered and/or to be delivered and a lien on any Works completed until Customer has paid in full all amounts due to GRADE under the Contract or otherwise (including any Change Orders).

5.9 The market for some of the raw materials, labour, intermediate product, and other commodity markets that are specified in the Contract (including but not limited to steel and its products) are volatile and sudden price increases are not unusual. GRADE agrees to use diligent efforts to obtain advantageous prices from its sub-contractors and material suppliers. However, the Customer is required to share the risk of increases in the market price for materials, equipment or third-party services used by GRADE in a Project in the following circumstances:

5.9.1 If the Customer causes a delay to the performance of the Project or suspends the Project, in either case for a period of more than 6 months, and later confirms to re-start the Project.

5.9.2 If during the performance of the Contract the price or cost of the materials, equipment or third-party services increases through no fault of GRADE by an amount equal to or exceeding 2% (two percent) of the corresponding amounts specified in the Contract.

5.9.3 In either circumstance described in Sections 5.9.1 or 5.9.2, GRADE is entitled to increase the Contract Price and upon request by GRADE, Customer must pay a sum equal to the amount by which GRADE's cost for the relevant materials, equipment or third-party services has increased. The Customer agrees to accept as evidence of the price increase any copies of quotations, supplier list prices, invoices or receipts provided by GRADE.

6 Confidentiality and Intellectual Property Rights

6.1 Each party shall treat all Confidential Information provided by the other party as private and confidential. A party must not use, publish or disclose Confidential Information or any particulars thereof, without the prior express written consent of the disclosing party except (a) as may be necessary for the purposes of performing the Contract; (b) to its officers, directors and employees, or to its lawyers, accountants or auditors; and/or (c) as required by the rules of a public stock exchange or by applicable law. Nothing in this Clause 6.1 prevents the use or disclosure of any Confidential Information that is already within the public domain or that entered the possession of the receiving

party from a third party who had a right to disclose and use such information.

6.2 **"Confidential Information"** includes any and all information, drawings and data/personal data of any kind made available or provided by a party in connection with the Contract whether orally, electronically, in writing, visually (such as through site visits, tests or audits) or otherwise, and regardless of whether it is marked "confidential. For the avoidance of doubt, each party acknowledges and agrees that the term "Confidential Information" includes:

- **a.** Those documents mentioned in Clause 2 sub-Clause 2.6
- **b.** Any bid specifications, drawings, Engineering, manuals, design documents and construction plans provided by GRADE
- **c.** Any bid, budget, estimate or request submitted by GRADE
- **d.** the nature, type and existence of the Project
- **e.** any financial, operational, technical and other information which relates to or describes, in any manner the Project including parties or timing of the Project, or other information related to the Project, whether such information provided in writing, oral, graphic, pictorial or recorded form or stored on computer discs, hard drives, digital or any other electronic medium.

6.3 Without Customer's prior permission, GRADE has the right to disclose the Customer's name and the current/past Project name of the Customer to GRADE's prospective clients for commercial purposes with an intention to increase its marketability and market presence. GRADE may disclose such general information, using professional judgment at all times, unless GRADE is notified by the Customer in writing, to the contrary.

6.4 Any intellectual property entailed in Goods or Services provided by GRADE, or in the Works, remains the property of GRADE. Consequently, nothing in the Contract may be interpreted as transferring any intellectual property in connection with the Goods delivered or, Services provided or the Works. Any intellectual property entailed in the Goods or Services provided by GRADE, or in the Works, will remain the sole property of GRADE, unless otherwise expressly agreed in writing in an agreement where the Customer has paid separately and specifically for the relevant intellectual property.

6.5 GRADE warrants that Goods delivered or Services provided under the Contract do not infringe the intellectual property rights of any third party. If, however, such infringement is proved, GRADE may at its discretion replace or modify infringing Goods, Services or take back infringing Goods and reduce the Contract Price accordingly.

6.6 For a period of three years after the date of delivery, GRADE shall indemnify Customer against any loss, claim or award of damages resulting from delivery of Goods or provision of Services by GRADE that infringe the intellectual property rights of any third party. Such indemnification may be claimed by Customer only if:

- **a.** GRADE acknowledges or concedes the infringement, or the fact of infringement is established in a judgment by a competent court of law or an arbitral tribunal; and
- **b.** Customer has notified GRADE within two weeks of the commencement of any legal action or proceedings against it on the grounds of such infringement; and
- **c.** Customer has fully co-operated with GRADE in defending their joint and/or several interests in any such action or proceedings; and
- **d.** The action or proceedings do not result from any modification by Customer of any Goods or Works supplied by GRADE or from any goods, information, data or permission supplied by Customer to GRADE under the Contract or otherwise.

