

## Solutions Terms & Conditions International

These Solutions Terms & Conditions (“Solutions Terms”) are agreed between the Innomotics entity named on the Order (“Innomotics”) and the customer that accepted the Order (“Customer”). They apply only to solutions as described in the Order (“Solution”). These Solutions Terms together with the applicable Supplemental Terms, if any, form the “Agreement”.

Capitalized terms are defined [at the end of the document](#).

### Commercial terms

#### 1. Innomotics Offerings

##### 1.1. Delivery mode

Innomotics will deliver the Offerings and any invoice as specified in the Order. Innomotics may deliver the Offerings in stages or installments and invoice accordingly.

##### 1.2. Updates for Offerings

Innomotics may issue Updates to its Offerings and Customer is responsible for installing the Updates. Innomotics will use commercially reasonable efforts to notify Customer when Updates are generally available. Information provided on Innomotics’ website is sufficient notice.

Innomotics may choose not to support non-current versions of the Offerings or to update them to future versions.

##### 1.3. Solution offerings

1.3.1. **Scope description.** Innomotics will deliver the Solution as described in the Order.

1.3.2. **Refurbished parts.** Innomotics’ Solutions may contain parts refurbished to an “as new” condition, that meet the Innomotics specification and are subject to the same terms as new parts.

1.3.3. **Supervision.** To the extent the Solution includes supervision, Innomotics’ only obligation is to provide correct instructions. Innomotics will not be liable for any non-compliance with these instructions or the performance of third parties or Customer’s personnel.

##### 1.4. Location

1.4.1. **Onsite.** If services are provided at Customer’s site, Innomotics will:

- a. provide them during normal local business hours (excluding holidays); and
- b. comply with Customer’s reasonable site rules if these are submitted in writing before performance starts.

1.4.2. **Off-site.** If onsite performance is not necessary, services may be performed:

- a. at a location of Innomotics’ choice; or
- b. by remote access.

##### 1.5. Personnel

Innomotics may direct and allocate personnel for the Solution at its option and is responsible for all compensation and other employment benefits of Innomotics employees.

## 1.6. Cybersecurity

The cybersecurity features of the Offerings are in accordance with the specifications outlined in Innomotics' product catalogue. Innomotics takes reasonably possible measures to avoid cybersecurity threats to the Offerings and to minimize vulnerabilities. There is no guarantee/warranty from Innomotics that the Offerings are completely secure or free from vulnerabilities.

## 2. Payment, interest, and taxes

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### 2.1. Payment terms

Customer will pay the Price (plus reasonable and verifiable travel and incidental expenses and Tax, if applicable) within 30 days of the invoice date, without deduction or set-off. If Customer disputes an invoice, Customer must pay any undisputed portion.

### 2.2. Interest

Innomotics is entitled to charge interest on overdue payments at the monthly percentage rate of 1.5% compounded or at the highest rate allowed by law (whichever is lower).

### 2.3. Taxes

All prices and expenses stated in the Order are exclusive of any Tax. Customer will pay or refund Innomotics for any applicable Tax imposed by any government authority for Customer's use or receipt of the Offerings.

If Customer is exempt from value-added or sales tax, then it must provide a valid, timely, and executed exemption certificate, direct pay permit, or other such government-approved documentation.

If Customer is required by law to deduct or withhold Tax, Customer will increase the amount it pays to Innomotics so that Innomotics still receives the net amount originally invoiced. Customer will promptly provide all tax receipts confirming it has paid Tax or has withheld Tax.

## 3. Changes

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### 3.1. Change requests

When Customer sends Innomotics a change request, or when Innomotics proposes a change, Innomotics may send Customer an offer including:

- a. a price estimate;
- b. a schedule impact; and
- c. any other necessary changes to the Order.

### 3.2. Change effectiveness

A change becomes effective when Customer and Innomotics accept it in writing. Innomotics will not commence a Solution which is subject to a change request prior to such acceptance by both parties.

### 3.3. Changes in law and standards

3.3.1. **Right to make adjustments.** Innomotics is entitled to make reasonable adjustments to the Order for any additional requirements or costs it incurs due to any:

- a. laws, regulations, court judgments or decisions, or guidance issued by public authorities; or
- b. engineering standards or codes of practice; or
- c. Customer's site rules,

in each case issued or changed after the effective date of the Order.

3.3.2. **Type of adjustments.** Such adjustments, may, for example, include changes to:

- a. the time schedules and scope of Offerings as needed; or
- b. the Price, to reflect any reasonable additional costs.

### **3.4. Equivalent performance**

Innomotics may supply the Offerings using a technically equivalent method to that set out in the Order, if this does not detrimentally alter the agreed functionalities.

