



## 1. SCOPE

**1.1** In these Terms and Conditions of Supply (“Conditions”): “Supply” means any supply by Supplier to Buyer including the supply of Goods and/or Services; “Buyer” means the party buying Goods or procuring Services and shall include, if the context so permits, its agents or sub-contractors; “Supplier” means Edwards Vacuum LLC or its affiliate named on the Purchase Order; “Purchase Order” means an order placed on Supplier by Buyer; “Product” means a product owned by Buyer to be the subject of a Service; “Purchase Price” means the price to be paid by Buyer to Supplier for the Goods and/or Services; “Goods” means products, consumable materials, equipment, equipment components, spare parts, software and other goods and materials supplied by Supplier to Buyer (including any exchanged products supplied by Supplier as part of providing Services); “Services” means any services supplied by Supplier to Buyer; and “Service Exchange” means the exchange of a product shipped by Seller to Buyer with a new or refurbished Good of the same type.

**1.2** These Conditions apply to and are deemed to be incorporated in all contracts for Goods and Services and, save where Supplier and Buyer have agreed in a document signed by both parties to different terms, shall apply to and prevail over all conditions endorsed on, delivered with or contained in Buyer’s purchase terms, or any Purchase Order, or other documentation. No modification to these Conditions shall be valid unless in writing and duly signed by a person authorized by Supplier. All Purchase Orders are subject to a \$40 minimum order level and are subject also to acceptance by Supplier.

**1.3** Once accepted the Purchase Order and these Conditions shall constitute the contract (“Contract”) between Buyer and Supplier for the Supply and shall constitute the entire agreement between Buyer and Supplier in relation to the Supply.

## 2. PRICE QUOTATIONS

**2.1** Prices quoted for (a) standard Goods and Services remain valid for 90 days unless otherwise specified; and (b) non-standard Goods and Services are estimates and may be increased without notice in the event of increases in Supplier’s costs of: (i) transport, labor and materials; (ii) handling of, and compliance with laws and regulations concerning hazardous materials; (iii) handling, delivery and shipping; (iv) energy or fuel; and/or (v) any other costs of supply or of Supplier’s performance arising between the time of quotation and the time of Supply.

**2.2** Prices quoted are exclusive of all applicable taxes, including but not limited to, any value added tax, Federal, state and/or municipal excise, sales and/or use taxes, levies and duties of any nature whatsoever (“Taxes”) applicable to the Goods and Services. All Taxes shall be paid by Buyer unless Buyer provides Supplier with an exemption certificate acceptable to the relevant taxing authority.

## 3. INSPECTION AND TESTING

**3.1** All Goods are inspected by Supplier before supply to Buyer and tested where appropriate.

**3.2** An additional charge will be made for tests or trial runs carried out at Buyer’s request. In the event that Buyer does not attend such tests after 14 days’ notice, Supplier will perform the tests and the Goods will be deemed accepted in Buyer’s absence.

## 4. SUPPLY AND TRANSPORT

**4.1** Supplier will use reasonable efforts to supply Goods and Services within the time requested in the Purchase Order and in any event within a reasonable period.

**4.2** Unless otherwise agreed in writing all shipments shall be made FCA (Incoterms 2020) Supplier’s production and/or distribution facilities and/or repair centers. Unless other delivery arrangements are agreed, Supplier may, at Buyer’s request and expense, arrange carriage and insure Goods against normal transit risks to the value of the Purchase Price. Risk of damage to or loss of Goods shall pass to Buyer on Supplier’s delivery of the Goods to the carrier. Should Buyer carry out the transport of the Goods Buyer shall have in place all adequate transit insurance with insurers of good reputation to the value of the Purchase Price, and Buyer shall ensure that Supplier is noted as additional insured on this insurance. Risk of damage to or loss of Goods shall pass to Buyer in accordance with the agreed terms and Buyer shall indemnify Supplier against all loss of, or damage to, Goods.