7 Defects Liability

7.1 If during a period of twelve months after delivery, a defect in material, workmanship or design provably present at the date of delivery in any Goods or Works comes to light (**"Defect"**), then GRADE shall without undue delay and at its sole discretion repair, replace or otherwise make good such Defect.

7.2 Where GRADE installs Goods that are supplied *ex works*, the defects liability period expires eighteen (18) months from the date of collection *ex works*; or twelve months from the date of the Completion Certificate as defined in clause 11.11, whichever is earlier.

7.3 Where GRADE acts as supplier of Goods or Services to a Contractor, the defects liability period expires eighteen (18) months from the date of delivery of the Goods to the Contractor. If GRADE is solely a supplier of Goods for the relevant Works, then GRADE has no liability whatsoever for any delays by the Contractor in performing its services. If GRADE is also providing Services for the relevant Works, then GRADE has no responsibility for any delay by the Contractor after expiry of such 18-month period, but the Contractor and/or the end user may request GRADE to provide an extended warranty for an amount of 2% of the Contract Price.

This warranty does not cover failures caused in whole or in part by:

a. Improper maintenance
b. Improper use or application
c. Corrosion
d. Normal deterioration
e. Operation beyond rated capacity / limits / voltages / frequencies
f. The use of replacement parts or lubricants, and condenser water which are not the manufacturer's specifications.
g. Improper repairs.

7.4 For Goods which are not manufactured by GRADE, GRADE is liable for Defects only if and to the extent that the manufacturer of such Goods is liable for defects to GRADE.

7.5 Customer shall inspect the Goods at the earliest reasonable opportunity after delivery and shall notify GRADE immediately of any evident or latent Defect that is discovered. Failure to conduct such inspection or give such notification shall release GRADE from any duty to make good such evident or latent Defect.

7.6 GRADE's liability for Defects is subject to the correct installation, use and maintenance of Goods or Works by Customer. GRADE has no liability for normal wear and tear. If GRADE has provided a list of wear-and-tear parts, GRADE's liability shall be limited to

the period and to the extent indicated in this list.

7.7 GRADE accepts no liability for any Defects (a) in Goods or Works repaired by Customer without prior written permission from GRADE, or (b) in Goods or Works maintained by Customer with replacement parts not procured directly from GRADE.

7.8 Any Defect shall be notified in writing to GRADE as soon as Customer discovers or should have discovered it but not less than 7 days from the discovery and before end of warranty period. Improper notification releases GRADE from all liability for any Defect so notified.

7.9 Unless GRADE decides that the alleged Defect shall be examined and/or made good *in situ*, Customer shall return to GRADE any Goods or Works alleged to be defective, carriage and insurance paid. No Goods may be returned unless GRADE has expressly agreed such return. In the event of examination *in situ*, if GRADE rejects its liability for an alleged Defect, GRADE may charge Customer all costs arising from the examination including but not limited to travel, transport and accommodation costs.

7.10 If continued operation of Goods or Works found or alleged to be defective would cause damage to any installation or equipment, GRADE may order the immediate, orderly shut-down of such Goods or Works.

7.11 GRADE's making good of any Defect shall not extend the original defects liability period on the Goods or Works and GRADE's liability for any replacement part shall expire at the same date as the original defect's liability period.

7.12 GRADE's liability for Defects extends only to the original Customer and may not be transferred to any third party.

7.13 This Defects liability period becomes null and void if the Customer or a third party makes any changes or repairs to the Goods or Works, without obtaining the prior written consent to do so from GRADE.

7.14 The warranty is based on the plant operating within the original design parameters and that the system is maintained in accordance with manufacturers recommendations and recognised good engineering practice.

7.15 The liability stipulated in this Article is GRADE's sole liability for Defects. As far as the law allows, it replaces any liability for Defects or non-conformity or any other undertaking arising from the applicable law, from the custom of the trade or from the practice of the parties, including but not limited to any warranty of merchantability or fitness for particular purpose.