## **4. Customer's obligations**

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### **4.1. Providing Contributions**

Customer will provide the following Contributions at its own expense and in a timely manner. This includes:

- a.** supporting Innomotics by providing:
  - the environment and opportunity to start work on time including unrestricted access to the site and related infrastructure, without interruption, and with adequate and legally compliant health and safety measures in place for onsite work;
  - qualified personnel with necessary know-how and decision-making ability;
  - assistance in obtaining visas, work and residence permits and customs clearances for the Solution, and the personnel or equipment of Innomotics or its subcontractors;
  - a secure internet connection and authorized access to Customer or third-party systems (as required);
  - reasonable support to ensure that all obligations required by competent authorities for the commissioning, acceptance, and use of the Solution are met;
  - timely acceptance (where required), input and feedback;
  - lockable rooms for storage and adequate working and recreation rooms for Innomotics and their subcontractors, including appropriate sanitary facilities;
  - all necessary information about the location of concealed electric, gas, water, and fiberoptic lines or similar installations, and the static and sub-surface conditions of the site; and
  - all earth-moving, construction work, and related services unless expressly included in the Order;
- b.** obtaining any permits and approvals from relevant authorities, except if only Innomotics can obtain these;
- c.** ensuring cooperation by any third parties retained by Customer;
- d.** if agreed in the Order, confirming with Innomotics the hours worked on a time basis. Innomotics time sheets are deemed accepted within 10 days of submission unless Customer identifies a material reason in writing to reject them; and
- e.** any additional Contributions as set out in the Order.

### **4.2. Scheduling and management**

Innomotics is not responsible for Customer scheduling, planning, project management, or any resulting delay or cost.

### **4.3. Reasonable adjustments**

If Customer does not:

- a.** provide its Contributions in accordance with the respective Order; or
  - b.** fulfil its obligations specified in this Section 4, or in the respective Supplemental Terms,
- Innomotics will have the right to adjust the Order, including the time schedule and fees, to make up for any delay or reasonable additional costs Innomotics incurs.

### **4.4. Use of the Offerings**

Customer is solely responsible for any results and conclusions obtained from using the Offerings.

## 4.5. Security and safety

Customer is responsible for:

- a. the conception, implementation, and maintenance of a holistic, state-of-the-art security concept to protect its enterprise, plants, systems, machines, and networks (including the Products) against Cyberthreats. "Cyberthreat" means any circumstance or event with the potential to adversely impact the Customer's plants, systems, machines, and networks (including the Product/s) via unauthorized access, destruction, disclosure and/or modification of information, denial of service attacks or comparable scenarios;
- b. the protection of its Information Technology (IT) including all information and data contained therein from IT security incidents by means of appropriate and suitable technical and organizational measures;
- c. the use of the latest product versions and an immediate installation of software patches and updates that Innomotics makes available, following Innomotics' installation and further security instructions;
- d. taking appropriate steps to protect and retrieve its data and configurations including by maintaining backup copies; and
- e. the safety of persons onsite.

If a party becomes aware of a possible security incident that may compromise the operational infrastructure of the other party, it will timely and confidentially notify the other party of the acknowledged security incident, provide all necessary content, and keep it updated. It will take appropriate and proportionate measures to avert or at least limit the effects on the impacted infrastructure of the other party.

## 4.6. No reverse engineering

Customer will not reverse engineer, decompile, or copy Offerings or their parts unless allowed by mandatory law or the Order.

## 4.7. Hazardous materials and environmental conditions

If services are provided at Customer's site, Customer will handle, store, dispose, and remediate the effects of any hazardous waste, hazardous materials onsite (including asbestos), geological or geothermal conditions, archaeological findings, or other conditions that require special treatment or have a negative effect on the Solution or the environment.

Customer will refund Innomotics for all services and costs caused by the discovery or handling of any such materials or conditions. If a health or safety risk arises during the provision of the Solution, Innomotics may suspend the provision of the Solution until such risks are eliminated.

## 4.8. Remote support

4.8.1. **Remote support.** Innomotics may provide the Solution remotely.

4.8.2. **Remote access.** In case of remote access by Innomotics, Customer will at its expense

- a. provide an access-controlled internet connection (e.g. wired or wireless broadband connections via DSL, UMTS or LTE) that meets the technical requirements of a secure remote connection;
- b. grant Innomotics necessary access to the objects of the services;
- c. activate and accept each remote access of Innomotics (if agreed); and
- d. have a qualified person available to Innomotics authorized by Customer who is familiar with the objects of the services and production system at Customer's site.

4.8.3. **Use of an Innomotics remote access functionality.** If agreed in the Order, Innomotics will provide a remote access functionality. Customer will satisfy itself that the security standards are compatible with Customer's operating environment, security requirements and internal policies.