**4.3** Buyer shall take delivery of the Goods in accordance with the delivery date specified in the Contract or at the latest 5 days after Supplier’s notification that the Goods are ready for delivery, whichever is the latest (the “Delivery Date”) Buyer will supply Supplier with delivery instructions promptly on notification to Buyer that Goods are ready for shipment.

**4.4** Buyer’s obligation to take delivery of the Goods as provided in this Contract constitutes a material obligation of Buyer.

**4.5** Where the Goods to be supplied are new, Buyer may request a deferral of the Delivery Date provided this request is in writing and made at the latest 6 weeks prior to the due date of shipment. Edwards may accept or refuse, at its sole

discretion, a request for deferral. Notwithstanding any other remedies available under these Conditions, should deferral of delivery be for a period longer than 14 days from the Delivery Date, Supplier shall be entitled to charge Buyer compensation amounting to at least 2% of the Purchase Price per month of delay, to be paid by Buyer within 30 days of issuance of the corresponding invoice. Deferral of the Delivery Date shall not in any case be for longer than 3 months from the initial Delivery Date. Without prejudice to Condition 12 at the expiry of the 3 month period Supplier shall be entitled to make arrangements for storage of the Goods at a place of its choice. In such case, Supplier’s obligation to deliver the Goods will be deemed satisfied and Buyer will be responsible for the risk of loss of, or damage to, the Goods, and for paying the Purchase Price.4.6 Where the Goods to be supplied are not new, or where Supplier is to return a Product after it is serviced, Buyer will supply Supplier with delivery instructions promptly on notification to Buyer that the Good or Product is ready for shipment. Should shipment or collection be postponed for more than 14 days after such notification, (i) Supplier shall be entitled to make arrangements for storage of the Good or Product at Buyer’s risk and expense at a place of its choice, (ii) Supplier shall be entitled to charge Buyer compensation at the rate of 2% of the Price per 14-day period or part thereof from the date of such notification and Buyer shall pay such amount within 30 days of invoice, and (iii) Supplier’s obligation to deliver the Good or Product will be deemed satisfied and Buyer will become responsible for the risk of loss of, or damage to, the Good or Product and for paying the Purchase Price.

**4.7** In the case of Service Exchange, Buyer must ship at its costs the product to be exchanged to Supplier within thirty (30) days of the date of the relevant Purchase Order. Should Buyer not comply with this obligation (i) Supplier may charge a non-return compensation which shall be calculated at the rate of two per cent (2%) of the Purchase Price for each 14 day-period during which Supplier has not received the product to be returned, with the non-return compensation being payable within thirty (30) days of the date of invoice by Supplier and (ii) should delay in returning the product exceed 3 months from the date of the relevant Purchase Order, Supplier shall be entitled to terminate the Purchase Order or that part of the Purchase order related to the service exchange and Buyer shall pay the price which would be due against the supply of a new Good of equivalent specification, less any amount already paid towards the Service Exchange. Buyer shall pay within 30 days of the date of invoice.

**4.8** The parties agree that compensation and other expenses payable under the Conditions above are a genuine pre-estimate of the costs and losses which Supplier would suffer from Buyer not taking delivery of the Goods and/or for non-return of a Service Exchange product on the Delivery Date.

**4.9** In cases where a Product is received by Supplier in respect of which no Purchase Order, or other written authority, is given to Supplier to carry out Services within 60 days of receipt by Supplier, Supplier may, at its option, either return the Product to Buyer or dispose of the Product as Supplier thinks fit and Supplier may charge Buyer for, and Buyer agrees to pay, all storage, return and/or disposal costs.

