

# GENERAL TERMS AND CONDITIONS FOR DESIGN PROFESSIONAL SERVICES (released on October 2018)



## 1 INTRODUCTION

Engel Machinery Inc., a company duly established and existing under the laws of York, Pennsylvania, USA (the "Investor") intends to realize the project as further specified in the Performance Work Statement ("PWS") attached to the inquiry. This request for quotation / call for tenders shall be considered as an invitation to Design Professional ("DP") to submit a quotation on the basis of the request for quotation or call for tenders free of charge. The quotation shall be binding for four months from the date of receipt by DP unless otherwise specified in the request for quotation or call for tenders. For the avoidance of doubt, Investor shall be entitled at all times to terminate negotiations without giving reasons and without being liable to compensate DP. In case that Investor accepts DP's offer by means of placing a written purchase order, the parties hereto enter into a Design Professional Agreement ("DPA") subject to the terms and conditions set forth herein.

## 2 GENERAL PROVISIONS

### 2.1 BASIC DEFINITIONS

Unless defined differently herein, terms used in this General Terms and Conditions shall have the same meaning as those used in Investor's Bidding Documents, these General Terms and Conditions and the General Conditions of Investor for Construction respectively.

- 2.1.1 *Affiliate.* For the purposes of this Agreement, Affiliate means, as to Investor, any entity, which controls, is controlled by, or is under common control with Investor or ENGEL Holding Gesellschaft m.b.H., having its registered office in 4311 Schwertberg, Ludwig-Engel-Strasse 1, Austria. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of the management or policies (whether through ownership of securities or partnership or other ownership interests, by contract, or otherwise).
- 2.1.2 *Design Professional Agreement ("DPA").* The term "Design Professional Agreement" (abbr.: "DPA") means all documents referred to in subparagraph 2.2.3, which together form the agreement between Investor and the DP for the Work the Agreement constitutes the complete agreement between Investor and DP and supersedes any previous agreements or understandings.
- 2.1.3 *Design Professional ("DP").* The term Design Professional (abbr.: "DP") shall mean the specific Design Professional named in the DPA.
- 2.1.4 *As-builts (As-built Drawings and Specifications).* The term "As-builts" shall mean the marked-up version of the DPA prepared by the construction Contractor to record as-built conditions, current changes, and selections made during construction.
- 2.1.5 *Bidding Documents.* The term "Bidding Documents" shall mean those documents prepared and furnished by Investor or its DP for the purpose of obtaining bids from contractors to construct the Project, including without limitation, the General Conditions of Investor for Construction.
- 2.1.6 *Certificate for Final Payment.* The term "Certificate for Final Payment" shall mean the certificate in accordance with paragraph 8.7 of the General Conditions of Investor for Construction.
- 2.1.7 *Compensation.* The term "Compensation" shall mean the consideration Investor shall pay DP for providing the services hereunder.
- 2.1.8 *Construction Documents.* The term "Construction Documents" shall mean the documents prepared and furnished by DP to be used for bidding the construction work for the Project.
- 2.1.9 *Contract Time.* The term "Contract Time" means the number of days set forth in the DPA, as adjusted by Change Order, as the case may be, within which DPA must achieve certain milestones and deadlines as per Section 7.
- 2.1.10 *Coordination.* The term "Coordination" shall mean that the documents shall be consistent and in conformance each part with all other parts.
- 2.1.11 *Estimated Project Construction Cost.* The term "Estimated Project Construction Cost" shall mean Design Professional's written estimate in the form specified by Investor in the Exhibits, of the total Construction Cost of the Project at the various stages of the design process.
- 2.1.12 *Final Completion.* The term "Final Completion" means the date at which the Work has been fully completed in accordance with the requirements of the Contract Documents pursuant to paragraph 8.7 of the General Conditions of Investor for Construction.
- 2.1.13 *Project.* The term "Project" means the project described in the PWS.
- 2.1.14 *Project Architect (or Engineer).* The term "Project Architect" or "Project Engineer" shall mean the specific Investor-approved Design Professional named in this Agreement who is the Design Professional's designated architect (or engineer) who is the first point of contact in providing all services required by this Agreement.
- 2.1.15 *PWS.* The term PWS is an abbreviation for "Performance Work Statement", which shall mean a written statement in the Exhibits of Investor's design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expendability, special equipment and systems, and Project site requirements.

- 2.1.16 *Project Schedule.* The term "Project Schedule" shall mean the schedule prepared by Investor showing project milestones, funding, design, design review, construction, and other deadlines applicable to the Project.