4.8.4. **Use of a Customer Remote Access Functionality.** If Customer provides a remote access functionality ("Customer Remote Access Functionality"), Customer will ensure the confidentiality and integrity of the remote connection and availability of this functionality. Innomotics excludes any liability for the use of this Customer Remote Access Functionality. Innomotics can reject the use of the Customer Remote Access Functionality if this functionality does not comply with common security standards.

## 5. Innomotics' use rights

Innomotics and its Affiliates and their subcontractors may:

- a. use for any purpose, in perpetuity, and at its own risk any comment or feedback Customer gives to Innomotics on Innomotics' Offerings, including suggestions for changes or enhancements, support requests, and error corrections;
- b. use data Innomotics collects in connection with the Offerings to provide and improve its products and services; and
- c. identify Customer by name or logo as part of a general customers list on websites and marketing materials unless Customer objects in writing.

## **6. Delivery and performance**

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### **6.1. Delivery terms for tangible deliverables**

Unless agreed otherwise in the Order, tangible deliverables will be delivered FCA according to INCOTERMS®2020. Tangible deliverables are deemed delivered if Customer delays or fails to accept Delivery without cause.

### **6.2. Acceptance**

Innomotics will issue a notice of completion if the Solution or an agreed or functionally independent portion is ready for acceptance.

Customer will accept unless the Solution contains a material non-compliance with the specification set out in or referred to in the Order. If there is a material non-compliance, Customer will describe it in a written notice of rejection and Innomotics will remedy it within a reasonable time (or as agreed by the parties) and resubmit for acceptance.

The Solution or the delivered agreed or functionally independent portion is deemed accepted on the earlier of:

- a. 10 business days from completion notice provided that Customer has not given a rejection notice; or
- b. the date the delivered portion is put into productive use.

All costs and expenses of Customer and any third parties (other than those of Innomotics' own personnel or contractors) incurred in connection with inspections, tests, approvals, acceptance procedures etc. shall be borne by Customer.

### **6.3. Delivery and performance dates**

Any dates in the Order are estimates only and non-binding. The parties may agree on a binding schedule including a final binding delivery or performance date after final clearing of all technical and commercial topics ("Final Binding Date"), in which case Section 6.5 will apply.

### **6.4. Storage**

Upon Customer's request or if Customer does not take Delivery at the agreed Delivery date, tangible deliverables may be moved to storage. On receipt of an invoice Customer will pay for

- a. shipping, and
- b. storage expenses, including preparation for and placement into storage, handling, freight, inspection, preservation, maintenance, taxes, and insurance.

Customer will arrange, at its expense, to remove the Products from storage when conditions allow, and after paying to Innomotics all amounts due under this Section 6.4.

### **6.5. Delay**

- 6.5.1. **Liquidated damages.** If Innomotics is solely responsible for delaying the Final Binding Date and Customer suffered a loss, Innomotics will, after a grace period of 1 week, pay liquidated damages equal to 0.5% of the Price for the delayed portion of the Solution for every full week of delay.

Aggregate liquidated damages will not exceed 5% of the Price.

- 6.5.2. **Termination for delay.** Customer may only terminate the Order for delay if:

- a. the maximum liquidated damages are payable; and
- b. a reasonable additional delivery or performance period has expired.

- 6.5.3. **Exclusive remedy.** This Section 6.5 sets out Innomotics' entire and exclusive liability for delay and excludes all of Customer's other rights and remedies for delay to the extent permissible by mandatory law.

## **7. Risk and title**

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### **7.1. Transfer of risk for tangible deliverables**

Risk of loss or damage for tangible deliverables (or a portion of them) passes to Customer upon:

- a. Delivery; or
- b. attempted Delivery if Customer fails or refuses to take Delivery without cause; or
- c. moving the tangible deliverables into storage in accordance with Section 6.4.

### **7.2. Transfer of title**

Title in the Solution (or any portion of it) passes to Customer after Innomotics has received payment in full.

## **Additional software terms**

## **8. Code format**

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Offerings containing software will be delivered in object code. If Third-Party Terms require Innomotics to furnish Third-Party Technology in source code form, Innomotics will provide it upon:

- a. written request; and
- b. payment of any reasonable expenses.

## **9. Innomotics software terms**

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Supplemental Terms as specified in the Order may additionally apply for Innomotics' software.

## **10. Third Party Terms**

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In the event of a conflict with the terms of the Agreement, the Third-Party Terms prevail with respect to Third-Party Technology. Third-Party Terms for open-source software shall also prevail in relation to the software or parts thereof insofar as the Third-Party Terms for open-source software grant the Customer certain rights of use on the basis of the connection of open-source software components with the software.

