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R-06b	Version 2020	15.12.2020	buceli

<b>General Terms and Conditions of Purchase GTCP2020</b>
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## 1. Scope

These General Terms and Conditions of Purchase GTCP2020 ("**GTCP**") form an integral part of the respective order and its annexes ("**Order**") of the following companies:

- **Stadler Bussnang AG**, Ernst-Stadler-Strasse 4, 9565 Bussnang, Switzerland,
- **Stadler Rheintal AG**, Neudorfstrasse 8, 9430 St. Margrethen / St. Gallen, Switzerland,
- **Stadler Winterthur AG**, Sulzerallee 11, 8404 Winterthur, Switzerland,
- **Stadler Signalling AG**, Alte Winterthurerstrasse 14b, 8304 Wallisellen, Switzerland,

(hereinafter individually and/or collectively referred to as "**STADLER**") to the supplier ("**Supplier**") for the manufacture and/or supply of materials and/or the provision of services ("**Contract Product**").

In the event of discrepancies or differences between the Order and these GTCP, the Order shall take precedence.

Any terms and conditions of the Supplier are waived, irrespective of whether they are referenced or included in the Supplier's offer, order confirmation or invoices or the like.

The Order covers the entire agreement in force between STADLER and the Supplier concerning the subject matter of the Order and replaces all previous agreements, whether oral or otherwise, in this regard.

## 2. Interpretation

The term "**Working Day**" refers to all individual days which are not Saturdays, Sundays or public holidays at the place of fulfilment.

The term "**Order Value**" includes the entire remuneration agreed for the Order.

"**Related Businesses**" are all businesses which control STADLER or the Supplier, which are controlled by STADLER or the Supplier, or which are under the same control as STADLER or the Supplier. "Control", including the verb "to control", means (a) for legal persons, direct or indirect ownership of more than 50 (fifty) percent of the entity associated with voting rights, or (b) for entities without legal personality, direct or indirect ownership of more than 50 (fifty) percent of the interests in the entity associated with the right to elect the management of the business. A business shall only be deemed to be a Related Business for so long as it is under such Control.

## 3. Conclusion of an Order

An Order between STADLER and the Supplier shall be concluded on a case-by-case basis by:

- transmission of the offer by the Supplier  
and
- transmission of a corresponding signed confirmation by STADLER or transmission of a corresponding unsigned confirmation by STADLER (email, etc.), provided the Order Value (excluding value-added tax) is less than CHF 3,000 (three thousand) ("**Threshold Order Value**"),  
or
- transmission of a signed order request by STADLER or transmission of an unsigned order request by STADLER (email, etc.), in case the Order Value (excluding value-added tax) falls below the Threshold Order Value,  
and
- transmission of the corresponding confirmation of the Supplier or implied consent of the Supplier to the order request of STADLER (e.g. silence on the part of the Supplier for 10 (ten) working days after dispatch of the order request or any act of fulfilment by the Supplier)  
or
- by using an electronic ordering process accepted by both parties.

## 4. Changes to the Order

All changes to the Order require the express written consent of both parties in order to be valid. The Supplier shall accept change requests from STADLER at any time and examine them carefully. If desired changes are inconsistent with the current state of the art or if fulfilment of the Order is jeopardised as a result, the Supplier shall notify STADLER immediately. The Supplier shall inform STADLER in an offer within 5 (five) Working Days of any effects of the requested change on costs, deadlines or other factors. Any effects on costs shall be established on the basis of the Supplier's original calculation. The parties liable for the costs shall be specified separately in the offer.

STADLER shall be entitled to postpone the agreed delivery and/or performance dates for up to 12 (twelve) weeks into the future by means of a unilateral declaration of intent to the Supplier without incurring any costs.

## 5. Remuneration

The remuneration agreed in the Order shall be binding.

## 6. Invoicing and payment terms

Invoices shall be issued by the Supplier exclusively in accordance with the Order, and in any event at the earliest after complete and contractually compliant delivery or performance of the Contract Products concerned.