- 2.1.17 *Investor's Representative.* The term "Investor's Representative" shall mean the person or entity providing Investor's Representative services as indicated in the DPA including, but not limited to, issuance of written communications with DPA.

- 2.1.18 *Work.* The term "Work" or "Works" shall mean all construction and services provided by Contractor to fulfill its obligations under the Construction Contract; the Work may constitute the whole or a part of the Project.

### 2.2 CALL FOR TENDERS AND INTERPRETATION

- 2.2.1 The scope of services shall be further specified in the PWS and, as the case may be, other documents attached thereto.

- 2.2.2 Any changes in DP's quotation supplementing or amending the PWS shall be without effect, unless color coded and assigned with a detailed explanation.

- 2.2.3 In case of acceptance, the DPA shall be governed by the following documents, laws, statutes and standards, which are complementary and what is required by one shall be as binding as if required by all. In the case of any conflict, the following order of precedence shall apply:

- .1 The written purchase order issued by Investor to DP.
- .2 The minutes of negotiations.
- .3 These General Terms and Conditions.
- .4 DP's quote (with no effect given to terms or conditions in addition to or inconsistent with the terms and conditions contained herein) including attachments, if any.
- .5 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over Investor, DP, Contractor, any subcontractor, the project, the project site, the work, or the prosecution of the work; and all requirements of any insurance company issuing insurance required hereunder.
- .6 Respective plans and surveys, if any.
- .7 All professional standards, criteria and practice generally recognized and adopted by the industry of the engineering, procurement and construction management services.

- 2.2.4 With respect to the drawings, figured dimensions shall control over scaled measurements and specific details shall control over typical or standard detail.

- 2.2.5 Unless otherwise stated to the contrary, technical words and abbreviations contained in the DPA are used in accordance with commonly understood construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

- 2.2.6 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The section headings in the DPA are for convenience of reference only and are not intended to affect the meaning or interpretation of the DPA.

## 3 BASIC SERVICES

### 3.1 GENERAL

- 3.1.1 DP shall provide services to Investor during the term of this Agreement in accordance with and subject to the terms and conditions contained in the DPA. The specification of services contained in the PWS shall not be considered as a conclusive enumeration; DP shall render all services reasonably necessary for the Work in compliance with the applicable statutory requirements, fully functional and without defect in design. DP shall not invoke the lack of certain services in the PWS, if such services are required for the Work. DP is required to duly examine terms and conditions contained herein (especially the PWS). No claims from DP for additional payment will be allowed on the grounds of misinterpretation of these terms.

- 3.1.2 DP shall exercise all professional skill, care and diligence in the discharge of duties hereby covenanted to be performed by it and shall exercise such general superintendence and inspection in regard to the Project as may be necessary to ensure that the Work is being executed in accordance with the drawings and specifications and that the Work is free from defects and deficiencies. DP shall be fully responsible for the structural soundness of the Work.

- 3.1.3 DP shall at any time report upon request by Investor and inform about the status of the Work.

### 3.2 ADDITIONAL SERVICE

- 3.2.1 Unless required in paragraph 3.1 above, any other services provided by DP are Additional Services. These Additional Services shall be paid for by Investor, as provided in this DPA, in addition to the compensation for Basic Services. DP shall provide Additional Services only when and as

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authorized in a written instrument signed by Investor. No Additional Services shall be compensable unless so authorized.

**4 INFORMATION TO BE PROVIDED BY INVESTOR**

Unless otherwise provided in the DPA to the contrary, Investor shall only provide information, surveys, reports and data, if required for the performance of DP's services. There shall be no further obligation of Investor to provide information of whatever kind, unless reasonably deemed necessary in Investor's sole discretion.

**5 CHANGES**

Investor shall have the right to make changes to the PWS and/or to the Bidding Documents and DP shall be bound by such changes, except where such changes could have a negative impact on the Project, which DP shall diligently check and advise Investor accordingly. Such changes shall not cause an increase or decrease of the Compensation to be paid to DP hereunder, unless (i) said changes involve fundamental changes in the functionality of said Building (including but not limited to re-zoning of sections or parts of said Building, e.g. warehouse to office); (ii) DP promptly notifies Investor thereof in writing specifying such additional service and its detailed impact on time and costs; and (iii) DP receives a corresponding purchase order from Investor ("Change Order").

