

## HELIOX GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 For the purposes of these General Terms and Conditions of Purchase of Goods and Services by Heliox, hereinafter “**GTC**”, and all related documents, the capitalized terms as defined below in alphabetical order shall have the following meanings whereby these terms may be used in the singular or the plural form and vice versa, as the context so requires:

**Affiliated Company:** with regard to Heliox, any company, firm, partnership or other legal entity which now or hereafter is controlled by or is under common control with Heliox. “Control”: for the purpose of this definition meaning the ownership of 50% (fifty percent) or more of the nominal value of the issued share capital or 50% (fifty percent) or more of the voting power at the general meeting of shareholders or having the power to appoint a majority of the directors or otherwise direct the activities of such company, firm, partnership or other legal entity, but any such legal entity shall be deemed to be an Affiliated Company only as long as such liaison exists.

**Agreement:** any agreement formed by i) Supplier's acceptance of a Purchase Order; or ii) any agreement signed by the Parties for the delivery of Goods and/or Services, including all appendices attached thereto as well as all amendments thereof and/or additions thereto which the Parties may thereafter agree upon in writing. These GTC form an integral part of the Agreement.

**Agreement Price:** the total amount of the consideration as specified in the Agreement which is payable by Heliox to the Supplier for the sale and delivery of Goods and/or Services.

**Article:** any article of these GTC.

**Confidential Information:** the Agreement, its terms and execution, as well as all information and know-how (including but not limited to designs and other intellectual property rights) furnished by a Party to the other in any form whatsoever or otherwise coming to a Party's knowledge in connection with the performance of the Agreement and all data derived directly or indirectly from such information and all warranty claims, if any, which may arise under the Agreement. Heliox Data should also be considered as Confidential Information.

**Delivery Location:** the location where the Goods and/or Services are to be delivered as set out in the Agreement or Purchase Order.

**Embedded Software:** software necessary for operation of Goods and embedded in and delivered as integral part of Goods.

**Epidemic Failure:** the repeat of a certain type of failure of Goods or part thereof not caused by normal wear and tear but resulting from defects in material, workmanship, manufacturing process and/or design deficiencies attributable to Supplier, including but not limited to use of components with inherent or latent defects, or inconsistent maladjustments during manufacture. Epidemic Failure is limited to failures attributable to the same root cause.

**Force Majeure:** any cause or event beyond the reasonable control of the claiming party, not due to the fault or negligence of that party and which could not have been avoided by due diligence and use of reasonable efforts, extreme weather, earthquake, war riots, epidemic or pandemic (expressly excluding the COVID-19 pandemic), lockdown, insurrection, rebellion, civil disturbance, terrorism, sabotage, blockades, embargoes, industry-wide or region-wide labor strikes, or changes to laws or regulations or other acts of governmental entities.

**Goods:** the goods to be delivered pursuant to the Agreement and/or all materials, documents, or other deliverables which are the result of Work provided by Supplier under the Agreement in any form or media, including but without limitation to data, diagrams, drawings, reports and specifications.

**GTC:** these general terms and conditions relating to the purchase of Goods and Services by Heliox.

**Heliox Data:** all information in any form about, or

pertaining to, the business or operations of Heliox and its Affiliated Companies, including but not limited to information regarding products, technology, IT operations, Intellectual Property Rights, know-how, financial information, customer data, Personal Data, results, data structures and documentation accessed by Supplier in performing the Agreement.

**Heliox:** Heliox Automotive B.V. a private company with limited liability duly incorporated and validly existing under Dutch law, with its registered office and its official address in (5684 PH) Best at De Waal 24, the Netherlands, registered with the Chamber of Commerce under file number 60956224 and its Affiliated Companies.

**Intellectual Property Rights:** registered and unregistered intellectual and industrial property rights and applications, including but not limited to patent rights, trademark rights, database rights, design rights, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, computer programs (including all source codes) and related documentation, technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions), manufacturing, engineering and technical drawings, know-how and information, copies and tangible embodiments of all the foregoing, in whatever form or medium and any moral rights and the like associated therewith.

**Open Source Software:** (i) software provided under a free and/or open source license including, but not limited to, one approved by the Open Source Initiative (OSI <http://www.opensource.org/>); (ii) proprietary software provided royalty-free, in binary code form, under an end user license agreement, which may be accepted without a signature; (iii) shareware provided free of initial charge, such as on a trial basis, but where a fee may become due once the user decides to use the software beyond the trial period; or (iv) public domain software.

**Parties:** Heliox and Supplier together.

**Party:** Heliox or Supplier individually.

**Personal Data:** any data or information of an identified or identifiable natural person.

**Personnel:** means any person working on the delivery of Goods and/or Services under the supervision and responsibility of the Supplier or its subcontractor(s), whether in the employment of the Supplier or its subcontractor(s) or otherwise.

**Purchase Order:** any order issued by Heliox to Supplier for the purchase of Goods and/or Services, by virtue of which Supplier shall deliver the Goods and/or Services for Heliox, including any annex, addition or modification thereto.

**Recall Campaign:** a systematic effort by Heliox to locate certain Goods and/or spare parts installed and believed by Heliox possibly to be in breach of Supplier's warranty, or not to comply with laws, regulations, orders, or other governmental requirements, in order to replace, correct, or check such Goods.

**Services:** the services and work to be provided by Supplier in accordance with the Agreement.

**Software:** any software not being Embedded Software to be delivered by Supplier to Heliox under the Agreement.

**Specifications:** the detailed specifications, descriptions and drawings of the Goods and/or the Services and/or the Work Products agreed upon between the Parties and specified and defined as such in the Agreement.