**4.10** Buyer shall ensure and warrant that it shall comply with any applicable export or import laws, regulations or guidance and that it shall not import, export or re-export, directly or indirectly, the Goods, or other item related to the Goods, in or to (1) any country subject to an embargo under the laws of any country or under any international laws, including, but not limited to, Cuba, Iran, North Korea, Sudan and Syria and/or (2) any country for which an import or export/reexport license or approval or certificate is required, without obtaining such license or approval or certificate prior to importing or (re)exporting. Buyer shall attach to all Purchase Orders the necessary information to permit Supplier to commence its work, together with any import license and/or permits or certificates, which may be necessary. Supplier shall not be liable for delay in delivery or non-delivery of the Goods or any associated item due to (1) any restriction on the import or export of the Goods or any associated items, (2) noncompliance by Buyer with this clause or with the law, or (3) delay or refusal of export or import license or approval by any relevant authority. Supplier may request, and if so Buyer shall provide, in advance and as a condition of delivery, a signed statement providing information related to the use of the Goods and any associated items and/or the full identity of the end-user or any intermediary in the transaction. Notwithstanding any other provision of the Contract, Supplier shall be entitled to terminate the Contract with immediate effect and without liability if it has reasonable grounds to suspect that Buyer has breached or intends to breach this clause.

**4.11** Goods will be supplied and paid for as available unless Buyer specifically requests “one consignment”. Each shipment shall be considered a separate and independent transaction. Supplier may suspend shipment of any unfulfilled Contract between the parties in the event of any act or omission on the part of Buyer or if Buyer is in material breach of Buyer’s obligations under a Contract, whether separate or not.

**4.12** All Goods and Services supplied in accordance with the Contract will be deemed accepted unless Buyer notifies Supplier in writing promptly after



delivery or performance that the Goods or Services are not in compliance with the Contract. Any damaged Goods and packaging must be kept for inspection by Supplier.

**4.13** Supplier may modify the specification of Goods without notice provided that the modification does not materially affect the performance, form or fit of the affected Goods.

**4.14** Any and all order-related changes requested by Buyer (whether with respect to changes in drawings, designs, specifications, material, packing, time and place of delivery, mode of transportation, or otherwise) are subject to Supplier's approval in writing. If any change causes an increase in the cost of, or the time required for, the performance of any part of the order, an equitable adjustment shall be made to the price and/or delivery schedule. Unless agreed otherwise by the parties in writing, pricing for work arising from such changes shall be at Supplier's then-current applicable rates/prices.

**4.15** Services, installation and commissioning are not included in the purchase price for the Goods.

**4.16** Buyer shall be responsible for de-installing, de-commissioning and shipment of any Product. Supplier shall notify Buyer following discovery of any such Product as unsuitable for the performance of Services.

## 5. PAYMENT

**5.1** All amounts are stated and payments are to be made in US Dollars unless otherwise agreed in writing. If Buyer specifies a different currency, Supplier reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the relevant currency and US Dollars arising between the time of quotation and acceptance of the Purchase Order. Unless purchased via Supplier's website ([www.edwardsvacuum.com](http://www.edwardsvacuum.com)). Orders paid by credit card are subject to a \$25.00 minimum.

**5.2** Full payment without any deduction whatsoever must be made to Supplier within 30 days of the date of invoice unless otherwise agreed in writing. Invoices will normally be issued on the date of delivery of the Goods (or the date of deemed delivery) or completion of the Services. Any invoice disputes must be raised by Buyer within 15 days from date of invoice, or the invoice shall be considered to be accepted by Buyer. Time for payment shall be of the essence.

**5.3** All Purchase Orders are subject to credit approval before shipment. If, in Supplier's judgment, Buyer's financial condition does not at any time justify payment terms as previously specified, Supplier may cancel or suspend any unfulfilled Contract. Supplier may require Buyer to furnish Supplier with a confirmed irrevocable letter of credit drawn on a bank acceptable to Supplier.

**5.4** If any payment is overdue Supplier shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Buyer without notice and/or to charge interest on any amount overdue at the applicable statutory default interest rate, or if none, at the rate of 8% per annum over the Nordea base rate.