## **Warranties**

## **11. Solution warranty**

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Innomotics warrants that the Solution will be free from Defects at the time of acceptance, if agreed, or otherwise transfer of risk.

## **12. Solution warranty period**

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### **12.1. Original warranty period**

The warranty period for the Solution is 12 months following acceptance or partial acceptance, if agreed, or otherwise transfer of risk, but shall in any event not exceed 24 months following Delivery.

### **12.2. Warranty period for replacements and repairs**

The warranty period for any replacements, repairs or reperformance is 6 months from the date of replacement, repair or reperformance if the original warranty period expires earlier. In any event, the warranty period shall end no later than 24 months from the beginning of the original warranty period.

## **13. Defects and claims**

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### **13.1. Inspection and notification**

Customer will inspect all deliveries and notify Innomotics in writing of any Defects without undue delay upon discovery and always within the applicable warranty period.

### **13.2. Remedies**

Innomotics will remedy all Defects at Innomotics' option by repairing, replacing, or reperforming (onsite or remote) the defective Solution within a reasonable time.

### **13.3. Duty of cooperation and reimbursement**

In case of a warranty claim, Customer will:

- a. at no charge to Innomotics:
  - provide access to the defective portions of the Solution;
  - perform any necessary disassembly and reassembly;
  - provide access to operation and maintenance data;
  - at Innomotics request, transfer title to the replaced defective parts to Innomotics;
- b. pay Innomotics for any diagnostic and remedial work unless it is established that a breach of the warranty existed; and
- c. be responsible for the customs clearance in the country where the project is located and for the further transport from the place of Delivery for all equipment necessary to remedy the Defect.

### **13.4. Failure to remedy**

If Innomotics fails at least three times to remedy a Defect:

- a. Customer may terminate the Order in line with these Solutions Terms; and
- b. Innomotics will refund the Price paid for the non-conforming portion of the Solution.

## **14. Warranty exclusions**

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### **14.1. Time limit**

Any warranty claim is excluded after expiration of the applicable warranty period.

### **14.2. Excluded Defects**

Innomotics excludes any warranty for Defects that do not significantly impair the functionality or use of the Solution and for Defects resulting from:

- a. normal wear and tear;
- b. faulty or negligent handling, or unusually excessive use;
- c. noncompliance with instructions in the Order, manuals, and similar documents available to Customer;
- d. non-reproducible software errors;
- e. any cause outside of Innomotics' control;
- f. modifications, repair, installation, commissioning made by anyone other than Innomotics or their authorized representatives; or
- g. not using an Update provided by Innomotics.

### **14.3. No warranties**

Innomotics does not warrant that the Solution is compatible or interoperable, or functions in accordance with the Customer's operating environment or IT requirements (unless expressly agreed in the Order).

## **15. Exclusive remedy**

Sections 11–15 state Innomotics' entire liability and Customer's exclusive rights and remedy for warranty claims. Innomotics makes no other warranty, express, implied, or statutory, about the Solutions, including any warranties of merchantability or fitness for a particular purpose.

# **Intellectual property rights**

## **16. Retained Intellectual Property**

Each party will retain all rights in:

- a. the Intellectual Property they developed or acquired outside of the respective Order; and
- b. the improvements, modifications, or derivatives that they make to it under an Order.

## **17. Developed Intellectual Property**

Any Intellectual Property developed under an Order as part of the Offering is owned by Innomotics and licensed to Customer as specified in Section 18.

## **18. Innomotics license to Customer**

Innomotics grants Customer a non-exclusive, worldwide, perpetual, and non-transferable right to use Innomotics' Intellectual Property as part of the Offering:

- a. in unmodified form; and
- b. for Customer's internal business purpose.

Additional license rights and restrictions may be stated in the respective Order.

# **Confidentiality and compliance**

## **19. Confidentiality**

### **19.1. Protection and use**

The receiving party will:

- a. protect Confidential Information by the same means it uses to protect its own (and always by at least reasonable means); and
- b. use Confidential Information only as required for the purposes of the Order.

### **19.2. Limited disclosure**

The receiving party will:

- a. only disclose Confidential Information:
  - to its employees and to the employees of its Affiliates, agents, advisors, and contractors who need to know it; or
  - with the disclosing party's consent; and
- b. make sure that all recipients are bound by confidentiality obligations as strict as those in the Agreement.

### **19.3. Return and handling**

If the disclosing party requests it, the receiving party will return or destroy all Confidential Information. Copies required under applicable laws or created as part of a routine information technology backup may be kept but must remain confidential.

While performing under the Order, Innomotics' employees may gain general expertise, know-how, ideas, concepts, and techniques that are then retained in their unaided memories. Innomotics may use this residual knowledge without conditions or restrictions.