**Supplier:** the person, firm or company named as such in the Agreement as responsible for the delivery of Goods and/or Services.

**Work Products:** all deliverables (including future deliverables) and other data, reports, works, inventions, know-how, software, improvements, designs, devices, apparatus, practices, processes, methods, drafts, prototypes, products and other work products or

intermediate versions thereof produced or acquired by Supplier, its Personnel or its agents for Heliox in the performance of Services under the Agreement.

1.2 The headings of these GTC are for ease of reference only and are not intended to qualify the meaning of any article or section thereof.

1.3 If the contents of the Agreement deviate from the contents of these GTC, the contents of the Agreement shall prevail.

1.4 Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another person.

1.5 References to the Parties include their respective successors in title and permitted assigns.

1.6 Terms and expressions of law and of legal concepts as used in this GTC have the meaning attributed to them under the laws of the Netherlands and should be read and interpreted accordingly.

1.7 In these GTC the term 'in writing' includes by post, e-mail and any other electronic communication device customary in the market.

## **ARTICLE 2 APPLICABILITY OF THE GTC**

2.1 These GTC apply to all Purchase Orders and Agreements and form an integral part thereof. Upon Supplier's written acceptance of a Purchase Order, with signing an Agreement, or with the start of performance thereof, Supplier shall be legally bound to these GTC. The applicability of the Supplier's general terms and conditions of sale or services or other conditions is expressly rejected.

2.2 Heliox shall have a right to amend these GTC and communicate the amended version on its website or by sending it to the Supplier.

2.3 A failure by Heliox to exercise or a delay in exercising a right or remedy provided by these GTC or by law does not constitute a waiver of that right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these GTC or by law by Heliox prevents further exercise of that right or remedy or the exercise of another right or remedy.

2.4 If 1 (one) or more provisions of these GTC shall be found, by a court with jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of these GTC. Heliox shall replace this illegal, invalid or unenforceable provision by a legal, valid or enforceable provision that achieves to the greatest extent possible the objectives of the illegal, invalid or unenforceable provision.

2.5 These GTC do not derogate from Heliox's statutory and common law rights, but are in addition thereto.

2.6 Any issues that are not arranged for in these GTC or any related Agreement shall be further discussed and agreed upon between the Parties in good faith, observing the principles of reasonableness and fairness.

## **ARTICLE 3 ORDERS, AGREEMENTS AND NOTIFICATIONS**

3.1 No offer shall be binding on Heliox unless it has been awarded or confirmed by Heliox in writing by issuing a Purchase Order.

3.2 Purchase Orders issued by Heliox shall constitute an Agreement and shall be binding on the Supplier unless the Supplier sends Heliox written notice within 5 (five) working days after the date of the Purchase Order stating the contrary and expressly detailing the reasons. In the event that Heliox has not received such written notice from the Supplier within the aforementioned term, the Supplier shall be deemed to have accepted the Purchase Order and the Agreement is constituted. For the avoidance of any doubts, Heliox Purchase Order shall always prevail over Supplier's offer.

## **ARTICLE 4 CHANGES**

4.1 Any changes to the Purchase Order or the Specifications directly affecting the Goods and/or Services shall have to be approved in writing by Heliox prior to implementation by the Supplier.

4.2 Heliox shall have the right at any time to make changes in (for example but not limited to) designs, Specifications, packaging, quantities as mentioned in any relevant Agreement or Purchase Order, time and Delivery Location and method of transportation.

4.3 Heliox will request changes by submitting a change notice in writing. The Supplier has (5) five working days to accept, review or reject Heliox requested changes. If the Supplier does not provide timely notice of rejection of any changes, it shall be deemed to have accepted all changes not so rejected, subject to reasonable price adjustments solely in connection with such change. There will be no change until accepted, in writing, or by failure to provide timely notice of rejection, by the Supplier.

4.4 If any change gives reason to adjust the Agreement Price and/or the time of delivery, such adjustment shall be made on the basis of the unit prices and rates laid down in the Agreement or in a fair and reasonable manner in relation to the norms underlying the Agreement. The lack of agreement on the adjustment of the Agreement Price and/or the time of delivery after Heliox has demanded the changes shall not authorise the Supplier to suspend execution of modification of any part of the Agreement or the requested changes.

## **ARTICLE 5 MANDATORY CHANGES**

5.1 Heliox may terminate the Agreement if the Goods and/or the Services and/or the Work Products are affected by mandatory changes ordered by competent authorities. Such termination may take place with immediate effect and Heliox shall in no way be liable for any claim resulting from such termination.

5.2 The Supplier shall furnish to Heliox any information required during the term of the Agreement to enable Heliox to comply with the requirements of any federal, state, local, or foreign authority in its use of the Goods and/or the Services and/or the Work Products.

## **ARTICLE 6 SHIPPING AND PACKAGING OF GOODS**

6.1 Supplier will comply, in all respects, with Heliox's shipping, packaging requirements as amended or updated from time to time and as incorporated in the Agreement by reference.

6.2 Unless otherwise agreed in writing, any charges or costs relating to handling, packaging, storage or transportation of Goods are borne by Supplier and are included in the price of the Goods as set forth in the Agreement.

6.3 Supplier will:

6.3.1 properly pack, mark and ship Goods in accordance with the requirements of Heliox, the involved carriers, and laws and regulations of the country of manufacture, the country of destination and any country in which the Goods will be transported, including, without limitation, laws and regulations governing the handling and transportation of dangerous Goods or hazardous materials;

6.3.2 route shipments in accordance with Heliox's instructions and the terms and conditions stated in the Agreement;

6.3.3 provide with each shipment packing slips with Heliox's agreement and/or release number and date of shipment marked thereon;

6.3.4 promptly forward the original bill of loading or other shipping documents for each shipment in accordance with Heliox's instructions; and

6.3.5 include on bills of loading or other shipping documents the correct classification of the Goods.

