

## TERMS AND CONDITIONS OF SALE AND SUPPLY BY QUARTZTEQ GMBH

These terms and conditions (“**Conditions**”) apply to all transactions for the sale of any products and/or the performance of any services ordered from or to be supplied or performed by QUARTZTEQ GmbH (Company commercial registration number: CHE-346.903.492) whose registered office is Bahnhofstrasse 3, 5436 Würenlos, Switzerland (“**QUARTZTEQ**”).

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions unless the context requires otherwise the following words have the following meanings:

“**Contract**” any contract between the Customer and QUARTZTEQ for the purchase of Goods and/or Services incorporating these Conditions, any applicable Specification and the Order.

“**Contract Price**” the price payable by the Customer for the Goods and/or Services as specified in the Order.

“**Customer**” the person or organisation who purchases Goods and/or Services from QUARTZTEQ as identified in the Order.

“**Customer Default**” has the meaning given to it in Clause 3.7.

“**Delivery Location**” the location set out in the Order or such other location as the parties may agree subsequently for the purposes of delivery of the Goods and/or performance of the Services.

“**Force Majeure Event**” any occurrence which hinders, delays or prevents a party in performing any of its obligations under this Contract which is beyond its reasonable control including but not limited to acts of God, war, explosion, flood, fire, governmental actions, strike, lock-out, or other form of industrial action (other than a strike, lock-out or other form of industrial action induced by the party so incapacitated), power breakdown or machinery breakdown.

“**Goods**” any products ordered by the Customer from QUARTZTEQ or to be supplied by QUARTZTEQ to the Customer and any products and/or materials which are to be utilised in the performance of the Services in which ownership is intended to pass to the Customer once the Services have been performed.

“**Liquidated Damages Sum**” the sum specified in the Order being the amount of the liquidated damages applicable to the Contract in accordance with Clause 7.3.

“**Losses**” any and all liability or losses arising from actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities.

“**Order**” an order placed in writing by the Customer with QUARTZTEQ for the supply of the Goods and/or provision of the Services whether made by fax or e-mail or as may be set out in the Customer's purchase order form or the Customer's written acceptance of QUARTZTEQ's quotation, as the case may be, being identified as such in the order acceptance which is issued by QUARTZTEQ.

“**Services**” the services and/or work to be performed by QUARTZTEQ for the Customer as identified in the Order.

“**Specification**” any specification for, or the quality and/or description of, the Goods and/or Services, including any relevant plans or drawings, that is agreed in writing by the Customer and QUARTZTEQ and as may be set out in the Order or as may be subsequently agreed between the parties following confirmation of the Order.

“**VAT**” value added tax and any such tax amending or replacing the same or the equivalent taxation in the relevant jurisdiction.

“**Warranty Period**” the period specified in the Order for the duration of the warranties provided under Clause 17.1.

1.2 In these Conditions:

- (a) reference to any gender includes all genders;
- (b) reference to the singular shall include the plural and vice versa;
- (c) words indicating a person shall include bodies of persons whether corporate or incorporate;
- (d) reference to a Clause is to the relevant Clause in these Conditions;
- (e) the headings are for convenience only and shall not affect their interpretation;
- (f) reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted

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or consolidated and all subordinate legislation from time to time made under it.

### 2. FORMATION OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase the Goods and/or the Services on these Conditions.
- 2.2 Any quotation given by QUARTZTEQ shall not constitute an offer, and unless specified otherwise by QUARTZTEQ in writing, is only valid for a period of 30 calendar days from its date of issue.
- 2.3 A legally binding contract will only be formed between QUARTZTEQ and the Customer when either:
- (a) QUARTZTEQ has notified the Customer of its acceptance of the Customer's Order in writing; or
  - (b) (if earlier) by its actions has commenced performance of the Customer's Order.
- 2.4 A read receipt or delivery receipt of an email will not amount to written confirmation of QUARTZTEQ's acceptance of the Customer's Order.
- 2.5 QUARTZTEQ may refuse to accept any Order placed by the Customer and will have no liability to anyone else in such circumstances.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 3. SPECIFICATION