**6 INVESTOR'S DESIGNATED REPRESENTATIVE**

Investor shall designate, in writing, a Representative who will act on behalf of Investor with respect to this DPA. DP shall accept directives only from Investor's Designated Representative and not from other employees or consultants of Investor. Investor may replace Investor's Designated Representative at its sole option; if this replacement is made, Investor shall notify DP in writing.

**7 PROJECT SCHEDULE**

7.1 DP acknowledges that all time limits stated in this DPA are of the utmost importance to Investor.

7.2 DP shall submit its proposed work plan for the performance of DP's services within 5 calendar days following the execution date of the DPA. DP's work plan shall include without limitation, a schedule for how DP will comply with the Project Schedule. DP's work plan shall include allowances for the periods of time required for Investor's review and approval of submissions and for approvals by authorities having jurisdiction over the Project. DP's work plan, when approved by Investor, shall not be exceeded by DP except when Investor and DP mutually agree, in writing, to a revised Project Schedule.

7.3 The total time scheduled for full completion of DP's services for each phase of the Project shall not exceed the durations listed in the DPA, unless mutually agreed upon in writing by DP and Investor. The durations for Investor's review period listed in the Project Schedule shall be computed from the date on which a clear, complete submittal is received by Investor. Investor's failure to meet its commitment to provide written requested information or to review within the stipulated time frames shall be cause for an adjustment in the Project Schedule. However, submittals received for review, which are rejected, in writing, as not meeting the deliverables required by submittal requirements of this Agreement and the attachments thereto, shall not be cause for adjustment of the Project Schedule, and any such delay caused by such rejected submittals shall be at the sole responsibility of DP.

**8 DELAY AND LIQUIDATED DAMAGES**

8.1 If DP recognizes that there is a risk of a delay or if DP becomes aware of a possible impediment of the performance of its obligations hereunder, DP shall notify Investor without undue delay. If DP fails to do so, it will be precluded from objecting that such late performance was an Excusable Delay as hereinafter defined. Any extension of time shall require Investor's written consent.

8.2 If a delay or impediment is not due to DP's default ("Excusable Delay"), Investor may extend or postpone milestones of the Schedule, as the case may be. For the purpose of this Agreement, an Excusable Delay shall be any delay or impediment due to an event, which is not within the reasonable control of DP, but only if and to the extent that (i) such event, despite the exercise of reasonable diligence, cannot be, or be caused to be, prevented, avoided or removed by DP, and (ii) such event materially and adversely affects the ability of DP to perform its obligations under the DPA, and DP has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on DP's ability to perform its obligations under this DPA and to mitigate the consequences thereof. Acts and/or omissions by subcontractors shall be attributed to DP in the same way as an act and/or omission by DP.

8.3 In case of late performance by DP of any of its obligations under the DPA (excluding delays solely attributable to Investor and Excusable Delays as defined hereinbefore), DP shall pay to Investor liquidated damages ("LD") amounting to one per cent (1%) of the Compensation

for each week of the delay, however not exceeding ten per cent (10%) of the total Compensation. Payment of the said LD shall not relieve DP from its obligations under this DPA and shall be in addition to and not in lieu of any other rights and remedies available to Investor hereunder or at law; in particular, Investor reserves the right, at its option, to terminate this DPA if completion of services has not occurred within ten (10) business days of the required date and/or to seek any additional actual damages. Investor shall be entitled to set off and to deduct such LD from any amounts payable to DP. Neither failure nor delay on the part of Investor to exercise its right to deduct or claim the LD at any time before time lapse shall operate as a waiver thereof.

**9 COMPENSATION**

**9.1 FEE FOR BASIC SERVICES**

9.1.1 For services rendered in accordance with this DPA, the basis for compensation shall be a lump-sum fee as defined in the purchase order issued by Investor to DP, payable upon completion of each Project phase, after the review and approval by Investor, in accordance with the following schedule:

9.1.2 Investor shall pay fees to DP in stages as follows:

- .1 90% shall be paid by installments as the building work proceeds, and in proportion to the value of the said works as certified from time to time;
- .2 5% shall be paid after Final Completion; and
- .3 5% after issuance of Certificate for Final Payment.

9.1.3 In case the DPA is terminated earlier, fees shall be paid to DP for the actual services rendered as per stages referred above.

**9.2 FEE FOR ADDITIONAL SERVICES**

9.2.1 For the Additional Services of DP, as described in Section 3, including the Additional Services of consultants, compensation shall be in accordance with the DP Rate Schedule, which the parties hereto will mutually agree upon and attach to the DPA.