## **ARTICLE 7 PAYMENT, INVOICING**

7.1 As consideration for executing and completing the supply of Goods and/or Services in conformity with the Agreement, Heliox shall pay the Supplier the Agreement Price. The Agreement Price is stated exclusive of VAT and other duties which shall be stated separately on the invoice. The Supplier undertakes to make every effort to obtain any and all legally permissible discounts, credits and refunds from suppliers and Sub-contractors in favour of Heliox.

7.2 The amounts stated in the Agreement are fixed amounts, include all extra charges and may not be increased unless otherwise provided for in the Agreement.

7.3 The Supplier shall send an invoice to Heliox within 30 (thirty) days after the acceptance of the Goods and/or the Services by Heliox. The invoice shall be addressed to the department and address stated in the Agreement or Purchase Order. Heliox shall pay the invoice amount by transfer to the Supplier's bank or giro account within 60 (sixty) days of receiving the invoice. In the event that Heliox disputes any item of an invoice, Heliox shall be entitled to pay only the undisputed amount of such invoice within the time mentioned above.

7.4 The Supplier shall comply with all legal requirements of invoicing and shall state the following information on each invoice:

- the Purchase Order number;
- the number of the Agreement, if applicable;
- the invoice date;
- the post office box number;
- the invoice reference;
- description of the Goods and/or the Services;
- the currency code;
- invoice amount, quantity x unit price and VAT, itemised;
- Heliox's VAT identification number;
- Heliox's article code.

7.5 The Supplier assumes full liability for payment of all social security charges, contributions, wages and taxes levied at any time in respect of any Personnel deployed by the Supplier in connection with the performance of the Agreement. To the extent that Heliox should be obligated to pay any of the above charges, contributions and/or taxes for which the Supplier is liable pursuant to the preceding provisions of this Article 7.5, Heliox shall be entitled to recover the amounts in question and any associated costs from the Supplier, said claim being due and payable or offsetting against Supplier's invoices, without further notice of default being required.

7.6 At Heliox's request, Supplier shall provide an irrevocable performance guarantee in a format approved by Heliox. This guarantee shall be issued by the Supplier's ultimate parent company and serves as security for the proper execution of the Agreement.

7.7 Heliox shall at all times be entitled to offset and reduce any payments due and owing to Supplier under the Agreement by any amount which Heliox (and/ or any Affiliated Company) claims is owed to it by Supplier pursuant to the Agreement or any other agreement between Heliox (and/or any Affiliated Company) and Supplier.

7.8 Payments by Heliox are not considered as acknowledgement, approval of a performance nor waiver of notice of defect.

## **ARTICLE 8 SUSPENSION, SETTLEMENT AND RIGHT OF RETENTION**

8.1 If Supplier fails to meet its obligations and/or in the event of a rejection of the Goods and/or the Work Products Heliox will be entitled to suspend its payment obligations towards Supplier until Supplier has met its obligations.

8.2 In the event of Supplier's (imminent) insolvency, Heliox will be entitled to settle any claims of subcontractors relating to the Agreement directly with those subcontractors. In that case, the claim of Supplier shall be decreased by an equal amount.

## **ARTICLE 9 SECURITY, ASSIGNMENT AND PLEDGE**

9.1 Heliox is at all times entitled to request financial security at the expense of Supplier in order to ensure compliance with the obligations under the Agreement, in which case Supplier is obliged to provide security. If Supplier fails to provide security, or provides insufficient security, Heliox shall be entitled to dissolve the Agreement in whole or in part without judicial intervention or to consider the Agreement dissolved and to entrust the part of the Agreement still to be performed to third parties. In that case, Supplier will be liable for all damage.

9.2 Without Heliox's prior written consent, Supplier may not assign the claims arising from the Agreement to any third party or parties, pledge them or transfer them (or cause them to be transferred) under any title whatsoever, or establish any restricted right (or cause them to be established) thereon. This Article 8.2 is a clause within the meaning of Section 3:83(2) of the Dutch Civil Code and shall have a property-law effect.

## **ARTICLE 10 DELIVERY, OWNERSHIP, RISK AND TITLE**

10.1 The Goods, the Services and the Work Products must be delivered in the manner and at the place and time indicated in the Agreement. If no agreements have been made in that respect, delivery of Goods must be free of any additional charges "DDP" (Delivered Duty Paid), Incoterms (latest version thereof), at the Delivery Location. Delivery of the Goods and/or Services also includes the delivery of any and all related ancillary materials and any and all related documentation. In case of Software, the delivery obligation shall only have been met once all the (systems and user) documentation has also been delivered.

10.2 It is understood that time is of the essence for all deliveries under the Agreement. Deliveries shall take place on the delivery date as specified in the Agreement. Early or late execution of the Agreement as well as partial deliveries shall not be permitted, unless approved in writing by Heliox.

10.3 If the Supplier does not deliver the Goods, Services and/or the Work Products on the dates as specified in the applicable Agreement, Supplier shall be deemed to be in default by sole expiry of the dates and Heliox will be entitled to which shall not exclude Heliox from recovering other costs or damages:

10.3.1 terminate the Agreement in whole or in part;

10.3.2 refuse any subsequent delivery of the Goods or provision of Services;

10.3.3 reclaim from Supplier any expenses reasonably incurred by Heliox obtaining the Goods and/or Services in substitution;

10.3.4 claim damages for any cost, loss, expenses and liquidated damages incurred by Heliox which are attributable to Supplier's delay.