An invoice shall be due 30 (thirty) days after receipt of the invoice by STADLER. The Supplier shall grant STADLER a (cash) discount of 2 (two) percent if the invoice is settled no later than 14 (fourteen) days after receipt of the invoice by STADLER.

In the event of defective contractual performance, STADLER shall be entitled to withhold payment of the entire Order until the deviation has been remedied. If STADLER and the Supplier do not agree whether or not remuneration is due in accordance with this term, STADLER shall be entitled to withhold remuneration, without thereby becoming liable for any consequences of default, until the parties have resolved the matter or until STADLER is required to make payment under the terms of a final court order.

Any payment withheld by STADLER may be offset by STADLER across multiple Orders with claims by STADLER against the Supplier.

The Supplier waives its right to rely on the objection of non-compliance with a contract or inadequate compliance with a contract, and specifically on all of its rights under Article 82 Swiss Code of Obligations, in the event that STADLER disputes a Supplier invoice with good cause and subsequently refuses to pay it (either in full or in part). Accordingly, the withholding of any payment by STADLER shall not release the Supplier from fulfilling its contractual obligations.

The Supplier shall not be entitled to offset payment by STADLER against invoices/liabilities other than those designated by STADLER.

## **7. Transfer of ownership, benefit and risk**

Ownership, benefits and risks shall pass to STADLER upon acceptance of the Contract Products by STADLER.

## **8. Deadlines and default**

The Supplier warrants in full that it shall meet the delivery deadlines agreed in the Order. Upon expiry of the deadline, the Supplier shall automatically be in default (i.e. without any requirement for a reminder). The Supplier shall inform STADLER immediately if any late deliveries become apparent, and it shall provide STADLER with a plan to prevent or reduce the delay. The Supplier shall be liable to STADLER for any and all damages caused by default or early delivery. The Supplier shall be liable for the fault of its sub-suppliers and other auxiliaries or substitutes to the same degree as for its own fault.

If the Supplier is in default, STADLER shall be entitled, subject to STADLER'S right to claim damages, to set a reasonable grace period for subsequent performance or, in lieu thereof, to waive any subsequent performance. If this grace period expires without remedy, STADLER may continue to insist on performance as well as compensation for delay or may waive performance.

In the event of a waiver, STADLER may either demand compensation for the loss incurred as a result of non-performance or withdraw from the respective Order in whole or in part.

In the event of default, the Supplier shall owe STADLER a contractual penalty that is payable immediately. The contractual penalty shall be 0.5 (zero-point-five) percent of the amount of the relevant Order Value (excluding value-added tax) for each calendar day of delay or part thereof, subject however to a minimum of CHF 250 (two hundred and fifty).

The foregoing shall be without prejudice to any entitlement to claim damages in excess of the contractual penalty. The contractual penalty shall be offset against any claims for damages. Payment of the contractual penalty shall not release the Supplier from fulfilling its contractual duties.

## **9. Warranty**

The Supplier warrants in full that the Contract Products are free from defects for the duration of the warranty period.

A defect is any deviation of a Contract Product from the Order, regardless of its cause, irrespective of the fault of the Supplier and no matter whether such a deviation existed at the time of acceptance. Any such deviation from the Order means that a contractually defined property is missing, or the grade and quality defined in the Order is missing, or a characteristic that STADLER could expect in good faith even without a special agreement (e.g. suitability for the contractually required or customary use) is missing. The Supplier also warrants compliance with all relevant statutory and official standards and provisions applicable at the time of delivery of the Contract Product, performance in accordance with the recognised state of the art, compliance with all regulations concerning occupational, product and operational safety, as well as the execution of all services in a professional and proper functional manner.

The warranty period for the Contract Products shall commence upon delivery of the Contract Products to STADLER in accordance with the respective Order and shall end 42 (forty-two) months thereafter.

STADLER may object to defects of any kind at any time during the entire warranty period. It shall thus be released from the statutory obligations to inspect and object.