#### **19.4. Required disclosure**

If a governmental agency or law requires it, the receiving party may disclose Confidential Information, provided it:

- a. promptly gives written notice to the disclosing party (if the law allows); and
- b. works with the disclosing party to limit the scope of disclosure.

#### **19.5. Exceptions**

The above confidentiality obligations will not apply to any information that:

- a. is or becomes generally available to the public (without the receiving party having breached the Agreement);
- b. becomes available to the receiving party from a source other than the disclosing party (if the receiving party has no reason to believe that the information is confidential);
- c. was already in the receiving party's possession without an obligation of confidentiality; or
- d. is independently developed by the receiving party without the use of Confidential Information.

### **20. Data protection**

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Customer and Innomotics will both comply with applicable laws regarding data protection.

### **21. Export control compliance**

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#### **21.1. Export Regulations / No Re-Export**

- a. Customer will comply with all applicable Export Regulations.
- b. Customer will:
  - not export or re-export, directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries), to or for use in Russia or Belarus any Offerings supplied by Innomotics in connection with the Order; and
  - undertake its best efforts to ensure that the purpose of this Section 21.b is not frustrated by third parties, including authorized solution partners; and
  - establish and maintain an adequate monitoring mechanism to detect conduct by any third parties that would frustrate the purpose of this Section 21.1.b.

#### **21.2. Required information**

Customer will promptly provide upon request information about users, the intended use, the location of use, and the final destination of the Offerings.

#### **21.3. Special data handling**

If Customer intends to disclose to Innomotics any information that is defense-related or requires controlled or special data handling, Customer will:

- a. notify Innomotics; and
- b. use the disclosure tools and methods Innomotics requires.

#### **21.4. Export checks for Offerings**

Before Customer performs any transaction with a third party concerning the Offerings delivered by Innomotics, Customer will check and certify by appropriate measures (e.g. monitoring) that:

- a. Customer does not violate any Export Regulations with its use, transfer, or distribution of such Offerings, the brokering of contracts, or the provision of other economic resources in connection with Offerings, also considering any prohibitions to get around these (e.g., by undue diversion);
- b. the Offerings are not intended for prohibited or unauthorized non-civilian purposes (for example: armaments, nuclear technology or any other defense and military use); and

- c. Customer has screened all direct and indirect parties involved in the receipt, use, or distribution of the Offerings against all applicable restricted party lists of the Export Regulations concerning trading with the entities, persons, and organizations listed there.

## **21.5. Semiconductor development**

Customer will not, without Innomotics' prior written consent, use Offerings to develop or produce integrated circuits at any advanced semiconductor fabrication facility located in the Peoples Republic of China and further restricted locations meeting the criteria specified in the U.S. Export Administration Regulations, 15 C.F.R. 744.23.

## **21.6. Reservation and suspension**

21.6.1. **Reservation.** Innomotics will not have to fulfil any Order, if prevented by:

- a. impediments arising out of national or international foreign trade issues;
- b. impediments arising out of customs requirements; or
- c. any Export Regulations.

21.6.2. **Suspension.** Innomotics may limit or suspend access to the Offerings by Customer or Customer's users if obliged to do so under Export Regulations.

## **21.7. Breach of Export Regulations**

Any violation of this Section 21 is a material breach of the Order entitling Innomotics to, e.g.:

- a. suspend or terminate the Order in accordance with Section 22 and 23; and
- b. in case of a breach of Section 21.1.b., to penalties in the amount of 5% of the Price of the Order.

# **Suspension and termination**

## **22. Suspension**

### **22.1. Suspension right**

Innomotics may suspend the performance of its obligations under an Order by giving Customer written notice if:

- a. Customer's payment is more than 15 days late or is in delay in providing any payment security;
- b. Customer does not provide the required Contributions in accordance with the Order after a reasonable grace period; or
- c. Customer materially breaches the Order.

### **22.2. Payment during suspension**

If Innomotics suspends performance, Customer will become immediately liable to pay:

- a. the Price (plus reasonable and verifiable travel and incidental expenses) related to any portion of the Offerings delivered or ordered before the effective date of suspension; plus
- b. any reasonable costs and expenses directly or indirectly incurred as a result of the suspension.

### **22.3. Schedule adjustment**

If Innomotics resumes performance, Innomotics will adjust all affected schedules to reasonably accommodate the suspension. After 15 days' suspension, Innomotics may reassign personnel and already ordered (off the shelf) products.

### **22.4. Termination for suspension**

Innomotics may terminate any Order if the Order has been suspended for more than 60 days.

## **23. Termination**

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### **23.1. Termination right**

Either Customer or Innomotics may terminate any Order upon written notice if the other:

- a.** becomes bankrupt or insolvent;
- b.** goes into liquidation;
- c.** has a receiving order against it;
- d.** compounds with its creditors;
- e.** continues business under a receiver, trustee, or manager for the benefit of its creditors; or
- f.** does not remedy a material breach within 30 days of notice.