10.4 Heliox reserves the right to suspend the delivery of Goods and/or Services and/or the Work Products by the Supplier or any acceptance thereof without any charge and to the extent and for such period as considered necessary by Heliox.

10.5 The Goods shall be delivered, and Services shall be provided, during Heliox's business hours (or those of the requested Delivery Location) unless otherwise requested by Heliox.

10.6 Upon delivery, Supplier (or its appointed carrier) shall provide Heliox a delivery note and any other required export and import documents. If Heliox has approved partial delivery, such delivery note shall also include the outstanding balance.

10.7 The title to and risk pertaining to the Goods pass to Heliox upon delivery of the Goods in accordance with **Article 10.1**, without prejudice to any right of rejection which may accrue to Heliox under these GTC or otherwise. All rights in and titles the Work Products shall become Heliox's property upon completion of the Services in accordance with **Article 11.3**. The Supplier warrants that Heliox will acquire the full and unencumbered ownership of the Goods and/or the Work Products upon such delivery.

10.8 To the extent that the Goods and/or the Work Products contain Embedded Software, ownership of such Embedded Software will not pass to Heliox, but Supplier shall grant, or – as applicable – shall procure that the third party owner grants Heliox and all users a worldwide, irrevocable, perpetual, transferable, non-exclusive, royalty-free right to use the Embedded Software as integral part of such Goods and/or the Work Products for servicing either of them.

10.9 The Supplier hereby waives any and all rights and

powers vested in it on the grounds of a right of retention, suspension or a right of recovery, with respect to the delivered Goods and/or the Work Products.

10.10 The Supplier shall transfer to Heliox the ownership of all items such as source codes, models, dies, moulds, jigs, gauges, tools and drawings specifically acquired or manufactured by the Supplier in the course of the execution of the Agreement immediately upon such items having been supplied to the Supplier or when the manufacture of such items has been completed by the Supplier.

#### **ARTICLE 11 SUPPLEMENTARY PROVISIONS GOVERNING THE PROVISION OF SERVICES**

11.1 Supplier shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff.

11.2 Supplier shall be fully liable for the acts and omissions of any and all third parties with which it has contracted in connection with the Services.

11.3 Only written confirmation by Heliox shall constitute acceptance of the Services performed. If Heliox does not accept the Services and/or Work Product(s), the provisions of **Article 14** below shall apply. Heliox shall notify Supplier of such rejection, and Supplier shall, at its own expense, carry out the necessary corrections, additions and modifications reasonably requested by Heliox in writing within (30) thirty days of such notification.

#### **ARTICLE 12 EPIDEMIC FAILURES**

12.1 In the event of an Epidemic Failure, or that any Recall Campaign is required, Supplier shall dedicate sufficient resources on a continuing basis, at its sole expense, to identify and eliminate the cause(s) of the Epidemic Failure and shall also, at Heliox written request, replace or update all delivered to Heliox with the potential for such Epidemic Failure and reimburse Heliox for its commercially reasonable expenses relating to any recalls or related actions taken by Heliox.

12.2 If replacement Goods are not provided and/or an acceptable plan to resolve an Epidemic Failure is not provided to Heliox within 30 (thirty) days after it is reported, or such additional period as may be permitted by Heliox depending on the nature of the Epidemic Failure, Heliox may terminate the Agreement and a relating framework supply agreement without any liability to Supplier for such termination. In the event of an Epidemic Failure, Heliox is entitled to request a refund or credit for the affected Goods (and Supplier shall provide such refund or credit on Heliox request). Heliox may also cancel any specific Purchase Order or Agreement or a relating framework supply agreement pertaining to the affected Goods.

#### **ARTICLE 13 RECALL CAMPAIGN**

13.1 In the event that Heliox determines that a Recall Campaign is necessary to remedy a breach of Supplier's warranty or to comply with law, regulations, orders or other government requirements, the full costs and expense of such campaign shall be borne by Supplier, unless Supplier proves that there was no defect or deficiency in the Goods.

13.2 Supplier shall hold Heliox and its Affiliated Companies harmless against liabilities, costs, damages, losses, claims and expenses (including in- and out- of court costs, and legal fees and expenses) occasioned by or arising out of or attributable to a Recall Campaign. While making a decision for such action to recall, Heliox will exercise reasonable discretion and duly consider Supplier's interests.

#### **ARTICLE 14 OVERALL PERFORMANCE, ACCEPTANCE AND INSPECTION RIGHTS**

14.1 The Supplier shall be and remain responsible for the overall design and performance of the Goods and/or the Services and/or the Work Products not only as regards the Goods and/or the Services and/or the Work Product meeting the Specifications and the Agreement, but also as to their archiving the quality normally expected of the Goods and/or the Services and/or the Work Products in

the industry and of the Supplier's own products.

14.2 If the Supplier holds the opinion that the delivery of the Goods and/or the Services and/or the Work Products is completed, it shall inform Heliox accordingly in writing. Unless otherwise provided in the Agreement, completion or acceptance shall be deemed to have taken place when Heliox has accepted the Goods and/or the Services and/or the Work Products in writing. If Parties have agreed on a specific acceptance procedure in the Agreement, acceptance shall be subject to Heliox's signing of the acceptance statement.