**5.5** Any sum due by Buyer may be offset by Supplier against any sums due by Supplier to Buyer under any Contract.

## 6. RETENTION OF TITLE

**6.1** Title to Product remains with Buyer unless it becomes the subject of Service Exchange in which case title passes to Supplier upon receipt of the Product at the Supplier's service center.

**6.2** Any consignment stock, inventory or materials held at Buyer's site and owned by Buyer for the use of Supplier in carrying out the Services shall be at the risk of Buyer.

**6.3** Until payment in full by Buyer, Goods shall be held by Buyer as Bailee for Supplier and will be kept, unaltered and in good condition (at no cost to Supplier) separately from all other goods of Buyer or any third party in such a way that they remain readily identifiable as Supplier's property.

**6.4** If payment becomes overdue, or on the occurrence of any termination event referred to in Condition 12 below, Supplier may, where permitted by law, and after giving notice to Buyer, enter upon any premises where Supplier reasonably believes Goods to be, or otherwise take action, to recover Goods.

**6.5** From delivery and prior to full payment of the Purchase Price, Buyer shall maintain the Goods in satisfactory condition and keep them insured under adequate insurance policies with insurers of good reputation, covering the Purchase Price.

## 7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

**7.1** Supplier shall retain all right, title and interest in and to, and possession of, any know-how, technical information, drawings, specifications or documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Supplier and supplied by Supplier under any Contract. All such information shall be kept confidential by Buyer and shall not be disclosed to any third party unless and until the same is or becomes public knowledge nor shall any such information be used by Buyer for any purpose, other than for the purpose of using any Goods supplied under the Contract, without Supplier's prior written consent.

**7.2** Ownership is retained by Supplier of any patent, copyright, trademark, trade secret, design right or other intellectual property right in or relating to the Supply and Buyer shall acquire no rights in or over such intellectual property rights save as expressly set out herein including, but not limited to, any technical information, know-how, drawings and specifications supplied by Supplier or relating to the Supply.

**7.3** Supplier's trademarks and names and those of its associated companies shall not be used by Buyer otherwise than as applied by Supplier to Goods, Services or associated documentation.

**7.4** Any and all software and source code and all revisions thereof embedded in or associated with any Good is and shall remain the proprietary property of Supplier (and/or its licensors, if applicable), and in no event will title thereto be sold or transferred to Buyer. Subject to Buyer's payment in full for such Good and Buyer's compliance with these Conditions, Supplier grants to Buyer for the useful life of such Good a royalty-free, non-exclusive, non-transferable license to use the software solely for the normal proper use of the Good. Buyer shall not create derivative works based on the software, or disassemble or decompile the software, or transfer, copy, modify, or otherwise change the software. This license will terminate automatically upon Buyer's breach of any term herein.

## 8. WARRANTY

**8.1** In respect of supply of Goods comprising equipment and related components, spares and parts:

**A.** Supplier hereby undertakes to repair or replace at Supplier's option, or to arrange repair or replacement by Supplier's representative of, any Goods supplied to Buyer if a defect in materials or workmanship arises under conditions of normal and proper use and maintenance (normal wear and tear, and consumables excepted) provided that (i) the Goods were purchased and used for a purpose for which they were suitable; (ii) the Goods were operated and maintained in accordance with the operating instructions; (iii) unless otherwise agreed by Supplier in writing, the defect occurs within 12 months from the date of shipment of the Goods; and (iv) Condition 8.3 is satisfied.

**B.** Any repaired or replaced Goods (including Goods the subject of service exchange) will continue to be warranted for the unexpired period of the warranty referred to in Condition 8.1 A above.

**C.** Supplier may charge Buyer for the cost of shipping Goods to and from a Supplier service center if the Goods to be repaired or replaced are located in a country in which Supplier does not have a service center.

**D.** The warranty under this clause does not cover the costs of installation or removal of the Goods to be repaired or replaced which shall be at Buyer's cost.