- 3.1 The quantity, quality and description of the Goods and/or Services shall be as specified in the Order and/or in any Specification provided to QUARTZTEQ by the Customer or produced for the Customer by QUARTZTEQ and/or as otherwise agreed in writing between the parties. Details in brochures and price lists produced by QUARTZTEQ and/or the Specification are intended as guidance only and are only intended to give a general approximation of the Goods and/or Services unless stated in the Order or otherwise agreed in writing.
- 3.2 Any Specification, moulds, dies, materials and/or equipment together with the copyright, design rights, patents and/or any other intellectual property rights in all Specifications, data and materials specifically produced and/or used by QUARTZTEQ for the Customer in connection with the Contract, shall be and

shall remain the exclusive property of QUARTZTEQ, unless such data or materials is provided to QUARTZTEQ by the Customer.

- 3.3 The Customer shall check and ensure that any Order and any Specification is accurate and adequate for the provision of the Goods and/or Services and QUARTZTEQ shall have no liability for any Losses arising from or in connection with any errors in any Specification or details provided by and/or approved by the Customer or in any delay by the Customer is providing and/or approving the same.
- 3.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify QUARTZTEQ against all Losses (including all legal and other professional costs and expenses) suffered or incurred by QUARTZTEQ in connection with any claim made against QUARTZTEQ for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with QUARTZTEQ's use of the Specification. **This Clause 3.4 shall survive termination of the Contract.**
- 3.5 The Customer shall give QUARTZTEQ any information requested by QUARTZTEQ to perform the Contract.
- 3.6 The Services shall be performed by appropriately qualified and trained personnel with due care and diligence to such high standard of quality as it is reasonable for the Customer to expect in all the circumstances.
- 3.7 If QUARTZTEQ's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) QUARTZTEQ shall without limiting its other rights or remedies have the right to suspend delivery of the Goods and/or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays QUARTZTEQ's performance of any of its obligations;
  - (b) QUARTZTEQ shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from QUARTZTEQ's failure or delay to perform

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any of its obligations as set out in this Clause 3.7; and

- (c) the Customer shall reimburse QUARTZTEQ on written demand for any Losses sustained or incurred by QUARTZTEQ arising directly or indirectly from the Customer Default.

3.8 QUARTZTEQ shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services under Swiss law, but it shall be the responsibility of the Customer to ensure the Specification and the Order give sufficient details to QUARTZTEQ to ensure the Goods and Services are compliant with all applicable regulations and other legal requirements in the country of destination requested by the Customer.

#### 4. CHANGES TO SPECIFICATION BY QUARTZTEQ

4.1 QUARTZTEQ reserves the right to make any changes to the Specification, Order, Goods and/or Services which are required from time to time by law or any applicable safety or manufacturing requirements provided such changes do not materially affect the quality and/or performance of the Goods and/or Services.

#### 5. IMPORT LICENCES

5.1 Unless otherwise agreed in writing by QUARTZTEQ or specified in the Order, the Customer is responsible for:

- (a) obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by QUARTZTEQ, the Customer shall make those licences and consents available to QUARTZTEQ prior to the relevant shipment; and
- (b) ensuring that the delivery of the Goods complies with any other legislation or regulations governing the importation of goods into the country of destination requested by the Customer.

#### 6. EXPORT COMPLIANCE

6.1 In order to comply with national and international trade regulations, the parties will support each other and provide all necessary documentation and information (such as relating to the final destination and end use of the items). QUARTZTEQ shall have the right to

withdraw from the Contract, without being obliged to pay any compensation to the Customer, if

- (a) the Customer, despite request, does not provide either any or sufficient enough information about the final destination and the end use of goods
- (b) QUARTZTEQ obtains knowledge of an unintended end use;
- (c) the Goods and Services are intended for military end use, civil nuclear use or for use in connection with weapons of mass destruction or for missiles capable of delivering such weapons; or
- (d) a possibly illegal or unlicensed export or an infringement of embargo rules cannot be fully ruled out.

#### 7. DELIVERY AND PERFORMANCE

7.1 Delivery of the Goods will be made in accordance with the Incoterm specified in the Order to the Delivery Location, in the absence of which it shall be made by the Customer collecting the Goods from QUARTZTEQ's premises within 7 calendar days from QUARTZTEQ notifying the Customer that the Goods are ready for collection.