14.3 Heliox, its designates or external bodies appointed for such purpose by Heliox, shall at all times, but at reasonable prior notice, be entitled to subject the Supplier's manner of performing the Agreement to an audit and to take the necessary measures for such audit, including without limitation, the inspection of the locations where the production and delivery of Goods and/or the Services and/or the Work Products or parts thereof are carried out. The facilities and information necessary for such audit shall be provided by the Supplier at its own expense to Heliox.

14.4 The Supplier acknowledges that any audits conducted by Heliox pursuant to this **Article 14.3** shall not release the Supplier from its responsibilities under the Agreement.

14.5 In any case where the Goods and/or the Services and/or the Work Products not comply with the Specifications and other requirements of the Agreement Heliox has the right to reject such Goods and/or the Services and/or the Work Products. In such event Heliox shall give written notice of such rejection within 90 (ninety) days after the delivery of Goods and/or the Services and/or the Work Products to the Supplier specifying the reasons and shall return the rejected Goods and/or the Services and/or the Work Products to the Supplier. The remedies as set out in **Article 15.3** and **Article 15.4** shall apply.

14.6 Notwithstanding any explicit or implicit acceptance of the delivery of Goods and/or the Services and/or the Work Products by Heliox, the Supplier shall remain fully responsible and shall hold Heliox harmless from and against any claims for any and all damages resulting from any non-compliance with the requirements of the Agreement.

#### **ARTICLE 15 WARRANTY AND REMEDIES REGARDING GOODS AND WORK PRODUCTS**

15.1 Supplier warrants that throughout the warranty period as set out in the Agreement, or in case there is no warranty period incorporated in the Agreement, for a period of 36 (thirty six) months (the "**Warranty Period**") that the Goods and/or the Work Products:

15.1.1 will comply in all respects with all relevant applicable statutory provisions and any other national, European and international rules, laws and regulations which may be in force at the time of delivery;

15.1.2 in all respects comply with the Agreement;

15.1.3 are new (as not containing any used or reconditioned parts or materials), fit and suitable for the purpose intended by Heliox and will comply with the reasonable expectations of Heliox in respect of the properties, quality and reliability with a view to its intended purpose in so far such use is known or should in reason have been known to the Supplier.

15.1.4 are executed in accordance with the generally accepted industrial principles and standards and the standards of sound workmanship;

15.1.5 will be provided with and accompanied by any and all information and instructions that are needed in order to make proper and safe use possible;

15.1.6 are of good quality and free from faults and defects in design, construction, manufacture and material; and

15.1.7 are free and clear of all liens, encumbrances and other claims against title.

15.2 The Warranty Period shall be extended by a period equal to any period or periods during which the Goods and/or the Work Products did not meet or did not fully meet

the requirements of the Agreement. A new warranty period equal to the original warranty period shall apply to any part of the Goods and/or the Work Products that has been repaired, adjusted or replaced.

15.3 In the event that the Goods and/or Work Products do not comply with the other provisions of **Article 15.1** the Supplier shall be in default by operation of law. In such event Heliox shall be entitled, without prejudice to any other rights of action it may have pursuant to the Agreement or at law:

15.3.1 to demand that the Supplier at its own expenses again carries out, repairs and/or replaces each rejected part of the Goods and/or Work Products, within a period acceptable to Heliox, keeping Heliox fully informed of the progress thereof;

15.3.2 to refuse any further Goods, Work Products, and/or Services;

15.3.3 to require Supplier to indemnify and hold harmless for such damages as may have been sustained by Heliox as a result of Supplier's breach of the Agreement;

15.3.4 dissolve the Agreement without judicial intervention. Insofar as prescribed by law Heliox shall first provide the Supplier with a written notice of default. In such event Heliox has no obligation to compensate Supplier (including paying for the rejected Goods, Services, and/or Work Products); and at Heliox's option, Supplier shall pay back to Heliox any remuneration received from Heliox under the Agreement and take back the Goods and/or Work Products at Supplier's own cost and risk; and Heliox may source equivalent replacement goods and/or services from an alternative supplier (with any incremental costs incurred in doing so being for Supplier's account).

15.4 In addition to the remedies laid down in **Article 15.3**, Heliox may execute the delivery of Goods, Work Products and/or Services itself or cause the same to be executed in full or in part at the Supplier's expense, if:

15.4.1 the Supplier fails to remedy the failure within the period referred to in **Article 15.3.1**, in which case Heliox will also be entitled to return any Goods and/or Work Products already delivered and demand immediate restitution of any payments made for such Goods and/or Work Products; or

15.4.2 circumstances arise in which Heliox cannot in reason be expected to wait for repair work to be executed by the Supplier, for instance in the event of imminent (further) damage or loss or risk to persons or things.

15.5 The Supplier shall bear all costs, including but not limited to transportation costs, in connection with the repair or replacement of said defective or non-compliant Goods and/or Work Products, and all other costs or damages Heliox may incur as a result of said defective or non-compliant Goods and/or Work Products.

15.6 The provisions set forth in this **Article 15** do not release Supplier from its liability for any hidden defects in the Goods and/or Work Products that appear after the Warranty Period, as referred to in **Article 15.1**, has elapsed, but that were present or performed during that term.

## **ARTICLE 16 (WARRANTY) CERTIFICATES AND OTHER DOCUMENTS**

16.1 Supplier must provide Heliox with all relevant documents such as, but not limited to: certificates, declarations, attestations, material statements, warranty certificates, instruction books, revision books, user manuals, maintenance documents, and or other verifications, immediately upon delivery of the Goods and/or Work Products, but no later than upon submission of the last instalment invoice, failing which Heliox shall be entitled to suspend its payment obligation in accordance with **Article 8.1**.