**E.** If Buyer's warranty claim does not meet the provisions under Condition 8.3, then Buyer's claim is considered out of warranty and in such event Supplier will repair/replace the defective Goods at Buyer's cost. The warranty for such paid repairs is 6 months from the date of repair/replacement.

**F.** Any repaired or replaced component, spare and part continue to be warranted for a particular period of time depending on the type of component. The duration of such warranty can be obtained from the Supplier.

**8.2** In respect of supply of Services:

**A.** Supplier warrants that Services shall be performed in a workmanlike manner using reasonable skill and care and in accordance with Supplier's service policy and practice. Unless otherwise agreed in advance, Supplier shall provide such Services, including repair and replacement, as are in Supplier's reasonable opinion necessary in order to provide the Service.

**B.** If subsequent to the performance of Services, failure or breakdown (normal wear and tear and consumables excepted): (a) occurs during the warranty period notified to Buyer at the time the Services are performed (or if no such period is notified to Buyer, and unless otherwise agreed, within 90 days of the date that the Services are completed); (b) occurs during normal usage; and (c) is shown by Buyer to Supplier's reasonable satisfaction (after a reasonable opportunity for Supplier to inspect the allegedly defective Services and to review documentation pertinent to the failure or breakdown) to have been caused by Supplier's failure to perform the Services in accordance with this Condition: Supplier, at its option, shall correct or re-perform the Service or replace the serviced product or refund the cost of the Services; provided that: (i) the failure or breakdown was not caused, or contributed to, by Buyer's act or omission, breach of contract, negligence, process reactions, excessive process build ups or accidents or by Buyer's failure to observe Supplier's recommended maintenance schedules and activities; and (ii) Condition 8.3 is satisfied. Repair or replacement under applicable warranty shall be made at no charge for replacement parts, when work is performed during normal working hours (8 a.m. to 5:00 p.m. Monday through Friday, exclusive of holidays). For the avoidance of doubt, any components of a Product not replaced in the course of the Product being serviced will not be covered by the Service warranty on the Product.

**C.** Buyer is responsible for shipping Products to the designated Supplier service center at Buyer's risk and cost. Supplier may charge Buyer for the cost of shipping Product from a Supplier service center back to Buyer if the Product is



located in a country in which Supplier does not have a service center. If Buyer requires a more expensive method of freight than Supplier's standard shipping then the extra cost shall be paid by Buyer.

**D.** Warranty under this Condition does not cover the costs of installation or removal of the Product which shall be at Buyer's cost.

**E.** Except as expressly warranted above, Services are provided "as is" and Buyer assumes the entire risk as to the results of the Services. Nothing stated in these Conditions implies that the operation of any serviced Product will be uninterrupted or error-free or that errors will be corrected. Other written or oral statements by Supplier, its representatives, or others do not constitute warranties of Supplier.

**8.3** The following provisions must be satisfied in respect of all claims under Conditions 8.1 and 8.2: a) the claim must first be notified promptly in writing to Supplier within the applicable warranty period specified above; b) the Goods or any Product must not have been repaired or modified by anyone other than Supplier or at Supplier's direction; c) in the case of equipment and related components, spares and parts not of Supplier's own manufacture, unless otherwise required by law, Supplier's responsibility shall be limited to passing on to Buyer the benefit of any guarantee or warranty given to Supplier by the manufacturer of such Goods or part; d) in the case of a replacement, Buyer returns at its cost the defective Goods to Supplier within 10 days of delivery of the replacement Goods by Supplier; e) the defect does not arise from Buyer's specification or instructions; and f) Buyer has paid the purchase price in full or paid in accordance with agreed payment schedule.

**8.4** Supplier may satisfy Supplier's liability under this Condition 8 by reducing the Purchase Price or refunding the Purchase Price and retaking the Goods or issuing a credit note.