The Supplier shall immediately return the defective Contract Products free of charge at STADLER'S option. If the Supplier is unable to correct defects objected to by STADLER within a reasonable period of time, STADLER shall be entitled either a) to rectify the defect itself or to have it rectified by a third party at the Supplier's expense or b) to demand a reasonable reduction of the price or c) to withdraw from the Order.

The Supplier shall bear all costs of rectifying the defects.

## **10. Provision of materials**

All materials provided to the Supplier for processing, assembly, testing, refining or other use, as well as all semi-finished and finished products, shall remain the unrestricted property of STADLER. The Supplier shall treat the corresponding materials and items with care, maintain them properly, mark them as the property of STADLER and adequately insure them against theft, natural hazards and other damage. Until the transfer of possession of these materials and items to STADLER, the Supplier shall bear the risk of theft, damage and destruction.

## **11. Monitoring rights of STADLER**

STADLER shall be entitled, subject to reasonable advance notice, during the normal business hours of the Supplier, to inspect all of the Supplier's facilities used to manufacture the Contract Products. This right shall also include the right to inspect the accounts of the Supplier to the extent necessary to monitor the contractually compliant processing of the Order. Pursuant to the above conditions, STADLER is entitled to inspect the inventory of goods owned by STADLER but in the possession of the Supplier.

The Supplier shall ensure that STADLER'S rights specified in this section may be exercised in the same manner at its sub-suppliers. For this purpose, the Supplier and its sub-suppliers may require that their manufacturing and business secrets be preserved by the relevant recipient. The Supplier's above-mentioned obligations and all monitoring activities conducted by STADLER shall in no way release the Supplier from its duties.

## **12. Liability of the Supplier**

The Supplier shall be fully liable to STADLER for any damages incurred by STADLER as a direct or indirect consequence of defective contractual performance. If the Supplier does not have insurance coverage for damage arising from a circumstance identified as force majeure, the Supplier shall be released from liability to STADLER to the corresponding extent.

If a contractual penalty has been agreed for failure to comply with a particular obligation on the part of the Supplier, STADLER expressly reserves the right to claim damages in excess of the contractual penalty. The contractual penalty shall be offset against any claims for damages. Payment of the contractual penalty shall not release the Supplier from fulfilling its contractual obligation.

## **13. Insurance coverage**

In addition to the insurance referred to in other provisions of the Order, the Supplier undertakes to take out and maintain adequate insurance for the relevant liability risks under the Order during the performance of the Order. The Supplier shall remain fully liable, subject to the exception specified in Section 12 and irrespective of any insurance cover.

## 14. Third-party software

The Supplier shall obtain all licences from third parties required for the intended use of the Contract Products by STADLER and by the end customer of STADLER and shall maintain them for the lifetime of the Contract Products. If these constitute licence rights for software (including firmware and operating systems), the Supplier shall deliver to STADLER at the latest upon delivery of the first Contract Product of the Order the information, documents and other details necessary for the use, development or modification of the Contract Product.

## 15. Intellectual property rights of third parties, indemnification

The Supplier warrants to STADLER that:

- i. the Supplier along with its sub-suppliers will not infringe any industrial or intellectual property rights ("IPR") whatsoever of third parties when fulfilling the Order;
- ii. without prejudice to the generality of the foregoing, the Contract Products manufactured and/or supplied by the Supplier, along with any software furnished by it, will not infringe any IPR of third parties whatsoever.
- iii. the Supplier is, subject to (iv) below, the sole owner of all industrial and intellectual property rights arising from the development and/or delivery of the Contract Products; and
- iv. the Supplier holds a valid licence for the use of industrial and intellectual property rights and is authorised to licence and sub-licence such rights for use under the Order to the required extent should any commercial or intellectual property rights necessary for the proper use of the Contract Products and/or the software delivered belong to a sub-supplier of the Supplier or another licensor.

Following appropriate notification by STADLER, the Supplier shall defend against any third-party claims in relation to an alleged infringement of IPR at its own cost and risk. STADLER may provide support to the Supplier, at the reasonable request of the Supplier, provided that the Supplier compensates STADLER for all costs thereby arising.