## **ARTICLE 17 OPEN SOURCE SOFTWARE**

17.1 Unless the inclusion of Open Source Software is specifically authorized in writing by duly authorized officers of Heliox and unless otherwise stated in the Agreement, Supplier represents and warrants that the Goods and/or the Work Products do not include any portion of any Open

Source Software.

17.2 Should the Goods and/or the Work Products delivered by Supplier contain any Open Source Software, Supplier must deliver to Heliox:

17.2.1 the source code and build scripts of the relevant Open Source Software, insofar as the applicable open source conditions require the disclosure of this source code;

17.2.2 a schedule of all open source files used, indicating the relevant license and including a copy of the complete text of such license.

## **ARTICLE 18 INTELLECTUAL PROPERTY RIGHTS**

18.1 The Supplier warrants that the delivery of Goods and/or Services and/or Work Products, the manner in which the delivery of Goods and/or the Services and/or the Work Products is realised and the use of the delivery of Goods and/or Services and/or Work Products, in the widest sense, will not infringe any third-party patent rights, trademark rights, copyrights or other industrial or Intellectual Property Rights. The Supplier shall, at its own expense, indemnify and hold Heliox and its Affiliated Companies harmless from and against any third-party claims or suits alleging any such infringement and from any costs, including litigation costs, expenses and damages incurred in connection with such claims.

18.2 In the event that any Goods and/or Services and/or Work Products are held to constitute an infringement and the use thereof is enjoined, the Supplier shall, at its option and expense:

18.2.1 either procure for Heliox and its Affiliated Companies the right to continue to use such any Goods and/or Services and/or Work Products;

18.2.2 or replace said Goods and/or Services and/or Work Products by non-infringing any Goods and/or Services and/or Work Products of equivalent performance;

18.2.3 or introduce a non-infringing modification in said Goods and/or Services and/or Work Products in a manner such that performance of the Goods and/or Services and/or Work Products is not degraded.

18.3 The Intellectual Property Rights in all drawings, calculations, Specifications, documents and other data carriers (including Software) produced in connection with the Agreement shall vest in Heliox. Said documentation and other data carriers shall be handed over to Heliox on demand. Heliox shall have the exclusive right to file patent applications, in its own name or in the name of a third party designated by Heliox, for inventions made as part of the execution of the delivery of Goods and/or Services and/or Work Products and the Supplier shall give its full co-operation with respect to such patent applications.

18.4 If the Supplier manufactures Goods and/or Services and/or Work Product pursuant to specific instructions of Heliox, the Supplier shall transfer to Heliox the ownership of all Intellectual Property Rights related to such Goods and/or Services and/or Work Product or any other item (inventions, drawings, feasibility studies etc.) originated as a result of Heliox ordering the manufacture of such Goods and/or Services and/or Work Products. The Supplier shall co-operate in the execution of any formalities necessary to effectuate the transfer of the ownership of such Intellectual Property Rights.

18.5 Supplier must specify in writing and prior to delivery all Open Source Software contained in or used by Embedded Software, if any, and request Heliox's written approval. Supplier agrees to replace at its own cost any open source software components rejected by Heliox with Software of at least the same quality and functionality.

## **ARTICLE 19 COMPLIANCE, INTEGRITY, COC**

19.1 Supplier warrants that the Goods and/or Services and/or Work Products are in compliance with all relevant laws, regulations, and Heliox Code of Conduct Suppliers.

19.2 Without limiting the generality of **Article 19.1**, Supplier represents and warrants that it is and will remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, satisfying all necessary clearance requirements,

proofs of origin, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the provision of the Services, the release or transfer of Goods, Work Products, hardware, Software and technology.

19.3 By the execution of the Agreement, Supplier shall at all times comply with all applicable and relevant statutory provisions and any other regulations, instructions and conditions in the field of health, safety and the environment attached to permits, licenses, policies of Heliox or orders of a similar nature which have been issued in connection with the delivery of Goods and/or Services and/or Work Products and the Supplier shall ensure that sub suppliers, Personnel and third parties called in by the Supplier likewise comply with the same. In addition, Supplier shall comply with all applicable national, European and international rules relating to ethical and responsible standards of behaviour, including, without limitation, those dealing with human rights, child labour, non-discrimination, environmental protection, sustainable development, bribery and corruption.

19.4 Any violation of an obligation contained in this **Article 19** shall constitute material breach of the Agreement and entitles Heliox to terminate the Agreement with immediate effect and without prejudice to any further rights or remedies available thereunder or at law. Notwithstanding anything to the contrary in the Agreement, Supplier shall, without any limitations, indemnify and hold Heliox harmless for all liabilities, damages, cost or expenses incurred as a result of any such violation and/or termination of the Agreement, or arising from export restrictions concealed by Supplier.

## **ARTICLE 20 DATA PROTECTION**

20.1 The Parties shall at all times comply with any obligations under the General Data Protection Regulation (GDPR) regarding Personal Data protection and any other relevant law and regulations while processing personal data. Both Parties shall (i) limit processing of personal data to strict necessary data processing, (ii) take appropriate security measures to protect the confidentiality of the (personal) data provided by the other Party, (iii) inform the other Party, on such Party's request, about the security measures taken in respect to the foregoing, and (iv) notify the other Party of any breach of Personal Data at the latest within 48 hours after discovery. Supplier shall inform Heliox of such Personal Data breach via [legal@heliox-energy.com](mailto:legal@heliox-energy.com).