9.2.2 Investor may for any reason and without any further compensation to DP, order the deferral of the commencement of the Work. DP shall then update the Contract Schedules in accordance with Section 7 hereof.

9.2.3 If the Work of the Project is suspended or abandoned for more than 3 consecutive months, and such suspension was not scheduled at the beginning of the Project, DP shall be compensated for all authorized services performed prior to the receipt of written notice from Investor of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than 12 consecutive months, DP's compensation shall be adjusted as mutually agreed to compensate DP for any additional costs reasonably incurred as the result of the suspension.

**9.3 REIMBURSABLE EXPENSES**

9.3.1 For Reimbursable Expenses, as described in this paragraph 9.3, only actual costs will be reimbursed in accordance with the Reimbursement Schedule in the Exhibits. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.

9.3.2 Reimbursable Expenses are paid in addition to the compensation for Basic and Additional Services and are actual expenditures made by Design Professional and Design Professional's consultants in the interest of the Project.

**10 OWNERSHIP AND USE OF DOCUMENTS**

**10.1 DRAWINGS, SPECIFICATIONS, AND PRESENTATION MATERIALS**

10.1.1 Drawings and specifications shall become the property of Investor, whether or not the Project for which they are made is executed. DP shall be permitted to retain copies, including reproducible copies, of the drawings and specifications for information and reference except as provided in paragraph 10.2. During a period of two years after Final Completion, DP shall not use the drawings and specifications as a whole or in substantial part on projects of competitors of Investor, but DP may reuse details of the drawings.

10.1.2 All presentation drawings, slides, and models shall become and remain the property of Investor.

10.1.3 Investor may use the drawings and specifications as a whole or in substantial part on other projects of Affiliates, without paying DP further royalties.

**10.2 CONSTRUCTION DOCUMENTS**

10.2.1 DP, upon request, shall provide copies of the Construction Documents in the number required by Investor for bidding and construction purposes; the reproduction expense shall be borne by Investor. Investor reserves the right to select the type of document reproduction and to establish where the reproduction will be accomplished.

10.2.2 Investor may use the Construction Documents, without DP's consent, in connection with the Project, including without limitation, future additions, expansions, renovations, alterations, connections, repairs, information, reference, use, or occupancy.

10.2.3 Except as provided in subparagraphs 10.2.1 and 10.2.2 Investor will not use the Construction Documents for another project without DP's written consent unless Investor has purchased the design from DP in accordance with subparagraph 10.1.3.

## **11 INDEMNIFICATION**

11.1 DP shall indemnify, defend, and hold harmless Investor and its officers, employees, agents, and representatives (collectively, "Indemnitee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnitee ("Losses") arising out of the performance of services or DP's other obligations under this DPA, but only in proportion to and to the extent such Losses are caused by or result from (1) the negligent acts or omissions of DP, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom DP is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this DPA; or (3) willful misconduct by Indemnitor.

11.2 The indemnification obligations under this Section 11 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. The obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by Investor except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Agreement; or (c) willful misconduct.

11.3 DP shall indemnify, defend, and save harmless Indemnitee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnitee of the design or construction documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Agreement.

11.4 Nothing in this Agreement, including the provisions of this Section 11, shall constitute a waiver or limitation of any rights, which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

## **12 INSURANCE REQUIREMENTS**

12.1 Design Professional, at Design Professional's sole cost and expense, shall insure its activities in connection with this Agreement and shall obtain, keep in force, and maintain insurance as listed below:

12.1.1 Workers' Compensation, Disability Benefit, or similar employee benefit act coverage, and employer's liability coverage, as required by the state in which the Project is located

12.1.2 Commercial General Liability which (i) includes premises/operations, product/completed operations, contractual liability, independent contractors, broad-form property damage, underground, explosion and collapse hazard, and personal / advertising injury; and, (ii) names the Investor and the Investor's Related Parties as additional insureds

12.1.3 Commercial Comprehensive Automobile Liability which includes contractual liability coverage and coverage for all owned, hired and non-owned vehicles with

12.1.4 Professional Liability coverage, including contractual liability; at the option of Investor and in its sole discretion, Investor may require DP to purchase project specific professional liability insurance for the Project as a reimbursable cost with the minimum limits.