8 Limitations of Liability

8.1 Notwithstanding anything to the contrary in the Contract or otherwise, GRADE is not liable towards the Customer in contract, tort, or any other legal basis for loss of profit or revenue, loss of use, production or business, recall costs, damage to and loss of product, feedstock, raw materials and utilities, loss of data, cost of capital, cost of substitute supplies and services, property damage external to the Works and any damage, expenditure or loss arising out of such damage, any incidental, indirect or consequential damages, costs or loss or any of the foregoing suffered by any third-party.

8.2 To the fullest extent permitted by law, and notwithstanding anything contained in the contrary, GRADE's aggregate liability towards Customer under the Contract for any Defect, act, omission or failure (however it may arise) is limited to 50% of the Contract Price.

8.3 GRADE is not liable for indirect or consequential loss or damage, including but not limited to loss of refrigerant, loss of product including any item subject to refrigeration, loss of feedstock, loss of profit or other financial loss, damage to any item of equipment or any works not supplied by GRADE, environmental damage suffered due to any Defect in any Goods, Works or to any other act, omission or failure on the part of GRADE.

8.4 Customer shall compensate GRADE for, and hold it harmless against, the financial result, including but not limited to costs, legal costs and/or award of damages, of any claim or legal action brought by any third party and arising either directly or indirectly from the use, storage or disposal of Goods and/or implementation of Services supplied by GRADE.

8.5 GRADE is not liable to the Customer for any delay in performing, or any failure to perform, any of GRADE's obligations under the Contract, if the delay or failure was due to any Force Majeure Event.

8.6 Any claims of the Customer against GRADE pertinent to Defects liability arising out of the Contract and irrespective of the legal basis (contract, tort, indemnity and any other area of law) shall become time barred after expiry of the agreed warranty period.

9 Approval of Documentation

9.1 GRADE shall promptly submit to Customer for its approval all documentation requiring approval under the terms of the Contract. Customer shall approve or disapprove such documentation and return it to GRADE within ten days of submission. Any documentation not returned within the required period is deemed approved. Customer may disapprove documentation only on the grounds that it contains an error or omission, does not comply with the Contract or is manifestly contrary to good engineering practice. Where Customer disapproves any documentation, GRADE shall resubmit appropriately revised documentation. If such revised documentation is not disapproved within 10 (ten) working days of resubmission, it is deemed approved by Customer. Approval by Customer of any documentation does not relieve GRADE of its obligations under the Contract.

9.2 If Customer requires any change in any documentation on any grounds other than disapproval under §9.1, the provisions of §10, Change shall apply.

9.3 GRADE reserves the right to substitute items of the Scope provided that any such substitution shall be with an item of equal or better standard. GRADE may perform the Contract pursuant to its own plans, procedures, and working methods, unless they conflict with any express provision of the Contract.

9.4 Customer is responsible for the accuracy and completeness of any design, documentation or other information (**"Data"**) supplied to GRADE by or on behalf of Customer. Additional costs and/or delay resulting from any error or omission in such Data are subject to the provisions of §10, Change.

10 Change

10.1 Any deviation from any provision of the Contract requires express written approval by GRADE.

10.2 Subject to the procedure stipulated in §10.3, Customer may at any time issue a change order (**"Change Order"**) requiring additions, omissions or alterations to GRADE's Scope, and GRADE shall perform such changes. GRADE may at any time

propose an addition, omission or alteration to its Scope but shall not put such change into effect without a Change Order.

10.3 If Customer wishes to issue a Change Order, it shall first request from GRADE a proposal detailing all measures necessary to make such change (**"Proposal"**). The Proposal must specify all changes to GRADE's Scope, the schedule, the Contract Price, and to any other matter. If Customer accepts such Proposal, or any agreed modification of such Proposal, Customer shall issue a Change Order to that effect to be signed by both Parties. Until such signature, GRADE has no obligation to begin work on any proposed change. If, however, prior to such signature GRADE begins work on any change with the knowledge and consent of Customer, then Customer is deemed to have issued a Change Order on the terms and at the date of GRADE's Proposal.

10.4 GRADE has the right to correct any typographical, clerical or other error or omission in any Contract Agreement, Offer, price list, acceptance of Offer, invoice or other document or information issued by GRADE, without any liability on the part of GRADE.