20.2 Supplier shall ensure that its subcontractors comply with the provisions of this **Article 20**.

## **ARTICLE 21 IMPORT AND EXPORT**

21.1 Supplier agrees and warrants that it will comply with all applicable international and national export control laws and regulations and it will not export or re-export, directly or indirectly, any information, Goods and/or Work Products, Software and/or technology to any country for which the European Union or the United States of America or any other country, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining such license or approval.

21.2 Supplier agrees to inform Heliox in writing whether or not the supplied information, Goods and/or Work Products, Software and/or technology is US controlled and/or controlled under the export control laws of its own country, and if so, Supplier will inform Heliox about the extent of the restrictions (including but not limited to export control legal jurisdiction, export control classification numbers, export control licenses as applicable).

21.3 Supplier shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide Heliox with all information required to enable Heliox and its customers to comply with such laws and regulations.

## **ARTICLE 22 CONFIDENTIALITY, PUBLICITY AND INFORMATION SECURITY**

22.1 The Supplier shall:

22.1.1 not disclose Confidential Information to third parties other than those involved by it in the performance of the Agreement without Heliox's prior written consent and shall use the same solely for the purposes of performing the Agreement;

22.1.2 protect the Confidential Information against disclosure in the same manner and with the same degree of care, with which it protects confidential information of its own;

22.1.3 not without the prior written consent of Heliox advertise or publish in any way whatsoever the fact that it has been contracted to execute the delivery of Goods and/or the Services to Heliox; and

22.1.4 bind all third parties involved by it in the performance of the Agreement to similar confidentiality in writing or cause them to sign the undertakings of confidentiality supplied by Heliox.

22.2 The Confidential Information shall at all times remain subject to Heliox's ownership and to Heliox's Intellectual Property Rights and shall not be copied or used for any purpose other than satisfying the requirements of the Agreement.

22.3 Upon acceptance of the delivery of Goods and/or the Work Products by Heliox or upon termination or dissolution of the Agreement, whichever is the earlier, the Supplier shall, on demand and as soon as is reasonably practicable return all Confidential Information to Heliox.

22.4 Heliox Data shall remain the property of Heliox and its Affiliated Company. Supplier may use such data only for the performance of and in accordance with the Agreement and in accordance with Heliox's instructions.

22.5 Supplier shall clearly mark the Heliox Data as Heliox's property.

22.6 Supplier shall establish an information security management framework to initiate and control the implementation of security policies, standards and procedures within Supplier's organization in order to protect Heliox Data and assets relevant to the Agreement (including any systems). Such framework shall be operated in accordance with good industry practices and shall at a minimum include protection against loss, deterioration, corruption, unauthorized alteration and unauthorized access. Supplier shall protect Heliox Data and assets based on the principles of confidentiality, integrity and availability.

## **ARTICLE 23 LIABILITY AND INDEMNITY**

23.1 Unless otherwise agreed in writing between the Parties, the Supplier shall be liable and will defend and indemnify and hold Heliox, its Affiliated Companies, officers, representatives, assignees, and their Personnel, harmless from and against:

23.1.1 any (alleged) claim, suit, loss, damage, or expense (including attorney's fees) which may result from the Supplier's breach of express or implied warranties and other terms and obligations of the Agreement;

23.1.2 any and all damages, including injury to persons and damage to property, which may result in any way from (i) any act or omission of the Supplier, its agents, employees, Personnel or subcontractors, or (ii) a defect in the Goods and/or the Work Products, spare parts, options or accessories (including a defect in Goods and/or Work Products warnings, labelling, operator's or service manuals or other documents), or (iii) the design, manufacture, sale, operation, handling of the Goods and/or the Work Products, spare parts, options or accessories by the Supplier or the use thereof. The foregoing includes claims as a result of third parties using the Goods and/or the Work Products in their intended manner, or any other type of loss or damage such as consequential losses and Recall Campaigns;

23.1.3 all fines, losses, damages, costs and expenses arising from any actual or alleged utilization of any patent, patent application or other Intellectual Property Rights as a result of the use, processing, sale, storage or lease of

the Goods and/or the Work Products except to the extent that the same is the result of adaptations made by the Supplier to comply with Heliox's specific design requirements;

23.1.4 claims by Personnel of Supplier or its subcontractors; and

23.1.5 all costs reasonably incurred in connection with the claims as referred to in **Article 23.1.1**) up to and including **Article 23.1.5**).

23.2 Heliox's records will serve as full evidence of Heliox's damage suffered, unless Supplier provides evidence to the contrary.

23.3 In the event of a claim by a third party against Heliox, which may be the subject of the indemnification provided for in **Article 23.1**, Heliox shall provide written notification thereof to Supplier. Supplier shall provide Heliox with such reasonable assistance in the defence and prosecution of claims as Heliox may request.

23.4 Heliox shall in no event be liable for any consequential, special, incidental, indirect, or punitive damages, including without limitation lost profits, whether the claim is based on contract, tort, strict liability, or any other theory of law or equity, even if advised of the possibility of such damages.

23.5 The limitations and exclusions of liability set forth in this **Article 23** shall not apply in the case of damage resulting from a Party's wilfulness misconduct or gross negligence.

#### **ARTICLE 24 INSURANCE**

24.1 Supplier is obliged to take out adequate insurance(s) to cover its liability at its own expense. The insurance(s) must be in line with industry norms and with a reputable and financially solvent insurance company. Unless the Parties agreed a specific minimum insurance coverage in writing, such insurance shall cover Supplier's liability towards Heliox and third parties to the necessary extent.

24.2 Supplier's liability insurance does not affect Supplier's liability under the Agreement and law.

24.3 Upon Heliox's first request, Supplier shall issue proof of insurance, as well as proof that the payable insurance premium has been paid.