12.2 If the above insurance is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Completion. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of the DPA and shall include, without limitation coverage for professional services as called for in this Agreement. Insurance required above shall be issued by first-class insurance companies under terms consented to by Investor (such consent to not be unreasonably withheld).

12.3 The coverages required in the PWS shall not in any way limit the liability of Design Professional.

12.4 The form and substance of all insurance policies required to be obtained by DP shall be subject to approval by Investor. At the request of Investor, DP shall submit to Investor copies of the policies obtained by DP.

12.5 DP, upon the execution of this DPA, shall furnish Investor with Certificate of Insurance evidencing compliance with this Section 11. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to Investor, in accordance with policy provisions. If insurance policies are cancelled for non-payment, Investor reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against DP. The General Liability and the Professional Liability insurance policies shall apply to the negligent acts, or omissions of DP, its officers, agents, employees, and for Design Professional's legal responsibility for the negligent acts or omissions of its consultants and anyone directly or indirectly under the control, supervision, or employ of DP or DP's consultants.

## **13 TERM AND TERMINATION**

### **13.1 GENERAL**

Unless terminated earlier as hereinafter set forth, the DPA shall automatically terminate and expire upon the full performance or discharge of all the obligations of the Parties hereunder.

### **13.2 INVESTOR-INITIATED TERMINATION**

13.2.1 If Investor determines that DP has failed to perform in accordance with the terms and conditions of this DPA, Investor may terminate all or part of the DPA for cause. This termination shall be effective if DP does not cure its failure to perform within 10 days (or more, if authorized in writing by Investor) after receipt of a notice of intention to terminate from Investor specifying the failure in performance. If a termination for cause does occur, Investor will have the right to withhold monies otherwise payable to DP until the Project is completed. If Investor incurs additional costs, expenses, or other damages due to the failure of DP to properly perform pursuant to the DPA, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to DP upon completion of the Project. If the costs, expenses, or other damages incurred by Investor exceed the amounts withheld, DP shall be liable to Investor for the difference.

13.2.2 Investor may terminate this DPA for convenience at any time upon written notice to DP, in which case Investor will pay DP in full for all services performed and all expenses incurred under this DPA up to and including the effective date of termination. In ascertaining the services actually rendered to the date of termination, consideration will be given to both completed Work and Work in progress, whether delivered to Investor or in the possession of DP, and to authorized reimbursable expenses. No other compensation will be payable for anticipated profit on unperformed services.

### **13.3 DP-INITIATED TERMINATION**

Design Professional may terminate this DPA for cause if Investor fails to cure a material default in performance within a period of 30 days, or such longer period as DP may allow, after receipt from DP of a written termination notice specifying the default in performance. In the event of termination for cause by DP, Investor will pay DP in accordance with subparagraph 13.2.2.

### **13.4 DOCUMENTS AND MATERIALS**

In the event of any termination of this Agreement by either party for any reason, Investor reserves the right to receive, and DP shall promptly provide to Investor, all drawings, specifications, models, and other documents, data, and materials prepared or generated by DP and its subconsultants for the Project. In the event of termination, any dispute regarding the amount to be paid under this Section 13 shall not derogate from the right of Investor to receive and use any such documents or materials.

## **14 MISCELLANEOUS PROVISIONS**

### **14.1 GOVERNING LAW**

Unless otherwise provided in the DPA, the DPA shall be governed by the law of the country / state where the Project site is located.

### **14.2 Dispute Resolution**

Any controversy or claim arising out of or relating to this DPA shall be settled by arbitration administered by the American Arbitration Association in accordance with its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The place of arbitration shall be York / Pennsylvania. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrators, all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of

both parties. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

#### **14.3 SUCCESSORS AND ASSIGNS**

Investor and DP respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the DPA. Neither party to the DPA shall assign the DPA, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the DPA.

#### **14.4 RIGHTS AND REMEDIES**

14.4.1 All Investor's rights and remedies under the DPA will be cumulative and in addition to and not in limitation of all other rights and remedies of Investor under the DPA or otherwise available at law or in equity.

14.4.2 No action or failure to act by Investor or Investor's Representative will constitute a waiver of a right afforded them under the DPA, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by Investor or Investor's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

14.4.3 No provision contained in the DPA shall create or give to third parties any claim or right of action against Investor, Investor's Representative, or DP.

#### **14.5 SURVIVAL**

The provisions of the DPA which by their nature survive termination of the DPA or Final Completion, including all warranties, indemnities, payment obligations, and Investor's right to audit DP's books and records, shall remain in full force and effect after Final Completion or any termination of the DPA.