10.5 Unless otherwise agreed, GRADE may invoice Customer for any work performed under any Change Order immediately after such work is completed, and Customer shall pay such invoice within 30 days of receipt without set-off.

10.6 If GRADE suffers delay and/or incurs additional cost as a result of any circumstance including but not limited to those listed below, GRADE shall be entitled (a) to an appropriate extension of time and (b) to an appropriate addition to the Contract Price. Any such addition to the Contract Price shall include all additional related cost incurred by GRADE, consisting however but no restricted to items of points (a-j) below, plus an agreed margin. If no margin is agreed, such margin shall be 15%:

- **a.** Any delay, defect, inaccuracy and/or incompleteness in any Data and/or materials or services supplied to GRADE by or on behalf of Customer.
- **b.** Any supply/provision by GRADE of additional Goods or Services for any other reason than GRADE's default, where such supply/provision is made without a Change Order but with the agreement or on the instruction of Customer in writing or otherwise.
- **c.** Exceptionally inclement weather.
- **d.** Site conditions that could not be reasonably foreseen by GRADE on the basis of information made available to GRADE before the date of the Contract.
- **e.** Unforeseeable shortages in the availability of Goods or personnel.
- **f.** Failure by Customer to perform of any of its obligations under the Contract
- **g.** Customer failure to timely complete the import formalities
- **h.** Customer ordered suspension
- **i.** Any delay, disruption, impediment or prevention of GRADE or any breach of Contract caused by or attributable in whole or in part to Customer (including third parties for whom it is responsible), or
- **j.** Any other event or circumstance which gives GRADE an entitlement under this clause.

10.7 GRADE shall give notice to Customer of any event giving rise to a claim within 28 (twenty-eight) days of such event becoming known to GRADE. The notice shall be followed as soon as possible by a complete claim containing full and detailed particulars.

11 Installation and Commissioning

11.1 This article is additionally applicable where GRADE is responsible for engineering, installation or for erection or commissioning.

11.2 GRADE shall perform all engineering or installation Services in accordance with the schedule, procedures and protocols stipulated in the Contract or in their absence, in accordance with good engineering practice.

11.3 Customer shall give access to the site on the date stated in the Contract, or if no date is stated then on a reasonable date. Customer shall ensure that GRADE's staff can perform the Services without disturbance. The Customer shall, at its own expense (i) prepare the site which is in reasonable working conditions; (ii) provide GRADE with secure, lockable storage area with a physical barrier (e.g. roof) for storing materials and installation equipment, to prevent accidental exposure or unauthorized removal; (iii) provide proper access to the site; (iv) ensure the site is safe to execute installation or erection or commissioning works and (v) provide all facilities specified in the subclause 11.4.

"Site Readiness" means that all buildings/structures, within/whereupon GRADE shall work and/or install equipment, shall be completed to a safe and satisfactory level, with all necessary primary supports in place and no restrictions or blockages to impede GRADE staff from progressing installation works in a timely manner

11.4 Customer shall make available to GRADE on the site free of charge and at appropriate times:

- **a.** All assistants, equipment, materials, scaffolding, lighting, electricity including single phase power points for hand tools whilst working onsite, water, fuel, oils, fats, welding gases, nitrogen, cleaning materials, detergents, and all other necessary and/or customary items. All items shall be of an appropriate quality.
- **b.** Suitable facilities for GRADE's staff, including dining, medical, washing and toilet facilities and anything else required for adequate and safe working conditions during an eight-hour working day and a six-day working week.
- **c.** Such other items, and/or at such other times, as GRADE may reasonably require.

11.5 GRADE reserves the right to refuse to install the Goods where in its opinion the site and/or access has not been prepared or provide as above and shall not be liable for any loss, damage, or additional expense arising from such non-compliance.

11.6 If overtime and/or shift work is required, it shall be Invoiced separately to Customer at GRADE's standard rates as an addition to the Contract Price.

11.7 If prior to installation, civil engineering or other works must be performed by Customer and if any such work is in delay, installation shall begin only after such work is satisfactorily completed, and appropriate adjustments to Contract Price and schedule shall be made.

11.8 Any work performed by GRADE but not expressly included in its Scope, including but not limited to excavation, construction of

foundations, provision of attachment points for pipe hangers, execution of masonry, carpentry, painting, cutting or concrete work, provision of scaffolding and any further construction, fitting or manufacturing operations, shall be deemed a change under the provisions of §10, Change.