Innomotics is furthermore entitled to terminate if Customer comes under the direct or indirect control of any competitor of Innomotics.

The right to rescind an Order is excluded.

### **23.2. Payment if Customer terminates**

If an Order is terminated by Customer under Section 23.1, Customer will pay the fees and expenses related to any portion of the Offerings delivered or ordered before the effective date of termination.

### **23.3. Payment if Innomotics terminates**

If an Order is terminated by Innomotics, Customer will pay:

- a.** the Price (plus reasonable and verifiable travel and incidental expenses) for the Offering, minus any expenditures avoided by termination; and
- b.** all reasonable costs and expenses Innomotics incurred due to such termination.

### **23.4. Survival**

Sections 2, 4.5, 4.6, 4.7, 5, 19, 21, 23.2, 23.3, 24, 25 and 27 will survive termination of the Order.

## **Claims, liability, and dispute resolution**

## **24. Intellectual Property Infringement**

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### **24.1. Claim of Innomotics infringement**

In case of an Infringement Claim, Innomotics will:

- a.** defend, at Innomotics' cost, the Infringement Claim; and
- b.** pay all damages finally awarded against Customer by a court of competent jurisdiction or agreed in settlement with Innomotics' consent.

### **24.2. Remedies**

In case of an Infringement Claim, Innomotics may, at its option and expense, provide these remedies:

- a.** obtain the right for Customer to continue the use of the Offerings;
  - b.** modify the Offerings to become non-infringing; or
  - c.** replace the infringing part of the Offerings,
- in case of **b.** and **c.** without materially affecting the functionality of the Offering.

### **24.3. Refund**

- 24.3.1. Conditions for refunds.** If remedies under Section 24.2 are in the opinion of Innomotics not available at commercially reasonable expense, Innomotics may terminate any Orders including licenses for such Offerings and Customer will receive the refunds for the allegedly infringing portions of the Offerings specified in Section 24.3.2 ("Refunds"), provided that, after receiving Innomotics' notification, Customer:

- a. stops using the allegedly infringing portion of the Offerings; and
- b. returns all related portions of the Offerings in Customer's possession.

**24.3.2. Refunds.** Refunds will equal:

- a. for Products or perpetual software: the remainder of a 60-month amortization period from their initial delivery;
- b. for subscription services or time-based licenses: the remainder of their term; and
- c. for any other Offering: refund of prepaid fees for the infringing portion of the Offerings.

**24.4. No admission**

If Customer stops using the allegedly infringing Offerings (or a part of them) or complies in any other way with a third-party demand, Customer will notify the third-party claimant in writing that this is not an admission of infringement.

**24.5. Preconditions**

Any defense or remedies under this Section 24 are subject to Customer giving Innomotics:

- a. prompt written notice of the Infringement Claim;
- b. all requested information (including information about Customer's use of the Offerings) and reasonable assistance related to the Infringement Claim; and
- c. sole authority to defend or settle the Infringement Claim.

**24.6. Customer's prior consent**

Innomotics will not admit liability or incur obligations on Customer's behalf without Customer's prior written consent, which Customer will not unreasonably withhold.

**24.7. Exclusions**

Innomotics will not have any liability or obligations as specified in this Section 24 to the extent that an Infringement Claim arises out of:

- a. not using a replacement, correction, patch, or new version of the Offering provided by Innomotics that performs substantially the same functions as the allegedly infringing Offering;
- b. using the Offering in combination with software, equipment, products, or other items not provided by Innomotics;
- c. using Offerings provided free of charge;
- d. any adjustment, modification, or configuration of the Offering not made by Innomotics;
- e. Customer's instructions, requests, specifications, and Contributions;
- f. using the Offerings for a purpose or in a manner not authorized by Innomotics;
- g. deliverables resulting from services; or
- h. information or data not provided by or on behalf of Innomotics.

**24.8. Claim of Customer's infringement**

If any allegation is made against Innomotics or its Affiliates based on a claim that the Contributions infringe an intellectual property right, then the obligations of Innomotics under Sections 24.1, 24.2, 24.5 and 24.6 will reciprocally apply to Customer in favor of Innomotics and its Affiliates.

**24.9. Exclusive remedies**

This Section 24 sets out Innomotics' entire liability and Customer's sole and exclusive rights and remedy for infringement of third-party intellectual property rights.

**25. Liability**

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**25.1. Exclusive liability**

This Section 25 will exclusively govern Innomotics' liability for all claims, costs, damages, and indemnities, regardless of the form of action, whether based in contract, statute, tort (including negligence) or otherwise and applies in addition to any other limitation or exclusion of Innomotics' liability contained elsewhere in the Agreement and the Order.