#### **14.6 COMPLETE AGREEMENT**

The DPA constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The DPA may be modified only by a written instrument signed by both parties or as provided in Section 5.

#### **14.7 SEVERABILITY OF PROVISIONS**

If any one or more of the provisions contained in the DPA should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **14.8 INVESTOR'S RIGHT TO AUDIT**

DP and entities and agencies designated by Investor will have access to and the right to audit and the right to copy at Investor's cost all of DP's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. DP shall preserve all such records and other items during the performance of the DPA and for the longer period of 3 years after Final Completion or the warranty period.

#### **14.9 NOTICES**

14.9.1 Any notice required to be given hereunder shall be in writing in English and shall be delivered in person or sent by courier, registered or certified mail by facsimile or via email. The documents submitted in accordance with the foregoing shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted.

14.9.2 Any party may, from time to time, change its address or representative for receipt of notices provided for in this DPA by giving to the other party not less than 30 days prior written notice.

#### **14.10 TIME OF THE ESSENCE**

Time limits stated in the DPA are of the essence.

#### **14.11 MUTUAL DUTY TO MITIGATE**

Investor and DP shall use all reasonable and economically practicable efforts to mitigate delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such delay or

damage.

#### **14.12 CONFIDENTIALITY**

14.12.1 Confidential Information in this context shall mean any and all technical, financial or commercial information stated by Investor to be confidential or confidential in nature, provided, however, that the term "Confidential Information" shall not include any information of which DP can demonstrate that the information:

- a) is generally known to the public at the time of disclosure or becomes generally known or state of the art after this time through no wrongful act on the part of DP; or
- b) becomes known to DP through a disclosure by sources other than the disclosing party or of one of its affiliates having no duty of confidentiality to Investor, whether direct or indirect, with all respect to such information and having the legal right to disclose such information; or
- c) has been independently gained and without infringing of a duty of confidentiality.

14.12.2 DP shall store away carefully the Confidential Information disclosed by Investor and shall take reasonable measures to prevent disclosure to unauthorized parties. DP may disclose Confidential Information to its employees and to third parties only to the extent strictly necessary for the performance of this DPA or as required by law. DP so disclosing shall cause its employees and third parties to observe the obligations of this Section 14.12. DP shall use Confidential Information only to the extent necessary to perform its obligations under the DPA.

14.12.3 The obligations contained in this Section 14.12 shall survive any termination or expiration of this DPA and shall end after 5 years from formation of the DPA.

#### **14.13 COMPLIANCE AND BUSINESS ETHICS**

Prerequisite for any business cooperation shall be the unreserved compliance with our Code of Compliance as amended ([www.engelglobal.com](http://www.engelglobal.com)) as well as compliance with all relevant laws, regulations, directives, and similar rules with regard to the aforementioned Code of Compliance. Any breach of the obligations set forth in this Section shall be regarded as a serious breach of contract, which shall entitle us to terminate all agreements not yet fulfilled with immediate effect and claim for all damages and losses incurred by such breach.

#### **14.14 DATAPROTECTION**

14.14.1 The parties hereby expressly consent to the processing of personal data, in particular name, address, contact and professional data, of the persons acting on their behalf and intervening vis-à-vis the companies of the respective other party for the purpose of contract fulfilment, order processing as well as for the fulfilment of the relevant legal requirements and accounting obligations.

14.14.2 Furthermore, the parties consent to the transfer of this personal data to affiliated companies of the respective other party in countries outside the European Union for the purpose of order processing and contract fulfilment, always considering the potential risks related thereto

14.14.3 By giving such consent, the parties also warrant to obtain corresponding declarations of consent by the respective data subjects, and upon first request to indemnify each other from all disadvantages related to any breach of the foregoing warranty.

14.14.4 Without prejudice to the lawfulness of the processing based upon consent given before, such consent (pursuant to 14.14.1 and 14.14.2) may be withdrawn at any time by either party or the respective data subject, by using the options stated in 14.14.5.

14.14.5 An overview to all companies affiliated to the Investor can be found under [www.engelglobal.com/dataprotection](http://www.engelglobal.com/dataprotection). Options for withdrawal pursuant to 14.14.4 to the Investor as well as respective information are provided at [www.engelglobal.com/dataprotection](http://www.engelglobal.com/dataprotection).

#### **LEGAL NOTICE:**

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*Insert respective ENGEL-Company, address, reg.no., tax.no.*

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