11.9 As soon as the Works are completed, the tests on completion (**"Tests"**), as specified in the Contract, shall be performed. If no such Tests are specified, then GRADE shall at its sole discretion determine appropriate Tests.

11.10 If during Tests discrepancies with the Scope are discovered which have no material effect on the functioning of the Works, GRADE may remedy such discrepancies during the Defects liability period. Such discrepancies do not constitute a reason to refuse or delay taking-over.

11.11 As soon as Tests are satisfactorily completed, Customer shall immediately issue a signed Completion Certificate over attaching, if appropriate, a list of non-material discrepancies for correction during the Defects liability period. If Customer fails to issue such certificate, then it shall be deemed to be issued seven days after satisfactory completion of Tests.

11.12 If Customer takes the Works into beneficial or commercial use, such taking into use shall be deemed acceptance and taking-over of the Works.

11.13 Should the Customer choose to start operating the Works prior to completion of the Scope, a Completion Certificate shall be deemed to have been issued on the date the Customer started operating the Works for commercial usage and all the outstanding payments shall become due.

11.14 GRADE may provide tools, documentations, or other equipment **("items/equipment"**) at the Project Site for the GRADE convenience in performing its Scope of Work and provisions of Services concerning turnkey Projects. Such items/equipment are including but not limited to any and all leftover materials, tools, containers, portable cabins, any and all equipment belongs to the appointed sub-contractors and any other items/equipment not expressly defined herein. Such items/equipment at all the times remain as GRADE property. Customer shall provide a suitable place to store such items/materials at the Project site. GRADE retains the right to remove such items/equipment at any time during the term, or upon the Completion or upon termination of the Contract and its agreed Scope of Works or Provisions of Services. The Customer shall not claim any rights over such items/equipment.

12 Supervision

12.1 This Article applies whenever GRADE is responsible for supervision of installation or of other works.

12.2 Unless otherwise expressly agreed, the sole responsibility of any supervisor appointed by GRADE (**"Supervisor"**) shall be the provision of correct, timely and adequate instruction to such staff as may be performing installation or other agreed works (**"Staff"**). GRADE accepts no liability whatsoever for any delay in completion or for any work incorrectly performed during installation. The Supervisor shall act exclusively as consulting engineer and not as superintendent of any Staff. The Supervisor shall bear no responsibility for the quantity or quality of Staff employed.

12.3 For the avoidance of doubt, whenever GRADE supervises installation, the provisions of §7, Defects Liability applies to any claim for Defects or non-conformity to the exclusion of any other right, however arising.

12.4 Customer shall give the Supervisor necessary access to the site and shall support him in his activities with all necessary facilities including but not limited to dining, washing, medical and toilet facilities together with such other accommodation, transport and communication facilities as GRADE may reasonably require.

12.5 Where the Supervisor gives any instruction with regard to goods not in GRADE's Scope, such instruction shall not imply any liability on GRADE's part for the reliability, suitability or operability of any such goods or equipment.

12.6 The Supervisor shall report to Customer or any duly appointed representative at a reasonable time and a level of detail to any Defects, shortcomings or failures in the work supervised by him.

12.7 Unless local regulations expressly state otherwise, the Supervisor shall not be responsible for implementation of local health, safety or working practice regulations.

12.8 Customer shall provide sufficient skilled labour for the purpose of recording under instruction of the Supervisor technical data obtained during all supervised activities. If Customer cannot make such labour available, GRADE may provide such labour subject to the provisions of §10, Change.

13 Insurance

13.1 Customer shall take out and maintain, at its own cost and expense, all risks insurance policy to cover for the Goods/Works thereof to be supplied by GRADE. GRADE shall also obtain workmen compensation insurance.

13.2 Where GRADE is responsible either for installation, commissioning or for supervision services, the Customer shall take out a construction all risks/erection all risks policy to cover for all GRADE activities on site. Such policy shall name GRADE as co-insured but allowing the insurer or insurance company no recourse against GRADE. The Customer shall, prior to the commencement of work on site, furnish GRADE with a copy of this policy and evidence that it is current. Notwithstanding any provision contrary to Clause 4 (Delivery of Goods and Provision of Services) the Customer shall insure GRADE Goods and Works for not less than the full replacement value, including delivery to the site.