7.2 QUARTZTEQ will use its reasonable endeavours to achieve delivery and/or performance by the Delivery Date specified in the Order but each such date is to be treated as an estimate only and time shall not be of the essence of the Contract.

7.3 If for any reason (other than a Force Majeure Event or a Customer Default) QUARTZTEQ fails to provide the Goods and/or Services in accordance with the desired Delivery Date specified in the Order, the Customer may, by way of liquidated damages, deduct from the price the Liquidated Damages Sum for each day or week (being the sum and frequency as specified in the Order or in the absence of any specified figure being 0.25% of the Contract Price per week) that the Delivery Date is delayed up to a maximum of the percentage specified in the Order (or in the absence of such maximum figure being no more than 5% of the total Contract Price). The Customer and QUARTZTEQ both acknowledge and confirm that any such deduction is a genuine pre-estimate of the damage and loss likely to be suffered by the Customer as a result of the failure to meet the desired Delivery Date. Such deduction shall be the Customer's sole and exclusive remedy for

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QUARTZTEQ's failure to provide the Goods and/or Services by the desired Delivery Date.

7.4 The Customer will have no right to reject or object to the Goods and/or Services and will have no right to rescind for late performance unless the due date for performance has passed and the Customer has served on QUARTZTEQ a written notice requiring the Contract to be performed giving the QUARTZTEQ no less than 30 calendar days in which to do so and the notice has not been complied with.

7.5 QUARTZTEQ may deliver the Goods by separate instalments and/or perform the Services in stages as set out in the Order and each delivery and/or stage shall constitute a separate and distinct contract which QUARTZTEQ shall be entitled to invoice separately. Failure by QUARTZTEQ to deliver any instalment or perform any stage shall not entitle the Customer to treat the Contract as a whole as repudiated and/or terminated.

7.6 If the Customer fails to take delivery of the Goods or fails to allow performance of the Services then without prejudice to any other right or remedy available to QUARTZTEQ, QUARTZTEQ may:

- (a) withhold delivery and/or performance of any other Goods and/or Services;
- (b) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or
- (c) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7.7 If the Customer fails to take delivery of the ordered Goods or fails to allow performance of the ordered Services the Customer will indemnify and keep indemnified QUARTZTEQ against any and all Losses (including increased administration and legal costs on a full indemnity basis) incurred and/or suffered by QUARTZTEQ as a result.

### 8. NON-DELIVERY

8.1 The quantity of any consignment of Goods as recorded by QUARTZTEQ on despatch from QUARTZTEQ's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless

the Customer can provide conclusive evidence proving the contrary.

8.2 QUARTZTEQ shall not be liable for any non-delivery of Goods (even if caused by QUARTZTEQ's negligence) unless the Customer gives written notice to QUARTZTEQ of the non-delivery within 5 calendar days of the date when the Goods would in the ordinary course of events have been received.

8.3 Any liability of QUARTZTEQ for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

### 9. SITE FOR SERVICES

9.1 To enable QUARTZTEQ to perform the Services the Customer will at its own cost provide the following in respect of the site where the Services are to be performed:

- (a) sufficient and suitable access to the site;
- (b) a safe area which complies with all applicable statutory and other regulations and codes of practice to enable performance of the Services; and
- (c) all necessary health and safety policies applicable to the site and to QUARTZTEQ's personnel whilst performing the Services.

### 10. CANCELLATION

10.1 No Order which has been accepted by QUARTZTEQ may be cancelled by the Customer except with QUARTZTEQ's prior written agreement and on terms that the Customer shall indemnify and keep indemnified QUARTZTEQ in full against any and all Losses (including the cost of all labour and materials used) incurred and/or suffered by QUARTZTEQ as a result of cancellation.

### 11. POSTPONEMENT

11.1 QUARTZTEQ will be under no obligation to do so but may comply with a reasonable request by the Customer to postpone delivery of the Goods and/or performance of the Services.