**8.5 EXCEPT AS EXPRESSLY WARRANTED ABOVE, GOODS AND SERVICES ARE PROVIDED WITHOUT OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY'S RIGHTS, EACH OF WHICH IS HEREBY EXPRESSLY DISCLAIMED. CORRECTION OF NONCONFORMITIES IN THE MANNER AND WITHIN THE APPLICABLE WARRANTY PERIOD SET FORTH ABOVE PROVIDES THE EXCLUSIVE REMEDIES WITH RESPECT TO THE QUALITY OF, OR ANY DEFECT IN, PRODUCTS OR SERVICES DELIVERED OR PERFORMED HEREUNDER.**

## 9. LIABILITY AND INDEMNIFICATION

**9.1** Subject to Condition 8, the following provisions set out the entire liability of Supplier (including any liability for the acts or omissions of its employees, agents, or subcontractors) to Buyer in respect of: a) any breach of these Conditions; or (b) any representation, statement or tortious act or omission, including negligence, arising under or in connection with these Conditions.

**9.2** Subject to the requirements of Section 9.4 below, Supplier shall defend, indemnify, and hold harmless Buyer and its affiliates, and their respective officers, directors, employees and agents (collectively "Indemnified Parties") from and against all claims made against any Indemnified Party by any third party (including any employee of Supplier or of Buyer) for (a) personal injury (including but not limited to death) and/or (b) physical damage to tangible property, in each case to the extent such personal injury and/or physical damage to tangible property is caused by the negligence of Supplier or Supplier's employees/agents. Supplier's indemnity obligations expressly exclude any injuries/deaths/damage to the extent that they are caused by the negligence of Buyer or any third party (other than Supplier's employee/agent/subcontractor); and any damages or costs of any and all kinds related in any way to any matter that is covered by Supplier's above-stated warranty.

**9.3** Subject to the requirements of Section 9.4 below, Supplier shall defend, indemnify, and hold Indemnified Parties harmless from and against all claims made against any Indemnified Party in so far as the claim is based on an allegation that any Good constitutes an infringement of any United States patent or copyright. In case the Good, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Supplier will, at Supplier's option and expense, either: (i) procure for Buyer the right to continue using said Good; (ii) replace it with substantially equivalent non-infringing Good; (iii) modify the Good so it becomes noninfringing; or (iii) take back the non-conforming Good and refund or credit monies paid by Buyer to Supplier for such infringing Good less a reasonable allowance for use. Supplier will have no duty or obligation to Buyer under this paragraph to the extent that the Good is (i) supplied according to Buyer's design or instructions wherein compliance therewith has caused Supplier to deviate from Supplier's normal designs or specifications, (ii) modified, (iii) combined with items, systems, methods, or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a claim is brought against

Buyer. If by reason of such design, instruction, modification or combination, a claim is brought against Supplier, Buyer shall protect Supplier in the same manner and to the same extent that Supplier has agreed to protect Buyer under the provisions above in this paragraph. This paragraph states Supplier's exclusive liability for infringement of any third party's patent and/or copyright.

**9.4** Supplier's obligations in this Condition 9 are conditioned upon Buyer (i) promptly notifying Supplier in writing of the third party's claim and providing Supplier with a copy of such claim; (ii) giving Supplier exclusive authority to control the defense and settlement of the claim; and (iii) providing Supplier with full information and reasonable assistance at Supplier's expense. Supplier shall ensure that no settlement intending to bind Buyer shall be entered into without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed. The Indemnified Party shall be permitted to participate in such defense and settlement with counsel of its own choosing at its own expense. **9.5** If Buyer fails to perform any of its obligations pursuant to these Conditions, Buyer shall pay Supplier all costs and expenses incurred by Supplier, including all attorney's fees, in enforcing Supplier's rights relating to such obligation, whether by formal proceedings or otherwise, in addition to any other remedy available to Supplier.

**9.6** For the avoidance of doubt, save as provided in this clause Supplier shall have no liability in contract, tort, misrepresentation, restitution, or otherwise arising as a result of the performance or contemplated performance of the Contract.