13.3 The Customer shall maintain this insurance to provide cover until the date of issue of the Completion Certificate, for loss or damage for which GRADE (or any of its suppliers, as the case may be) is liable arising from a cause occurring prior to the issue of the Completion Certificate. Customer shall also obtain third-party insurance.

14 Force Majeure

14.1 GRADE may seek relief from its duty to perform any obligation under the Contract Agreement if performance is hindered by an event:

a. Beyond its reasonable control; and

b. Unforeseeable at the time the Contract Agreement came into force; and

c. The effects of which GRADE could not reasonably have avoided.

Any such event shall constitute Force Majeure. Force Majeure events include but are not limited to war, terrorist act or a justified fear of such act, strike or lock-out, epidemics, pandemics, sabotage, import or export restriction, imposition of travel

restrictions or advice against travel by any relevant government authority, transport damage, radiation, any act or failure to act on the part of any local, state or national government authority, any natural disaster, fire explosion or other accident, or any shortage or late supply of plant, labour, materials or utilities were caused by circumstances that are themselves Force Majeure. Customer's economic hardship or changes in market conditions are not considered Force Majeure Events.

14.2 If a Force Majeure event delays delivery or taking-over, then the delivery date or date of taking-over shall be extended by an appropriate period.

14.3 If Force Majeure prevents performance of duties under the Contract for a period of six months or longer then, either party may terminate the Contract.

14.4 If damage to the Works or termination of the Contract Agreement results from a Force Majeure event, Customer shall pay GRADE the full value of Goods or Works already completed, or Services already provided.

14.5 Notwithstanding the above, and in full consideration of its obligations, GRADE is further entitled to an extension of any stated time schedule therein and/or to charge extra reasonable costs in the event GRADE time schedule is adversely impacted and/or GRADE incurs additional costs due to any of the foregoing.

15 Export Controls

15.1 Customer acknowledges that the Goods to be provided by GRADE are or may be controlled by export control regulations which may result in an "Export Control Event." In case of an Export Control Event GRADE shall be entitled to all additional costs and expenses which may be needed for GRADE to fulfil its obligations under the Contract, including costs and expenses needed to obtain an export license if required. Customer agrees to provide to GRADE without undue delay all necessary information that may be requested to obtain an export license, such as end-user certificates. GRADE will promptly inform Customer of any delays arising from procedures to obtain an export license; revocation of export license or any prohibition on performing the Contract.

15.2 If an export license is denied or revoked, or if an embargo prohibits the performance of the Contract, or if any other Export Control Event affecting GRADE or any of its suppliers or subcontractors hinders GRADE's compliance with one or more of its obligations under the Contract, then GRADE is excused from the performance of its obligations under the Contract, with immediate effect. In any case GRADE is not liable to Customer for any claims for delay, loss or damage arising from or in connection with an Export Control Event.

15.3 Subject to clause 15.2, if GRADE gives notice to Customer that its performance of the Contract will be hindered by an Export Control Event, then each party is entitled to terminate the Contract by giving one-week prior written notice, without need for any court order or other judicial proceedings. In the event of such termination GRADE is entitled to all costs and expenses for all work in progress under the Contract or for which GRADE is obligated to pay to any supplier or subcontractor due to the termination, as well as to all losses and damages arising from or related to the termination.

15.4 Customer shall implement and follow all necessary procedures to comply with export control regulations related to any Goods provided by GRADE. Customer represents, warrants and covenants that it has not engaged, and shall not engage, in any activity that could subject either party to civil, criminal or administrative liability under applicable export control regulations including but not limited to the sale, lease, transfer, or sublicensing of any Goods without appropriate authorization. Customer shall indemnify and hold GRADE harmless from and against any claim, proceeding action, fine, cost, loss and damage arising from or related to the breach of this warranty and covenant.

16 Anti-Corruption, Bribery and Money Laundering

16.1 GRADE does not under any circumstances tolerate illegal, unethical or any form of corrupt behavior. Customer is expected to comply with the following;

a. Customer or its employees are not to directly, indirectly or through third parties, offer, promise, give or authorize the giving, to any of the GRADE employee any bribe, kickback, illicit payment, gift, service, favor or anything else of value to influence or reward that employee in order to secure the performance or non-performance of the sale of Goods or the provision of Services.

b. Customer or its employees shall not entertain and shall promptly report to the GRADE management or the concerned department with whom the Customer is in contact, any requests or demand by any of the GRADE employee for any undue financial or other advantages of any kind in return for securing the performance or non-performance of the sale of Goods or the provision of Services.