11.2 If delivery of the Goods and/or performance of the Services is postponed at the Customer's request the Customer shall indemnify and keep indemnified QUARTZTEQ in full against any and all Losses (including increased administration and legal costs on a

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full indemnity basis as well as any storage costs and associated insurance costs) suffered and/or incurred by QUARTZTEQ as a result and shall also pay for the Goods and/or Services as if delivery and/or performance had not been postponed.

### 12. PRICE

12.1 Unless otherwise agreed in writing the price of the Goods and/or for performance of the Services shall be the Contract Price as stated in the Order.

12.2 All prices or rates specified are exclusive of any applicable VAT or other applicable sales taxes or duties which shall be payable by the Customer where applicable.

### 13. PAYMENT

13.1 The Customer will pay the Contract Price for the Goods and/or Services at the frequency, in the installments and in the currency as specified in the Order or QUARTZTEQ's quotation, in the absence of which payment shall be made within 30 calendar days of the date of invoice and QUARTZTEQ shall be entitled to issue such invoice on or at any time after delivery of the Goods and performance of the Services or in the event of the Customer failing to accept delivery or permit performance the due date for such delivery and performance. In any case, QUARTZTEQ shall be entitled to demand payments in advance.

13.2 Time for payment shall be of the essence of the Contract.

13.3 All amounts due under this Contract shall be paid by the Customer to QUARTZTEQ in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

13.4 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy QUARTZTEQ may have QUARTZTEQ shall be entitled to:

- (a) immediately cancel the Order and suspend delivery and/or performance of any other Orders;
- (b) appropriate any payment made by the Customer to such Order as QUARTZTEQ may think fit;
- (c) charge interest from the due date until payment in full is made (both before and after judgment) on the amount unpaid at the rate of 5% (five percent).

### 14. RISK

14.1 Risk in the Goods and of damage to or loss of the Goods shall pass to the Customer:

- (a) in the case of Goods to be delivered at QUARTZTEQ's premises at the time when QUARTZTEQ notifies the Customer that the Goods are available for collection; or
- (b) in the case of Goods to be delivered otherwise than at QUARTZTEQ's premises at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods the time when QUARTZTEQ has tendered delivery of the Goods; or
- (c) in the case of Goods utilised in the performance of Services once utilised in the Services.

### 15. TITLE

15.1 Despite delivery of the Goods and risk having passed to the Customer, title and ownership in the Goods shall remain with QUARTZTEQ until it has received payment in full and cleared funds for:

- (a) the Goods and the Services; and/or
- (b) all other goods and services agreed to be provided by QUARTZTEQ to the Customer for which payment is then due under this and any other agreement.

15.2 Until such time as title in the Goods passes to the Customer the Customer shall:

- (a) hold the Goods as QUARTZTEQ's fiduciary agent and bailee;
- (b) keep the Goods stored in a secure and satisfactory condition separate from all other goods of the Customer and/or third parties and clearly marked in such a way as to be readily identifiable as QUARTZTEQ's property;
- (c) not alter, remove, destroy or obscure any identifying marks, logos or packaging on or relating to the Goods; and
- (d) keep the Goods insured for the price at which the Goods were sold to the Customer against all insurable risks and the Customer shall hold any proceeds of such policy of insurance in relation to the Goods on trust for QUARTZTEQ.