**9.7** Buyer will indemnify and keep indemnified Supplier from and against any costs, claims, demands, liabilities, damages or losses and all interest, penalties and legal and other professional costs and expenses arising out of or in connection with Buyer's use of Goods or Buyer supplying Goods to any party who is not a party to these Conditions and the Goods' subsequent use. This indemnity shall cover (but is not limited to) Supplier's liability to third parties arising out of the use or sale of the Goods, except to the extent caused by Supplier's negligence.

**9.8 NOTWITHSTANDING ANYTHING ELSE, THE TOTAL LIABILITY, IN THE AGGREGATE, OF SUPPLIER ARISING OUT OF OR RELATED TO THIS CONTRACT (OR THE PERFORMANCE OR BREACH THEREOF) OR ANY GOOD OR SERVICE, SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE AMOUNT PAID BY BUYER TO SUPPLIER FOR THE SPECIFIC GOOD OR SERVICE GIVING RISE TO THE CLAIM (REGARDLESS OF WHETHER DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE).** For purposes of this paragraph, the term "Supplier" means Supplier, its affiliates, suppliers, and subcontractors, and their respective employees/agents.

**9.9 NOTWITHSTANDING ANYTHING ELSE, UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF TOTAL OR PARTIAL USE OF PRODUCTS, GOODS OR SERVICES, DOWNTIME COSTS, AND DELAY COSTS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE AND EVEN IF THE LIMITED REMEDIES SET FORTH HEREIN FAIL OF THEIR ESSENTIAL PURPOSE (REGARDLESS OF WHETHER SUCH DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE).** For purposes of this paragraph, the term "Supplier" means Supplier, its affiliates, suppliers, and subcontractors, and their respective employees/agents.

## 10. FORCE MAJEURE

**10.1** Neither Buyer nor Supplier shall be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control.

**10.2** In the event of such delay, the date of shipment or performance shall, at the request of Supplier, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

## 11. CANCELLATION

**11.1** Buyer may cancel this Contract provided that such request is done in writing and no later than 30 days after the date of the Contract. Unless otherwise mutually agreed in writing, without prejudice to any other rights Supplier may charge and Buyer shall pay Supplier a compensation equivalent to 15% of the Purchase Price for standard Goods and 30% of the Purchase Price for non-standard Goods within thirty (30) days from issuance of the corresponding invoice.

**11.2** Unless otherwise mutually agreed in writing, in the event Buyer cancels this Contract more than 30 days after the date of the Contract, Buyer shall be responsible for the full Purchase Price.



11.3 The parties agree that such sums payable to Supplier under this clause are a genuine pre-estimate of the costs and losses which Supplier would suffer from Buyer cancelling all or part of the Contract.

## 12. TERMINATION

12.1 If Buyer is subject to any act of bankruptcy or has a receiver appointed or an administration order made against it or goes into liquidation or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Supplier under the Contract shall immediately become due and payable and Supplier may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice.

12.2 Supplier may terminate the Contract with immediate effect in the event of a failure by Buyer to comply with any material provision of these Conditions if the failure continues for more than 14 days after Buyer has been given written notice of such failure.

12.3 If Buyer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Supplier shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to dispose of the Goods, and to charge Buyer compensation of 15% of the Purchase Price (Standard Goods) or 30% of the Purchase Price (Non-Standard Goods), to be paid by Buyer within 30 days of issuance of the corresponding invoice. The parties agree that such sums payable to Supplier under this clause are a genuine pre-estimate of the costs and losses which Supplier would suffer from Buyer not taking delivery of the Goods.

12.4 Termination shall be without prejudice to any prior right of either party or any provisions (including but not limited to clauses 6, 7 and 9) which by nature shall survive termination.