Should a third party launch any court action directly against STADLER concerning an alleged infringement of IPR under an Order, the Supplier shall support STADLER upon first request by the latter, join the proceedings and take them over if possible under the applicable procedural rules. The Supplier shall be obliged to compensate STADLER for all costs incurred, i.e. specifically (although not limited to) court, lawyers' and other procedural costs, and to hold STADLER harmless in respect of any damage or losses incurred and any compensation payments due as a result of the industrial or intellectual property right infringement.

In the event of any infringement of IPR, the Supplier shall be obliged:

- i. to acquire a licence for the relevant industrial and intellectual property right and to grant STADLER a corresponding sub-licence to the necessary extent, subject to the terms and conditions set out in this Section 15, paragraph 1, subparagraphs i-iv;
- or
- ii. to alter the Contract Product concerned in such a manner as to put an end to the (alleged) IPR infringement, provided that the change applied is compliant at all times with the Order and that the performance, functionality and suitability for use of the Contract Product concerned is not impaired.

## 16. Intellectual property rights for STADLER

The ownership of, as well as all industrial and intellectual property rights to, documents and items created by the Supplier for STADLER and the processing of the Order from STADLER as well as to variations, modifications, alterations and further developments thereof are fully owned by STADLER and shall be deemed to be settled by the payment of the respective Order. The Supplier waives any right of retention (including in particular also the right of retention pursuant to Articles 895 et seq of the Swiss Civil Code).

Upon transfer of ownership and all development-related intellectual and industrial property rights from the Supplier to STADLER, STADLER shall receive an irrevocable, transferable, non-exclusive, assignable and royalty-free licence for the use of all intellectual and industrial property rights underlying the documents and items or necessary for the exercise of such rights, as well as the variations, modifications, alterations and further developments thereof.

## 17. Ownership rights of STADLER

All rights over documents and the items presented therein or over items which STADLER provides to the Supplier as part of the Order shall remain with STADLER. The Supplier shall not be entitled to use these documents for any purpose other than for processing the Order. Specifically, the Supplier shall have no right to use them for third party orders, to publish them or to make them in any way accessible to third parties. The Supplier undertakes to return or surrender to STADLER any such documents and items following the fulfilment of the corresponding contractual duties under the Order on its own initiative or to irrevocably destroy them at STADLER'S written request. The foregoing shall be without prejudice to any right of the Supplier to retain copies in order to comply with statutory retention requirements.

The Supplier shall treat the corresponding documents and items with care, maintain them properly, mark them as the property of STADLER and adequately insure them against theft, natural hazards and other damage. Until the transfer of possession of these documents and items to STADLER, the Supplier shall bear the risk of theft, damage and destruction. STADLER may require documents and items to be surrendered at any time. The Supplier waives any right of retention (including in particular also the right of retention pursuant to Articles 895 et seq of the Swiss Civil Code).

## 18. Tools

Tools are the property of STADLER, provided that STADLER has handed them over to be used by the Supplier or that STADLER has contributed to the procurement costs of the tools (for example, in case of sharing in the non-recurring costs). The Supplier shall not be entitled to use tools owned by STADLER for any purpose other than the processing of the Order. Specifically, the Supplier shall have no right to use them for third party orders, to publish them or to make them in any way accessible to third parties.

The Supplier shall exercise due care in using the tools owned by STADLER. The usual maintenance of these tools and repairs of the same as a result of normal use shall be the responsibility of the Supplier. The same applies to repairs that are the result of improper use or storage.

The wear-related replacement of the tool at the end of the expected service life is the responsibility of STADLER, provided the tool is owned by STADLER. The Supplier shall inform STADLER in good time of the requirement of any new tool so that the new tool can be procured in good time. If the tool is owned by the Supplier, the replacement of the tool is the responsibility of the Supplier. The Supplier shall also be responsible if a tool owned by STADLER must be newly procured or repaired after a theft or natural hazard, in which case the Supplier must discuss the matter with STADLER in advance.