#### **ARTICLE 25 TERMINATION**

25.1 Heliox shall at all times be entitled to terminate the Agreement or part thereof with immediate effect without giving reasons unless explicitly otherwise agreed upon in writing between the Parties.

25.1.1 If Heliox terminates the Agreement pursuant to **Article 25.1** of these GTC, the Supplier's sole remedy shall be payment for the part of the delivery of Goods and/or Services and/or Work Products that has been executed in accordance with the Agreement up until the date on which Heliox dissolves the Agreement, without prejudice to the right of Heliox to offset any costs and damages against such amount. Any amounts paid in excess of what was due by Heliox shall be immediately due and payable.

25.2 If the Supplier has not remedied any material breach of the Agreement within 10 (ten) days after having received written notification by Heliox, Heliox may immediately terminate in whole or in part the Agreement by sending written notice to the Supplier, without being liable for such termination and without prejudice to any other rights accruing to the Agreement or under applicable law.

25.3 Further, Heliox may terminate the Agreement with immediate effect by notice in writing in the event that Supplier becomes insolvent, makes a general assignment for the benefit of its creditors, suffers or permits the appointment of a receiver or a manager for its business assets or avails itself or becomes subject to any proceeding under bankruptcy laws or any other statute or laws relating to insolvency or to protection of the rights of creditors.

25.4 In the event that the Agreement is terminated or dissolved for any reason whatsoever the Supplier shall forthwith:

25.4.1 cease the delivery of Goods and/or Work Products in a safe and responsible manner; and

25.4.2 enable Heliox to take over the delivery of Goods and/or Work Products and in this respect to take possession of all Goods and/or Work Products.

#### **ARTICLE 26 FORCE MAJEURE**

26.1 A Party prevented from fulfilling its obligations under the Agreement duly and timely by an event of Force Majeure (a "**Subjected Party**") shall inform the other Party (the "**Impinged Party**") promptly, both orally and in writing, specifying the cause of Force Majeure and how it may affect its performance, including a good faith best estimate of the likely scope and duration of interference with its obligations. The Subjected Party shall make best efforts to terminate or avoid as soon as practicable the Force Majeure circumstances.

26.2 The Impinged Party shall be released from performing any of its obligations for the duration of the Force Majeure event. The Parties shall consult with each other in order to minimize all damages, costs and possible other negative effects. Furthermore, if an event of Force Majeure continues for more than 30 (thirty) days and no adequate remedial solution can be agreed upon within 15 (fifteen) days thereafter, the Impinged Party shall be entitled to terminate the Agreement or any Purchase Order or part of a Purchase Order, with immediate effect and without liability to the Subjected Party. Upon remediation of the Force Majeure event, the Subjected Party shall promptly resume performance on all Purchase Orders which have not been terminated.

#### **ARTICLE 27 ASSIGNMENT AND SUBCONTRACTING**

27.1 Supplier may neither assign, nor novate, transfer, encumber or subcontract the Agreement, nor any parts thereof (including any monetary receivables from Heliox) without prior written approval of Heliox.

27.2 Heliox may assign, novate, transfer, subcontract or deal in any other manner with the Agreement, in whole or in part, at any time, and on more than one occasion thereof to its Affiliated Companies, or to any successor in-interest or title which acquires that part of Heliox's group of companies' business to which the relevant Agreement relates (and such transferee may do the same).

#### **ARTICLE 28 NON-EMPLOYMENT**

28.1 During the execution of the Agreement and for 1 (one) year following termination of the Agreement, the Supplier shall not in any way hire or employ in any other way, be it directly or indirectly, staff of Heliox, without prior written approval of Heliox.

#### **ARTICLE 29 NOTICES**

29.1 Any notice must be given duly signed by registered mail, for by e-mail to the address of the relevant Party as stated in the Agreement and/or to such other address as such Party may have notified in writing. Supplier's reply, correspondence, information or documentation related to the Agreement must be provided in the language used in the Agreement.

#### **ARTICLE 30 MISCELLANEOUS**

30.1 **No waiver.** No waiver of a right with respect to a Party's breach of any provisions of these GTC or any Agreement shall be valid unless explicitly made in writing by the other Party and no such waiver shall operate or be construed as a waiver of any other breach. No failure or delay by a Party in exercising any right, power or privilege under these GTC or an Agreement will operate as a waiver of such right, power or privilege, nor will any single or partial exercise of any of such right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege under these GTC or an Agreement.

30.2 **Survival.** Provisions of the Agreement which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination will remain in full force and effect

notwithstanding such termination.

#### **ARTICLE 31 GOVERNING LAW AND DISPUTE SETTLEMENT**

31.1 These GTC and the Agreement are exclusively governed by Dutch law, with the exclusion of the Vienna Sales Convention.

31.2 All disputes - including those which are only considered as such by 1 (one) of the Parties - which may arise between the Parties in connection with or as a result of the Agreement or agreements which are a result thereof and which cannot be resolved by mutual consultation, shall be settled by a court in the district in which Heliox has its registered office. In case Heliox is the plaintiff, Heliox may at its sole discretion submit any such dispute either to the competent courts in the venue of Supplier's registered office.

31.3 Supplier irrevocably waives any objection to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgement (including but not limited to a default judgment) of any such court in relation to the Agreement and the GTC, to the maximum extent permitted by the law of any jurisdiction, the laws of which might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgment.

31.4 Unless the court has decided otherwise in a particular case, Supplier is obliged to continue his obligations under the Agreement, pending the conclusion of a decision in the dispute.