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- 15.3 The Customer may resell the Goods prior to title and ownership having passed provided such sale is in the ordinary course of the Customer's business at full market value and that such sale is a sale of QUARTZTEQ's property on the Customer's own behalf acting as principal.
- 15.4 QUARTZTEQ shall be entitled to recover payment for Goods despite ownership not having passed.
- 15.5 The Customer grants QUARTZTEQ's employees and/or agents the right to enter the Customer's premises or any other premises where the Goods are or may be stored in order to confirm the Customer's compliance with this Clause 15 (Title) and/or, if the Customer's right to possession has ceased, to recover the Goods.
- 15.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of QUARTZTEQ and if the Customer does so all moneys owing by the Customer to QUARTZTEQ shall (without prejudice to any other right or remedy of QUARTZTEQ) immediately become due and payable.
16. **CONFIDENTIALITY**
- Neither party shall use and/or disclose any confidential information which is acquired by it about the other party's business and/or given by one party to the other party and/or generated by one party using the other party's confidential information except in the proper performance of this Contract. This clause shall survive termination of the Contract.
17. **WARRANTY**
- 17.1 Subject to Clause 17.4 below, QUARTZTEQ warrants to the Customer that the Goods and Services will correspond in all material respects with the Specification at the time of delivery and will be free from material defects in design, materials and/or workmanship for the duration of the Warranty Period (or in the absence of such period being specified in the Order the period of 12 months) running from:
- 17.2 in the case of Goods, the date of shipment from QUARTZTEQ's premises of the Goods to the Customer; and/or
- 17.3 in the case of Services, the date of completion of the performance of the Services.
- 17.4 Customer shall inspect the condition of the Goods and Services as soon as feasible in the normal course of business and, if he discovers defects for which QUARTZTEQ is liable under warranty, shall notify QUARTZTEQ without delay.
- 17.5 QUARTZTEQ shall have no liability under the warranty in Clause 17.1 above in respect of:
- 17.6 any defect in the Goods and Services arising from QUARTZTEQ's compliance with any instructions and/or Specification supplied and/or approved by the Customer;
- 17.7 any faults and/or defects caused by fair wear and tear, wilful damage, abnormal working conditions, failure to follow QUARTZTEQ's instructions, misuse, alteration and/or repair of the Goods and Services without QUARTZTEQ's prior written approval and/or improper maintenance or negligence on the part of the Customer or a third party;
- 17.8 Goods and Services in respect of which the total price has not been paid by the due date for payment; and
- 17.9 those parts, materials and/or equipment which are not manufactured by QUARTZTEQ in respect of which the Customer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to QUARTZTEQ.
- 17.10 If any of the Goods and Services are defective and are covered by the warranty in Clause 17.1 above QUARTZTEQ shall at its sole option either repair the Goods or supply replacement Goods and Services or refund the price which has been paid by the Customer for the defective Goods and Services. Such repair, replacement or refund shall be the Customer's sole remedy in respect of any claims it has under the warranty given by QUARTZTEQ in Clause 17.1 above.
- 17.11 At QUARTZTEQ's reasonable request the Customer must return to QUARTZTEQ any alleged defective Goods for inspection and/or procure sufficient access to the premises at which any alleged defective Services have been performed to enable inspection.
- 17.12 Any work carried out by QUARTZTEQ, including but not limited to an inspection of the Goods and/or a visit to inspect Services, which is not covered by the warranty in Clause 17.1 will be charged for at QUARTZTEQ's normal rate on a time and materials basis.
- 17.13 The Customer shall procure sufficient access to the premises at which any Goods are held and Services have been performed to enable QUARTZTEQ to reperform Services in accordance with Clause 17.10.

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- 17.14 Such repair, replacement or refund shall be provided by QUARTZTEQ within a reasonable period of time of QUARTZTEQ being notified of the defect provided it is notified by the Customer immediately or within 30 calendar days at the latest of the defect becoming apparent or when it should reasonably have become apparent to the Customer.
18. **LIMITATION OF LIABILITY**
- 18.1 Any liability of QUARTZTEQ is excluded to the extent permitted by law. Therefore, QUARTZTEQ shall not be liable for any loss or damage suffered by the Customer arising under or in connection with this agreement, whether in contract or tort or otherwise, caused by ordinary negligence.
- 18.2 Any liability of QUARTZTEQ for any loss or damage suffered by the Customer caused by QUARTZTEQ's associates, employees and/or auxiliary persons is explicitly excluded.
- 18.3 QUARTZTEQ's total liability to the Customer under this Contract shall not exceed the Contract Price.
- 18.4 QUARTZTEQ shall have no Losses to the Customer for any:
- (a) loss of profits;
  - (b) depletion of reputation and goodwill;
  - (c) loss and/or corruption of data and systems;
  - (d) pure economic losses;
  - (e) special damages;
  - (f) aggravated, punitive and/or exemplary damages;
  - (g) consequential and/or indirect losses; and/or
  - (h) interruption of business, loss of business, contracts and/or opportunity.
- 18.5 Except for the financial cap on liability which shall apply only once in respect of all types of liability, each of the limitations and/or exclusions set out in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- (a) liability in contract (including fundamental breach);
  - (b) liability in tort (including negligence);
  - (c) liability for breach of statutory duty; and
  - (d) liability for breach of law and/or any other legal basis.
- 18.6 QUARTZTEQ shall have no liability to the Customer for defective Goods and Services to the extent the defect is caused or contributed to by the Customer and/or by the Customer's continued use of defective Goods and Services after the defect has become apparent or suspected or should reasonably have been apparent or suspected by the Customer.
- 18.7 All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Conditions are excluded from this Contract to the fullest extent permitted by law.
19. **TERMINATION**
- 19.1 Either party may immediately terminate the Contract by written notice if the other party:
- (a) breaches the terms of the Contract (and if remediable the breach has not been remedied within 30 calendar days of receiving notice requiring it to be remedied);
  - (b) persistently breaches any one or more terms of the Contract;
  - (c) fails to make any payment when due;
  - (d) is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, take or suffer any similar action in any jurisdiction or any step is taken (including without limitation the making of an application on the giving of any notice) by it or by any other person in respect of any of these circumstances (except for the purposes of amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on that other party under this Contract);
  - (e) ceases or threatens to cease to carry on business; and/or
  - (f) appears reasonably to the other party to be about to suffer any of the above events.
- 19.2 If QUARTZTEQ has the right to terminate the Contract:

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- (a) QUARTZTEQ may withhold delivery of any undelivered Goods and stop any Goods in transit;
- (b) QUARTZTEQ may withhold performance of any Services and cease any Services in progress;
- (c) QUARTZTEQ may terminate the Customer's right to re-sell and retain possession of any of the Goods owned by QUARTZTEQ;
- (d) QUARTZTEQ may enter the Customer's premises or any other premises where the Goods are or may be stored and may repossess and sell or dispose of any Goods owned by QUARTZTEQ to discharge any sums owed by the Customer to QUARTZTEQ under the Contract or any other agreement with the Customer; and
- (e) all monies owed by the Customer to QUARTZTEQ shall immediately become due and payable.

### 20. ENTIRE AGREEMENT

- 20.1 The Contract constitutes the entire agreement between the parties and supersedes any previous agreement between the parties relating to its subject matter.
- 20.2 The parties agree that they have not entered into the Contract in reliance on any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Contract. Nothing in the Contract shall exclude liability for any fraudulent statement and/or act made prior to the date of the Contract.
- 20.3 Each of the parties acknowledges and agrees that the only remedy available to it for breach of the Contract shall be for breach of contract under the terms of the Contract and it shall have no right of action against any other party in respect of any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Contract.

### 21. FORCE MAJEURE

- 21.1 Neither party shall be liable for any delay or failure to perform its obligations under the Contract (save in respect of payment of monies payable for the Goods and Services) as a result of a Force Majeure Event lasting more than 7 calendar days and any other similar events. If the Force Majeure Event causing the delay

or failure continues in excess of 1 month the Contract may be terminated at the option of the party not affected by the Force Majeure Event.

### 22. GENERAL

- 22.1 No variation to these Conditions or the Order shall be binding unless agreed in writing by an authorised representative of QUARTZTEQ.
- 22.2 No waiver by either party of any breach of the Contract by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.3 Any invalidity, illegality or unenforceability of any or any part of a provision of the Contract shall not affect the validity, legality or enforceability of the remaining provisions of the Contract.
- 22.4 The Customer shall not assign, transfer, dispose of or sub contract (or purport to do any of the above in respect of) any of its rights or obligations under the Contract without the prior written consent of QUARTZTEQ.
- 22.5 None of the terms and conditions of the Contract shall be enforceable by any person who is not a party to it. This shall not apply to any company within the same group of companies as QUARTZTEQ who QUARTZTEQ consents to being able to enforce the Contract in addition to QUARTZTEQ. The rights of any third party to enforce the Contract may be varied and/or extinguished by agreement between the parties without the consent of any third party.

### 23. GOVERNING LAW AND JURISDICTION

- 23.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with **Swiss Law** without regard to its conflict of laws provisions. The United Nations Conventions on the International Sale of Goods shall not apply to this Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms 2010) shall apply but where they conflict with this Contract, this Contract shall prevail.
- 23.2 Exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) is **5400 Baden, Switzerland**.