The Supplier shall treat the corresponding tools with care, maintain them properly, mark them as the property of STADLER and adequately insure them against theft, natural hazards and other damage. Until the transfer of possession of these tools to STADLER, the Supplier shall bear the risk of theft, damage and destruction. STADLER may demand that the tools be surrendered at any time. The Supplier waives any right of retention (including in particular also the right of retention pursuant to Articles 895 et seq of the Swiss Civil Code).

**19. Smart Contract Products**

Without the express approval of STADLER, the Supplier shall be prohibited from integrating parts into the Contract Products that automatically communicate with the environment and/or have the ability to do so or are able to achieve this ability. STADLER must be informed thereof in writing by the Supplier.

A prior and unanimous agreement shall be entered into by STADLER and the Supplier regarding the data traffic of the Contract Product that is classified as necessary, as well as the assignment of the corresponding responsibilities.

**20. Procurement of spare parts**

STADLER shall have the option of procuring spare parts from the Supplier at the prices agreed in the Order for the corresponding Contract Product up to the last delivery of the respective Contract Product. In addition, the Supplier shall make spare parts available to STADLER at the applicable market prices for a period of 10 (ten) years from the last delivery of the corresponding Contract Product. If a Contract Product also includes software, the Supplier shall keep the corresponding updates and support available for at least 10 (ten) years from the last delivery of the corresponding Contract Product.

**21. Ensuring the fulfilment of the contract**

In the event that the Supplier ceases its business operations either entirely or in part in such a manner that jeopardises or is may jeopardises compliance by the Supplier with its obligations, or that insolvency proceedings are initiated in relation to the Supplier (bankruptcy, debt restructuring agreement with the transfer of assets, etc.) or if a solicitor [*Sachwalter*] is appointed or if the Supplier has entered into a composition or arrangement with its creditors because of its financial situation ("**Cessation of Business Operations**"), the Supplier undertakes to inform STADLER in writing as soon as possible concerning the imminent or impending Cessation of Business Operations and specifically to ensure through appropriate action to be agreed upon with STADLER that the know-how relevant for the Contract Products is preserved as far as possible and remains available to STADLER even after the Cessation of Business Operations by the Supplier. If so requested by STADLER, the Supplier shall specifically make all arrangements within its power to enable STADLER to take on selected parts of the business or key staff of the Supplier and/or to second its own staff to the Supplier's business for training purposes prior to the Cessation of Business Operations. The Supplier shall also endeavour to the best of its abilities to ensure that STADLER may, should it so desire, take over contractual relations with sub-suppliers.

The same shall also apply *mutatis mutandis* where, for any other reason, the Supplier is no longer able to comply with its obligations or if it is foreseeable that the Supplier will no longer be able to comply with them.

**22. STADLER'S right of withdrawal**

STADLER is entitled to withdraw from the Order in whole or in part at any time. In the event of such withdrawal, STADLER shall be conclusively liable to the Supplier for the costs listed below:

- The order volume for Contract Products finished but not yet delivered to STADLER, insofar as they have been manufactured in accordance with the Order, and the costs of the raw materials necessarily related to this, which were purchased by the Supplier until receipt of the declaration of withdrawal and which cannot be used by the Supplier for any other purpose.
- The costs of demonstrably accrued, necessary and unpaid production hours up to the date of receipt of the declaration of withdrawal, which cannot be used by the Supplier for any other purpose.

Under no circumstances may the compensation to be paid by STADLER to the Supplier under this clause exceed the remuneration to which the Supplier would be entitled to claim in the event of proper fulfilment of the respective (part of the) Order.

The Supplier may only demand payments in accordance with this clause if the Supplier surrenders the products, raw materials and/or goods for which payment is requested free of all third-party rights and claims and at the request of STADLER.

The Supplier must sufficiently document any claims under this Section.

The Supplier must assist STADLER in mitigating any costs that STADLER may potentially incur as a result of this Section.