## **25.2. Scope of limitations**

The limitations and exclusions below and in the Order:

- a. apply to:
  - Innomotics;
  - Innomotics' Affiliates; and
  - Innomotics' respective officers, directors, licensors, subcontractors, and representatives; and
- b. will not apply to the extent liability cannot be limited or excluded according to applicable law.

## **25.3. Limitation of liability**

- a. **Innomotics' liability per event under the Order is limited to 20 % of the Price paid under the Order for the Offering; and**
- b. **Innomotics' aggregate liability for all claims under the Order is limited to 100 % of the Price paid under the Order for the Offering.**

## **25.4. Exclusions of liability**

25.4.1. **Time limitations. Any and all liability of Innomotics under the Order will cease with the expiry of the warranty period of the Offering and any claims by Customer will be excluded after 2 years from the date of the event giving rise to the claim.**

25.4.2. **Disclaimer. Even if foreseeable, Innomotics will never be liable for:**

- a. **any indirect, incidental, consequential, special, exemplary, or punitive damages;**
- b. **loss of production;**
- c. **interruption of operations;**
- d. **loss of use;**
- e. **loss or corruption of data;**
- f. **contractual claims of third parties;**
- g. **loss of revenue, profits, capital and interest, or anticipated savings; or**
- h. **any damages caused by Offerings provided free of charge.**

## **26. Force majeure**

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### **26.1. No liability**

Neither party will be liable for a performance failure or delay in whole or in part (except related to any payment obligations) due to a Force Majeure event.

### **26.2. Time adaptation**

Impacted schedules in the Order will be reasonably adjusted for a Force Majeure event.

### **26.3. Termination right**

If a Force Majeure event continues for more than 180 days, either Customer or Innomotics may terminate the Order. Customer will pay Innomotics the Price for the Offerings provided or ordered up to the date of termination.

## **27. Applicable law and dispute resolution**

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### **27.1. Applicable law**

This Agreement and any Order will be governed by the substantive laws, excluding choice-of-law rules, of Switzerland.

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and any Order.

## **27.2. Arbitration**

All disputes arising out of or in connection with this Agreement or any Order will be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC").

## **27.3. Arbitral tribunal**

If the value of the total matter in dispute, including the value of any counterclaims, is or converts to EUR 2 million or above, the expedited procedure provisions of the Rules will not apply, and the arbitral tribunal will consist of 3 arbitrators.

If the tribunal consists of 3 arbitrators, each party will nominate 1 arbitrator for confirmation by the ICC. Both arbitrators will agree on the third arbitrator within 30 days of their appointment. If this does not happen, the ICC will appoint the third arbitrator.

## **27.4. Seat and document production**

The seat of arbitration will be Zurich, Switzerland. Any order for the production or disclosure of documents will be limited to the documents on which each party relies in its submissions.

## **27.5. Language**

The language of the proceeding will be English.

# **General clauses**

## **28. Written form and notices**

In writing includes e-mail, unless otherwise stated. Termination notices must be sent by letter to the address specified in the applicable Order.

## **29. No restrictions**

Subject to confidentiality, nothing in the Order restricts Innomotics from providing products and services to third parties similar or identical to the products and services provided to Customer.

## **30. Affiliates and subcontractors**

Innomotics may use Affiliates and subcontractors to fulfill its obligations under the Order. Innomotics remains responsible for its obligations and those of its Affiliates and subcontractors.

## **31. Independent relationship**

Nothing in the Order creates a partnership or an employment relationship between Innomotics and Customer or any of their respective personnel.

## **32. Order of precedence**

In the event of a conflict between the Order, these Solutions Terms and any Supplemental Terms, the following order of precedence applies:

- a. Order (excluding any Customer general terms and conditions, even if the document states differently);
- b. applicable Supplemental Terms; and
- c. these Solutions Terms.

## **33. Entire Agreement**

The Order is the entire agreement with respect to its subject matter and supersedes and extinguishes any previous or contemporaneous agreements, assurances, warranties, or representations.

Each party agrees that it has no remedies in respect of any statement or representation (whether made innocently or negligently but excluding any made fraudulently) that is not set out in the Order.

If a translation of the Order or the Agreement conflicts with the original, the English language version will prevail.

The terms of any purchase order or other document from Customer are excluded and such terms will not apply to any Order and will not supplement or modify the Order irrespective of any language to the contrary in such document.

#### **34. No assignment**

Neither party may assign or otherwise transfer (by operation of law or otherwise) its respective rights or obligations under the Order without the written consent of the other. However, Innomotics may assign or otherwise transfer to an Affiliate or an acquirer of all or substantially all the business covered by the Order.