16.2 Money laundering is a financial crime in which the source of illegally acquired money or goods are hidden from law enforcement and financial regulators by generating the appearance of legitimacy for the illicit gains. Any activities related to Money laundering is strictly prohibited. GRADE emphasizes that it shall comply with all anti-bribery, anti-corruption and anti-money laundering laws of the United Arab Emirates and all such other states where they do business and it expects the Customer to comply with all such applicable laws while doing business with GRADE.

17 Non- Solicitation

Customer shall neither on its behalf nor on behalf of any other person or entity, directly or indirectly, hire, solicit, retain or encourage an Employee of GRADE to leave the company. Customer shall also ensure that within three (3) years from completion and/or expiry of the Contract, not to assist any other person or entity in hiring, soliciting, retaining or encouraging an employee of GRADE directly or indirectly in connection with GRADE or its entities. If the GRADE employee be offered an employment contract by the Customer within 2 years from completion and/or expiry of the Contract, then a penalty of 20% of the total Contract value or EUR 50,000.00, whichever is higher will come into force. The Customer must accept this Clause 17 as a fundamental condition for doing business with GRADE.

18 Changes in Law

If any change in any law or regulation having the force of law, including any change in the interpretation or application of such law or

regulation made or having the effect after the Contract commencement date, requires a modification of GRADE's Scope, then such modification shall be subject to the provisions of §10, Change.

19 Termination

19.1 GRADE may terminate the Contract in whole or in part and/or suspend any further deliveries or performances under the Contract without any liability to the Customer, with immediate effect by written notification, without requirement for any notice of default or other legal action if:

- **a.** Customer fails to pay invoices when due;
- **b.** Customer fails to perform one or more of its duties under the Contract or arising from the law.
- **c.** Customer takes any step leading to or implying an intention to go into liquidation.
- **d.** Customer becomes insolvent and is declared bankrupt or seeks composition with its creditors; or
- **e.** Control over Customer's business is fundamentally changed.

19.2 GRADE shall be entitled to immediate payment of all sums outstanding at the date of termination. Further GRADE may claim full compensation for additional costs arising from or in connection with the termination.

19.3 Any rights and duties under the Contract which by their nature are intended to survive termination of the Contract shall survive termination under this Article.

19.4 A cancellation fee of 10% from the Contract Price for sale of Goods or provision of Services will be applicable, should the Contract be cancelled by the Customer for any other reasons except for mutual agreement of both parties or for cause of Force Majeure under provision of clause 14 above. This would be in addition to any rights and reasonable costs accrued by GRADE to date, at the time of cancellation taking effect.

20 Status of Contract, Applicable Law and Settlement of Disputes

20.1 If any provision of these General Terms and Conditions or of the Contract is or becomes invalid or unenforceable, the invalid/unenforceable clause will be disregarded but the invalidity/unenforceability will not affect the remaining provisions. The Parties shall immediately replace such invalid provision with a new, valid provision having as nearly as possible the intention of the provision replaced.

20.2 The Contract and all questions as to its formation, validity or performance are governed and construed exclusively by the laws of the United Arab Emirates to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods, 1980.

20.3 The Parties shall endeavour to resolve amicably any dispute which arises from or in connection with the Contract. If amicable settlement is not possible, if both Parties have their registered office in the United Arab Emirates, such dispute shall be submitted for final and binding resolution to the Court of competent jurisdiction in Dubai, United Arab Emirates. If one of the parties has its registered office outside the United Arab Emirates, either party may submit the dispute for final and binding resolution through arbitration in accordance with the Rules of Dubai International Arbitration Centre (**"DIAC"**).

20.4 The arbitral tribunal shall consist of one arbitrator. The seat of arbitration shall be the Dubai International Arbitration Centre.

20.5 The Language of the Arbitration shall be English.

January 2025

These General Terms and Conditions for the Sale of Goods and Provision of Services supersede our previous general Terms and conditions v. 2.

These General Terms and Conditions for the Sale of Goods and Provision of Services are available on our website: www.grasso-adearest.com