In addition, STADLER may withdraw from the Order at any time with immediate effect in writing and without liability for any costs or obligations towards the Supplier in the event

- a) that the control relationships concerning the Supplier change significantly. This is the case where, for legal persons, ownership of more than 50 (fifty) percent of the interests in the entity associated with voting rights changes or, for entities without legal personality, ownership of more than 50 (fifty) percent of the interests in the entity which include the right to elect the management of that company changes. The Supplier shall inform STADLER of such changes within 15 (fifteen) Working Days; or
- b) of a Cessation of Business Operations or if the Supplier is no longer in a position to meet its liabilities and obligations in a timely manner, or enters into bankruptcy or composition proceedings against it, an (official) receiver is appointed, or has entered into a settlement or arrangement with its creditors based on its financial situation; or
- c) the Supplier, in the reasonable opinion of STADLER, violates or has violated applicable law, and such violation is related to the Order or its performance.

The rights of withdrawal set out in this Section shall apply in addition to, and not in lieu of, any other rights of withdrawal to which STADLER is entitled pursuant to the Order or under applicable law.

## 23. Confidentiality

In the context of the Order, the Supplier may obtain direct or indirect access to information from STADLER, STADLER's Related Businesses or their customers, suppliers or other business partners ("**Confidential Information**"). The fact that the Order has been concluded, its content and the Contract Products as such shall also be deemed Confidential Information.

The Supplier undertakes to treat the Confidential Information at all times in the strictest confidence and to protect it against third-party access. In addition, it shall only grant access to the Confidential Information to those employees and/or Related Businesses who absolutely require it for order processing.

Confidential Information shall not include information that:

- was already generally known or in the public domain at the time it was provided by STADLER; or that
- became generally known or came into the public domain after its transmission but prior to disclosure other than as a result of a breach of these confidentiality provisions by the Supplier; or that
- was already lawfully held by the Supplier before the Confidential Information was provided to it by STADLER; or that
- was provided to the Supplier by a third party, unless the Supplier was aware that the third party was committing a breach of a duty of confidentiality taken on towards STADLER by making it available; or that
- was developed independently by the Supplier without using the Confidential Information provided by STADLER; or that
- was subject to a requirement of disclosure to a third party pursuant to a mandatory statutory requirement or under the terms of a court order or official direction, in which case the Supplier must – where permitted by law – inform STADLER promptly in writing concerning the disclosure requirement.

If the Supplier breaches the duties set out in this Section, the Supplier shall owe STADLER a contractual penalty of CHF 50,000 (fifty thousand) payable directly and per incident. The contractual penalty shall not release the Supplier from its obligation to comply with its contractual obligations. The foregoing shall be without prejudice to any entitlement to claim damages in excess of the contractual penalty. The contractual penalty shall be offset against any claims for damages. Payment of the contractual penalty shall not release the Supplier from fulfilling its contractual obligations.

## 24. Code of Conduct

The Supplier undertakes to comply with the requirements contained in the Code of Conduct agreed with STADLER.

The Supplier shall also take reasonable steps to ensure that its subcontractors, representatives or other agents also comply with the duties specified in the agreed Code of Conduct and that they comply with the standards and requirements set out therein.

In particular, the Supplier confirms and warrants that, upon inception of the Order, as well as during the term thereof, neither it nor its executive officers, employees, agents or other representatives and governing officers will offer, promise, give, approve, request or accept any undue benefits whatsoever that are in any way related to the business operations of the Supplier and that such persons have not engaged in any such acts prior to the inception of the Order.

In the event of a breach of this Section 24, STADLER may, for good cause, withdraw from the order in whole or in part and claim damages.

## 25. Problematic or unregistered substances

The Supplier shall ensure that all utilised substances covered by the EU Chemicals Regulation REACH are registered or authorised by STADLER in accordance with this Regulation and taking into account the contractual use of the substances. This also applies to suppliers outside the EU. Upon request by STADLER, the Supplier shall provide appropriate evidence of compliance with this obligation. Safety data sheets must be kept up-to-date and electronically available or sent automatically upon initial delivery of the Contract Products.