#### **35. No waiver**

Failure to enforce a provision of the Order will not be considered a waiver.

#### **36. Amendments**

The Order and any amendments to it can only be effective if made in writing and signed by both parties (either manually or by an electronic system specified by Innomotics).

#### **37. Validity**

If any provision of the Order is invalid, illegal, or unenforceable, the remaining provisions will not be affected. Such provision will be deemed to be restated in accordance with applicable law to reflect the parties' original intent.

## **Definitions**

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Affiliate</b>                | Any legal entity that, directly or indirectly:<br>is controlled by a party;<br>controls a party; or<br>is controlled by a legal entity that directly or indirectly controls a party.                                                                                                                                                                                                                                                    |
| <b>Confidential Information</b> | Information that:<br>is disclosed by one party, its Affiliates, or their subcontractors to the other party or their Affiliates;<br>is marked or declared as confidential (or that any reasonable person can recognize as confidential in its nature); and<br>includes the terms of the Agreement and any Order, Offerings, Innomotics-owned Intellectual Property, and any information Customer derives from benchmarking any Offering. |
| <b>Contributions</b>            | Everything Customer (or someone on behalf of Customer) must provide or perform in connection with an Order so that Innomotics can perform the Offerings, including all preparatory work, assistance, documents, information, data, and approvals.                                                                                                                                                                                       |
| <b>Defect</b>                   | Non-conformance (at the time of acceptance, if agreed, or otherwise transfer of risk) with the specification set out or referred to in the Order.                                                                                                                                                                                                                                                                                       |
| <b>Delivery</b>                 | Making the tangible deliverables available to Customer in accordance with the INCOTERMS®2020 stated herein or in the Order.                                                                                                                                                                                                                                                                                                             |
| <b>Documentation</b>            | Instructions for use, learning materials, technical and functional documentation, and API (Application Programming Interface) information made available with the applicable Offering which may be updated by Innomotics from time to time.                                                                                                                                                                                             |
| <b>Export Regulations</b>       | All applicable sanctions, embargoes, and (re-)export control regulations and in any event those of the European Union, the United States of America and any locally applicable jurisdiction.                                                                                                                                                                                                                                            |

|                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Force Majeure event</b>         | Any event which is beyond the reasonable control of a party, its affiliates or its subcontractors, which could not have been prevented by good industry practice including, but not limited to, acts of war, riot, civil commotion, terrorism, natural disaster, epidemic or pandemic, strikes, lock-outs, attacks on Innomotics' systems (such as virus attacks, hacker attacks), non-issuance of licenses, permits or approvals, or any other act or failure to act by any public authority, or embargos or any other trade sanctions. |
| <b>Information Technology (IT)</b> | All aspects of technology used to develop, transfer and store information and data including but not limited to Products, software, IT systems, networks, Internet-enabled applications, cloud applications used by them and common IT interfaces.                                                                                                                                                                                                                                                                                       |
| <b>Intellectual Property</b>       | Rights in data, software, ideas, know-how, or any other proprietary material or information.                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Infringement Claim</b>          | Where a third party makes a specific claim, allegation or complaint against Customer that the Offerings directly infringe any: <p style="margin-left: 40px;">patent or trademark issued or registered by the United States, China, Japan, or the European Patent Office or the European Union Intellectual Property Office;</p> <p style="margin-left: 40px;">copyright; or</p> <p style="margin-left: 40px;">trade secret.</p>                                                                                                          |
| <b>Offering(s)</b>                 | The Products, services, solutions, software or documents provided to Customer as exclusively set out in an Order.                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Order</b>                       | A contract consisting of an order form, a statement of work, or any other document that sets forth the Offerings and the Price, incorporates the Agreement, and is agreed upon by both parties by manual or electronic signatures or by an electronic system specified by Innomotics.                                                                                                                                                                                                                                                    |
| <b>Price</b>                       | The purchase price payable by Customer for the Offerings.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Products</b>                    | Offerings that are tangible products, equipment, components, parts, and materials which may include firmware.                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Supplemental Terms</b>          | Additional terms and conditions that apply to a particular Offering as attached here or referenced in an Order.                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Tax</b>                         | Any taxes, duties, and any other charges.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Third-Party Technology</b>      | Any third-party software, technology, and other materials, including open-source software components, licensed by third parties under separate terms.                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Third-Party Terms</b>           | License conditions that may apply for Third-Party Technology and are specified in the Documentation, Supplemental Terms, Third-Party Technology source code (if any), and/or in "read me," header-, notices-, or similar files.                                                                                                                                                                                                                                                                                                          |
| <b>Update(s)</b>                   | Software updates, security patches, or bug fixes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |