

General Terms and Conditions for the Sale of Products and/or Services

1 General

1.1 Definitions:

“*Affiliate*” means, with respect to a Party, any other person or entity that controls, is controlled by or is under common control with such Party;

“*Annexes*” shall have a meaning set out under Section 15.1 (List of Annexes);

“*Authorized Representative*” means the individual that has the authority to legally bind a Party to an agreement;

“*Buyer*” means the entity to which the Seller is providing Products or performing Services under the Contract;

“*Confidential Information*” means any information disclosed by one Party to the other Party, whether in oral, written or any other form (including on-site observations), that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including (but not limited to) the terms and conditions of the Contract, the existence of the project relating to the Contract and business, commercial, product design, strategic, financial, pricing and technical information of the other Party;

“*Contract*” means either the contract made in writing and signed by and between both Parties, or the mutually accepted final purchase order or similar document (including the scope and pricing) between the Parties for the sale and purchase of Products and/or Services, together with these Terms and Conditions and Orgalime S2012. In the event of any discrepancies or differences of interpretation, the Terms and Conditions (including its Annexes) firstly, and Orgalime S2021 secondly, shall take precedence over any other documents included in the Contract;

“*Contract Price*” means the agreed price stated in the Contract for the sale of Products and/or Services, including adjustments (if any) in accordance with the Contract. Unless otherwise agreed between the Parties in writing, the Contract Price shall be determined according to the Seller’s current standard price list for the Products and/or Services in question;

“*Ex Works*” shall have the meaning set out in Incoterms 2020;

“*Force Majeure*” shall have the meaning set out in Section 41 of Orgalime S2012;

“*Incoterms 2020*” means the international commercial terms by the International Chamber of Commerce, Incoterms 2020;

“*IPR*” shall have the meaning set out in Section 10.1 (Title to IPR);

“*Orgalime S2012*” shall have the meaning set out in Section 2.1 (Application);

“*Other Charges*” shall have the meaning set out in Section 5.2;

“*Party*” or “*Parties*” means one or both of the Seller and the Buyer as the context requires;

“*Product*” or “*Products*” means the materials, goods, and/or products to be supplied under the Contract by the Seller to the Buyer;

“*Seller*” means the Evac Group entity providing Products and/or performing Services under the Contract;

“*Service*” or “*Services*” means the services to be performed under the Contract by the Seller to the Buyer;

“*Terms and Conditions*” means these “General Terms and Conditions for the Sale of Products and/or Services” and its Annexes, together with any modifications or additional provisions agreed between the Parties in writing, provided that any such provisions are expressly stated to prevail over the provisions set forth in these Terms and Conditions;

“*Variation Order*” shall have the meaning set out in Section 4.5 (Variation Orders);

“*VAT*” means (i) any tax imposed in compliance with the European Union’s Council Directive 2006/112/EC of 28 November 2006 amended on the common system of value added tax, (ii) any other tax of a similar fiscal nature, whether imposed in a member state of the European Union in substitution for, or in addition to, such tax, or imposed elsewhere, and (iii) any similar taxes imposed on the sale of goods and services in any applicable jurisdiction; and

“*Warranty Terms*” shall have the meaning set out in Section 11.1 (Seller’s Warranty).

1.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

1.3 *In Writing.* Any references to written form shall mean a document or email, whether electronic or in hard copy, that is signed by the Authorized Representative of the Party in question.

1.4 *Titles and Headings.* Titles and headings of sections of these Terms and Conditions are for convenience only and shall not affect the construction of any provision of these Terms and Conditions.

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2 Application

2.1 *Application.* These General Terms and Conditions for the Sale of Products and/or Services together with Orgalime's General Conditions for the Supply of Mechanical, Electrical and Electronic Products, version March 2012 ("*Orgalime S2012*") shall apply to any sales of Products and/or Services sold by the Seller and purchased by any Buyer. In any cases of inconsistency between these Terms and Conditions and Orgalime S2012, the former shall prevail.

2.2 *Exclusion of Inconsistent Terms.* These Terms and Conditions, together with Orgalime S2012, shall be deemed to be annexed to any quotation made by the Seller, as well as to any acceptance by the Seller of a purchase order by the Buyer, and therefore:

- i. form the terms and conditions of the Contract; and
- ii. apply to the exclusion of any inconsistent or additional terms and conditions put forward by or on behalf of the Buyer (e.g. the Buyer's general terms).

The above subsection (ii) to this Section 2.2 (Exclusion of Inconsistent Terms) shall not, however, apply to such modifications or additional provisions that are expressly agreed between the Parties in writing to be prevailing over the provisions set forth in these Terms and Conditions and/or over the provisions set forth in Orgalime S2012.

3 Representations

3.1 *Representations.* Without limiting any other representations and warranties, each Party represents and warrants, that:

- i. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite corporate power and authority to carry on its business;
- ii. the Contract is within its powers and has been duly authorized and signed;
- iii. the execution, delivery and performance of the Contract does not violate, conflict with or constitute a default under (i) its articles of association or similar registered company rules, or (ii) any law, statute, rule or regulation to which it is subject, or any order, judgment or decree to which it is subject to;
- iv. it is not insolvent, and it will not be rendered insolvent by the performance of the Contract, and it is able to meet its respective business obligations as they come due. No proceeding in bankruptcy or insolvency has commenced or is pending against it; and
- v. it is in compliance with all applicable laws, rules and regulations, including but not limited to import and export control laws and regulations, tax legislation, international trade restrictions, anti-corruption and anti-money laundering laws, employer related laws as well

as health, safety and environmental legislation.

4 Conclusion of Contract

4.1 *Quotation.* Any quotation by the Seller shall remain open for a maximum period of thirty (30) days from the date appearing thereon and may be withdrawn or altered by the Seller at any time within such period without notice. Additionally, obvious or apparent mistakes or errors in the quotation are not binding upon the Seller and may be corrected by the Seller at any time in its sole discretion.

4.2 *Purchase Order.* Any quotation submitted by the Seller amounts to an invitation to treat and not an offer, regardless of the language used. The placing by the Buyer of any purchase order (whether or not any quotation may have been submitted) shall constitute an offer by the Buyer and is always subject to Seller's written order confirmation.

4.3 *Samples and Catalogues.* Samples and catalogues of Products or Services are to be considered non-binding material for illustration and/or test purposes, giving only an initial approximation of properties and specification. Drawings, specifications of dimensions and weight, which form the basis of the quotation or order confirmation, shall as a rule only be seen as approximate values, insofar as they are not exclusively designated to be binding.

4.4 *Measurements.* The weight, volume or gage of the Products measured upon shipment is valid.

4.5 *Variation Orders.* Any changes to the quantities, delivery times or other arrangements or details relating to the Products or Services that are proposed by the Buyer after the conclusion of the Contract (the "*Variation Order*") are to be considered as a new offer by the Buyer, and subsequent written acceptance by the Seller is required. In case of a Variation Order, the Seller is entitled to a fair and reasonable adjustment of the Contract Price corresponding to the changes under the Variation Order, delivery schedule and other terms of the Contract, as may be necessary and appropriate. In case of a Variation Order, the Buyer shall have the sole responsibility for payment of any resulting additional charges that are not included in the Contract Price.

5 Price and Payment

5.1 *Contract Price.* The Buyer shall purchase the Products and/or Services from the Seller at the Contract Price.

5.2 *Other Charges.* The Contract Price is Ex Works, however, exclusive of all such fees and charges that the Seller's quotation does not expressly state to be included in the Contract Price, as well as VAT and any other taxes, duties, and charges of any kind imposed by any governmental authority or agency, or any other applicable party, on, or relating to, the Products or Services ("*Other Charges*"). The Buyer shall have the sole responsibility for payment of all such Other Charges (or subsequent increase of such Other Charges) that are not included in the Contract Price.

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- 5.3 *Invoicing.* With respect to any Product or Service, for which the Contract Price (or any part thereof), or Other Charges are payable by the Buyer under the Contract, the Seller shall send the Buyer an invoice, which is due and payable 30 days after the date of the invoice. Notwithstanding the above, all payments payable to the Seller under the Contract shall become due immediately on its termination.
- 5.4 *Instalment Payments and Deductions.* Instalment payments and any deductions of discounts, expenses or setoff require a specific separate written agreement between the Parties.
- 5.5 *Late Payment.* No payment shall be deemed to have been received until the Seller has received cleared funds in the currency stated on the invoice. In case of late payment or any part thereof, the Seller shall be entitled to:
- i. charge overdue interest at the rate of 5 per cent per annum above the base rate of the European Central Bank, calculated from the due date until the date of the actual payment;
 - ii. require payment in advance of delivery in relation to any Product or Service not previously delivered; and
 - iii. refuse to make delivery of any undelivered Product or Service without incurring any liability whatsoever to the Buyer for non-delivery or any delay in delivery.
- 5.6 *Price Adjustment.* The Seller reserves the right to adapt the Contract Price, for confirmed orders as well, to reflect any increase in the Seller's costs that result from events or circumstances beyond the Seller's control, such as Force Majeure, shortage of primary material or labor, fluctuation of foreign exchange rates, strikes, official orders, transportation or similar problems, if this increase happens before the delivery of the Product or the Service.

6 Delivery

- 6.1 *Time and Place.* Delivery of the Products and/or Services shall take place at the address specified by the Seller on, or as close as possible to, the date required by the Buyer. Any dates specified by the Seller for delivery of the Products and/or Services are intended to be an estimate and time for delivery shall not be made of the essence by notice unless otherwise agreed in writing between the Parties. If no dates are so specified, delivery shall be within a reasonable time taking into account all relevant factors (including without limitation the distance and chosen method of delivery). The Buyer shall take delivery of the Products and/or Services on receipt of adequate notice from the Seller (being not less than 4 days) that the Products and/or Services are ready for delivery. The Buyer shall make all arrangements necessary to receive the delivery of the Products and/or Services whenever they are tendered for delivery.

- 6.2 *Late Delivery due to Force Majeure.* The Seller reserves the right to postpone the delivery in case of Force Majeure for the duration of the obstruction and for a reasonable period of recuperation thereafter without incurring any liability to the Buyer for such delay.
- 6.3 *Partial Deliveries.* The Seller reserves the right to make partial deliveries subject to the whole delivery being delivered on time in accordance with Section 6.1 (Time and Place).
- 6.4 *Notice of Complaint.* Any damages, defects, shortages, over-deliveries and duplicated orders shall be reported to the Seller by the Buyer within three (3) days of receipt.

7 Risk and Property

- 7.1 *Transfer of Risk.* Risk in the Products shall pass to the Buyer upon collection. Risk will pass when the Products are entrusted to the Buyer or set aside for the Buyer's collection, whichever happens first.
- 7.2 *Retention of Title.* Title to Products sold shall not pass to the Buyer until full payment of the part of the Contract Price, which relates to the relevant Products, and any other applicable charges, have been made. Until title of the Products has passed to the Buyer, the Buyer shall:
- i. hold the Products on a fiduciary basis as the Seller's bailee;
 - ii. store the Products (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - iii. not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
 - iv. maintain the Products in satisfactory condition and keep them in a safe and secure manner.
- 7.3 *Buyer's Failure to Take Delivery.* If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or Seller is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- i. risk in the Products shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - i. the Products shall be deemed to have been delivered; and
 - ii. the Seller may store the Products until the Buyer takes possession of the Products, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

8 Termination

- 8.1 *Termination of Contract.* The Contract and the Buyer's right to possession of all Products shall terminate immediately if:

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- i. the Buyer commits a breach of any term of any Contract and (if the breach is capable of remedy) fails to remedy it within 30 days after receipt of notice in writing requiring it to do so;
- ii. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer, or the Buyer ceases, or threatens to cease, to carry on business; or
- iii. any event analogous to those described in above subsection (ii) of this Section 8.1 (Termination of Contract) which occurs in relation to the Buyer in any jurisdiction in which the Buyer is incorporated, resident or carries on business.

8.2 *Recovery of the Products.* The Buyer grants the Seller, its agents and employees an irrevocable licence to enter any of its premises or vessels where the Products are or may be stored in order to recover Products when the Buyer's right to possession of the Products has terminated.

9 Claims and Returns

- 9.1 *Firm Sale.* All Products are sold on a firm sale basis, i.e. the Seller will not take back any Products not required or sold by the Buyer.
- 9.2 *Return Costs and Packaging.* The Seller may only accept returns that appear in the Seller's current product list, as amended from time to time. Where the Seller agrees to accept the return of such Products, the Buyer will be responsible for the cost of carriage and will ensure that the Products are carefully packaged to avoid any damage in transit. The risk in the returned Products stays with the Buyer until the Products have been received and inspected by the Seller.
- 9.3 *Credit of Returns.* The Seller will not be obliged to accept any Products that are used or damaged in any way, or otherwise not in saleable condition. Credit of amounts due or paid in will only be given for Products that are in saleable condition.

10 Intellectual Property Rights

- 10.1 *Title to IPR.* The Seller shall retain title and ownership of all intellectual property rights (whether registered or not) relating (whether directly or indirectly) to the Products and/or Services provided by the Seller, including but not limited to software, firmware, drawings, designs, solutions, technical documentation or other technical information delivered under the Contract (the "IPR"). Nothing in this Contract shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the IPR.

- 10.2 *Technical Information.* The Buyer shall not use or copy any drawings, technical documentation or other technical information supplied by or on behalf of the Seller for any purposes other than those directly related to the Contract or to the use and maintenance of the Products.
- 10.3 *No Reverse Engineering.* The Buyer shall not in any form, copy, modify or reverse engineer the Products or the IPR, or allow any third party to do the same.

11 Warranty and Liability

- 11.1 *Seller's Warranty.* The Seller's warranty shall be governed by "Evac General Warranty Terms" (the "Warranty Terms", [Annex 1](#)).
- 11.2 *Liability Cap.* To the extent permitted by law, the Seller's liability to the Buyer will in the maximum be the lesser of the following: (i) the actual amount of the loss or damage (for which the Buyer must provide the Seller with reasonable proof), and (ii) thirty (30) per cent of the Contract Price.
- 11.3 *Exclusion of Indirect and Consequential Damages.* In no event shall the Seller be liable to the Buyer (or to any other party) for any loss of profit, loss of use, loss of contracts, loss of business, loss of customers, loss of goodwill, contractual liabilities of others or for any indirect or consequential loss or damage, which may be suffered by the Buyer (or by any other party).
- 11.4 *Notice of Claim.* The Seller (or any of its Affiliates) shall not be liable to the Buyer for any breach of the Contract unless written notice of the claim is given to the Seller within 14 days of the date when the Buyer becomes aware of the incident causing the damage, however no later than the end of the warranty period, as set out under the Warranty Terms, or one (1) year after the end of the Contract, whichever is later.
- 11.5 *No Liability until Final Judgement.* The Seller shall only be liable to the Buyer once the matter is finally settled and is non-appealable.
- 11.6 *Exceptions to Limitation of Liability.* Nothing contained in the Contract shall be construed so as to limit or exclude the liability of either Party for death or personal injury of a person, caused by the negligence of that Party, or any damage caused by gross negligence, fraud or wilful misconduct.

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12 Confidentiality

- 12.1 *Obligation of Confidentiality.* Neither Party shall disclose any Confidential Information to any third party, without the prior written approval of the other Party, except as may be required by law, regulation, court or governmental authority. Notwithstanding aforesaid, each Party may disclose Confidential Information to the extent necessary for the purposes of this Contract to (i) its employees and directors, (ii) its Affiliates and their employees and directors, (iii) its (and its Affiliates') attorneys, accountants, auditors, banks and professional advisors, and (iv) any entities and their employees and directors who are directly involved in the performance of the obligations under the Contract (including Seller's subcontractors and suppliers), provided that the Party disclosing the Confidential Information under (i)-(iv) shall see to it that such parties are bound at least by similar confidentiality obligations as set forth herein.
- 12.2 *Publicity.* Neither Party shall use the name of the other Party in publicity, advertising, or similar activity, without the prior written consent of the other.

13 Trade Compliance

- 13.1 *Sanctions.* The Buyer represent and warrants that it is not subject to any sanctions imposed by the United Nations, European Union, the United Kingdom, and the United States.
- 13.2 *Use of Products.* The Buyer shall not use, export, re-export, transfer, sell, or supply any Products in a manner that would violate or otherwise be inconsistent with any export control or sanctions regulations, including but not limited to those adopted by the United Nations, European Union, the United Kingdom, and the United States.

- 13.3 *Restricted Uses.* The Buyer shall not use any Products, or export, re-export, transfer, sell, or supply Products to be used (i) by, for, or for the benefit of any person or entity located or resident in a country or territory subject to a comprehensive trade embargo maintained by the United Nations, the United States, or the European Union (which on December 1st, 2021, included Cuba, Iran, North Korea, Syria, and the region of Crimea), (ii) by, for, or for the benefit of any person or entity subject to sanctions adopted by United Nations, the United States, or the European Union, or of any country with jurisdiction over the business activity, unless specifically authorized to do so under applicable law or a valid license issued by a competent authority, (iii) for incorporation into, or use as components or raw material in the manufacture, repair, or refurbishing of any items defined as military goods on the Wassenaar Arrangements Munitions List in countries subject to an arms embargo established by the United Nations Security Council, the European Union, the United States, or the Organization of Security and Co-Operation in Europe OSCE (which on December 1st, 2021, included Afghanistan, Armenia, Azerbaijan, Belarus, Central African Republic, Democratic Republic of Congo, Iran, Iraq, Lebanon, Libya, Myanmar/Burma, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen, and Zimbabwe), (iv) for any uses connected to chemical, biological or nuclear weapons, or missiles capable of delivering such weapons, including their storage or handling; (v) in oil exploration and production projects in waters deeper than 150 meters, in oil exploration and production projects in the offshore area north of the Arctic Circle, or in shale oil exploration or production projects in the Russian Federation; or (vi) in projects for the construction, repair, or modernization of pipelines for the export of oil or gas from the Russian Federation.
- 13.4 *Indemnification.* Notwithstanding anything contrary in the Contract, the Buyer shall indemnify and hold Seller harmless for any and all damages and costs resulting from its non-compliance with this Section 13 (Trade Compliance).
- 13.5 *Seller's Liability.* The Seller shall not be liable for any damages caused by any delay or disruption in deliveries where the execution of the deliveries is deemed by the Seller to be prohibited under export control or sanctions regulations or otherwise to expose the Seller to the risk of becoming subject to penalties, restrictions, or similar negative administrative consequences under such laws.

14 Miscellaneous

- 14.1 *Right to Subcontract.* The Seller shall, in its sole discretion, have the right to assign or subcontract all or any portion of the work to be performed by the Seller under the Contract, provided, that the Seller shall remain fully liable for the performance of its obligations under the Contract.
- 14.2 *Entire Agreement.* The Contract constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of the Contract.

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- 14.3 *Written Modifications.* The Contract may be modified only by a written agreement between the Parties.
- 14.4 *No Waiver.* The failure of a Party to insist upon strict adherence to any term of the Contract on any occasion shall not be considered a waiver of such Party's rights or deprive such Party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.
- 14.5 *Severability.* Should one of the clauses in the Contract or part thereof be legally invalid, the validity of the other clauses remains unaffected.
- 14.6 *Survival.* Upon termination or expiration of the Contract, any right or obligation of a Party which by its express terms or nature and context is intended to survive termination or expiration of the Contract, shall survive.
- 14.7 *Governing Law and Jurisdiction.* The Contract shall be governed by and construed in accordance with the laws of the jurisdiction of the Seller's domicile, excluding its choice of law provisions, and the Parties hereby submit to the exclusive jurisdiction of the courts of the Seller's domicile.

15 Annexes

- 15.1 *List of Annexes.* The following annexes constitute an integral part of these Terms and Conditions:
- Annex 1 Evac General Warranty Terms
(the "Annexes").
- 15.2 *Order of Priority.* To the greatest extent possible, the main body of these Terms and Conditions (meaning this document) and each of its Annexes shall be construed consistently, so as to complement each other. All rights, responsibilities and remedies established in such documents are cumulative. Any conflict or inconsistency between any provision of the main body of these Terms and Conditions and any provision of any of its Annexes shall be resolved by giving priority to such documents in the following order: (i) the main body of these Terms and Conditions, not including its Annexes; and (ii) the Annexes listed above under Section 15.1 (List of Annexes) in ascending order.