## 26. Obsolescence, discontinuation notices

Discontinuation notices regarding Contract Products must be sent by email to [obsoleszenz@stadlerail.com](mailto:obsoleszenz@stadlerail.com), indicating the order number and the name of any successor product and indicating the deadline for placing a final order.

## 27. Production site

STADLER must be informed in writing by the Supplier of the production site. Any change of production site planned by the Supplier for Contract Products shall require the prior written consent of STADLER.

The Supplier is obliged to comply with the statutory, country- and sector-specific regulations on environmental protection and recycling applicable to the production site.

## 28. Group clause

STADLER shall be entitled to transfer rights and obligations arising from the Order to Related Businesses of STADLER without the consent of the Supplier, in which case these GTCP shall remain valid without limitation.

## 29. Labelling of Contract Products

Labels may be affixed to places not visible to passengers, provided that these do not obstruct STADLER or the end customer in the course of inspection and cleaning work. STADLER may request that improper labels not be affixed to the Contract Products (for example, a logo) or that they be removed by the Supplier.

## 30. Advertising

The Supplier shall only be permitted to use specific Orders and the business relationship as such for advertising purposes with the prior, written approval of STADLER.

If the Supplier breaches the duties set out in this Section, the Supplier shall owe STADLER a contractual penalty of CHF 50,000 (fifty thousand) payable directly and per incident. The contractual penalty shall not release the Supplier from its obligation to comply with its contractual obligations. The foregoing shall be without prejudice to any entitlement to claim damages in excess of the contractual penalty. The contractual penalty shall be offset against any other damages. Payment of the contractual penalty shall not release the Supplier from fulfilling its contractual obligations.

### 31. Force majeure

A "**Force Majeure Event**" is a circumstance which renders it impossible or unreasonably onerous for a party to perform its contractual obligations, provided that the party invoking it (the "**Affected Party**") provides written evidence to the other party that:

- i. the Force Majeure Event is outside the operational control or otherwise outside the reasonable control of the Affected Party; and
- ii. the Force Majeure Event could not have been averted even with the utmost care; and
- iii. the occurrence or effects of the Force Majeure Event were unforeseeable at the time of conclusion of the Order; and
- iv. the Affected Party will do its utmost to minimise the impact of the Force Majeure Event on the performance of its obligations;

For the duration of the effects of the Force Majeure Event, the Affected Party shall be suspended from the affected contractual obligations under the Order, however, the obligations shall not automatically cease, both in the case of a temporary impossibility or the agreement of a specific expiry date is agreed, but rather

- in the event of foreseeable impossibility of more than two (2) months, STADLER can unilaterally terminate the mutual obligations;
- in the event of foreseeable impossibility for more than 6 (six) months, the parties either agree on the continuation of the mutual obligations or each party may declare the relief from such obligations.

In case of continuation of the mutual obligations, the parties shall agree on a new date of performance as soon as the discontinuation of the Force Majeure Event is foreseeable. The default provisions shall apply accordingly to the new date of performance.

The party invoking Force Majeure shall immediately notify the other party in writing of the occurrence ("**FM Information**") and at the discontinuation of the Force Majeure Event and shall inform the other party of its efforts to minimise the effects of the Force Majeure Event upon request but at least every 2 (two) weeks. The suspension shall apply from the occurrence of the Force Majeure Event and, in the event of FM Information being given late, from the receipt of the FM Information invoking this clause.

### 32. Severance

If any provision of the Order is invalid or unenforceable, this shall not affect the validity of the remaining provisions of the Order. In such case, however, the parties shall endeavour to replace the invalid or unenforceable term with a different valid and enforceable term that comes as close as possible in terms of its legal and financial content to the invalid or unenforceable term. This shall likewise apply *mutatis mutandis* to the filling of any gaps in the Order.

### 33. Final provisions

The Order shall be governed by substantive **Swiss law**, excluding the provisions on the conflict of laws and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any disputes arising out of or in relation to the Order shall fall under the exclusive jurisdiction of the **ordinary courts at the registered office of STADLER**.