## 13. BUYER'S DUTIES AND RESPONSIBILITIES WHEN SERVICES ARE PROVIDED

13.1 All Products and environments (whether at Supplier's or Buyer's or Buyer's customer's premises) must be free from risks to health and safety (save to the extent notified to, and specifically accepted by, Supplier in writing). Supplier may decline, without incurring any liability, to service any Product, or work in any environment in which, in Supplier's opinion, the risks to health and safety are not managed satisfactorily by Buyer.

13.2 Buyer will permit Supplier prior to commencement of any Services to assess the condition of the Products and the working environment. Supplier shall be under no obligation to service any Product which, in Supplier's reasonable opinion, has been used in a way or for a purpose for which it was not suitable, has not been operated and maintained in accordance with the manufacturer's operating instructions, is too old or in too poor a condition to be serviced economically or is in any way unsafe. Supplier shall have the right and Buyer shall provide all necessary access and cooperation to enable Supplier to carry out a risk assessment.

13.3 Buyer will provide Supplier with all available operating documentation, drawings, test certificates and maintenance inspection reports relating to any Product.

13.4 Buyer will indemnify and hold Supplier harmless against any loss, claim or damage suffered by Supplier or its employees, agents or sub-contractors suffered on Buyer's site or Buyer's customer's site except to the extent caused by Supplier's own negligence.

## 14. GOVERNING LAW AND DISPUTE RESOLUTION

14.1 The Contract and any claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

14.2 Buyer and Supplier agree that the State and Federal courts residing in the State of Delaware shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.

14.3 Supplier shall have the option to bring suit before the Courts of the domicile of Buyer when the claim is for or related to payments due from Buyer.

## 15. MISCELLANEOUS

15.1 Buyer may neither assign nor transfer nor deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Supplier.

15.2 Save as expressly provided, no term or provision of these Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

15.3 No waiver by either party of any breach of any of these Conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall

any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party. In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of these Conditions shall remain in full force and effect to the fullest extent permitted by applicable law.

15.4 Nothing contained in these Sale Conditions shall be deemed to require Supplier to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Supplier's failure to take any such action shall not be deemed a breach hereunder.

15.5 All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of Goods (whether in catalogues or advertisements or accompanying or referred to in the Contract) are stated by Supplier in good faith based on Supplier's experience as being correct within acceptable tolerances but are not binding in detail and do not form part of the Contract unless specifically stated to do so. Unless agreed otherwise in writing, it is Buyer's responsibility to ensure that Goods are sufficient and suitable for Buyer's purposes.

15.6 Buyer hereby acknowledges that relevant safety and training literature relating to the Goods and Services will be supplied by Supplier to Buyer free of charge and may be photocopied by Buyer as required. Buyer shall be fully responsible for the implementation of the contents of all safety and training literature provided by Supplier. Buyer shall ensure persons who use, maintain or otherwise handle Goods or receive Services receive adequate safety and training literature.

15.7 Buyer shall comply at all times with Supplier's code of conduct which can be found at: [www.edwardsvacuum.com](http://www.edwardsvacuum.com) and with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time (the "Requirements"), and Buyer shall have in place and shall maintain at all times its own policies and procedures to ensure compliance with the Requirements by Buyer's employees, officers, representatives, subcontractors and customers and shall enforce them where appropriate. Supplier shall be entitled to terminate the Contract immediately upon written notice to Buyer if Buyer or any person employed by it or acting on its behalf commits or may be deemed or is suspected to have committed or intends to commit a breach of the Requirements. If Buyer suspects or knows that there is any breach or intended breach of the Requirements by Buyer or any person employed by it or acting on its behalf, Buyer will notify Supplier immediately.

15.8 Buyer shall have the option to (1) provide for the collection, treatment, recovery and environmentally sound disposal, at Buyer's cost, of waste electrical and electronic equipment arising from the Goods at the end of their life or (2) to request Supplier in writing to do so at Buyer's cost. In the event Buyer does not exercise its option, it shall be deemed to have chosen option (1).