

EQUIPMENT PURCHASE STANDARD TERMS AND CONDITIONS

Revision: 2024-12-09

RÖCHLING Automotive USA LLP
245 Parkway East
Duncan, SC, 29334
United States

hereinafter referred to as “RÖCHLING“.

1 Contractual Basis

- 1.01 Upon acceptance by Supplier, the binding agreement between RÖCHLING and Supplier is evidenced by the “**Master Agreement**.” All the documents listed in the Master Agreement and these Terms and Conditions constitute an integral part of the contract between RÖCHLING and Supplier. The Parties are agreed that the contractual and other specified provisions shall apply in the following order with the proviso that, in the event of any inconsistencies or gaps, the document positioned higher in the list shall take precedence:
- (i) Master Agreement
 - (ii) Technical Specifications and RFQ Documents
 - (iii) Equipment Purchase Standard Terms and Conditions
 - (iv) Quotation Documents
 - (v) Bailment Agreement (where applicable)
 - (vi) Supplier Intake Documents
- 1.02 All the aforementioned documents shall hereinafter be collectively referred to as the “**Contract**”. Regardless of any signature or communication of assent sent by Supplier, by undertaking to perform after the receipt of a Master Agreement, Supplier manifests its agreement to all the provisions of the Contract. All terms, provisions, conditions, covenants, representations, warranties and/or guarantees printed on any Supplier invoice or order acknowledgement, or other documents issued by Supplier shall be null and void and superseded in whole by the Contract and the other documents indicated above. The Parties expressly agree that this Contract overrides and replaces all terms, provisions, conditions, covenants, representations, warranties and/or guarantees contained in any Supplier Invoice or Order Acknowledgement or other document issued by Supplier.

2 Subject Matter of the Contract

- 2.01 Supplier undertakes to manufacture a turnkey system with regards to the processes described in the RFQ and Technical Specifications (together referred to as the “**RÖCHLING Requirements**”) process-reliable and robust system in accordance with the

provisions of the present Contract, to deliver it, and to perform all services related thereto (hereinafter referred to as the "**System**").

- 2.02 Supplier shall perform its deliveries and services as completely as is necessary for a trouble-free operation of the System for series production, in accordance with the specifications and targets of RÖCHLING.
- 2.03 Supplier has investigated all the RÖCHLING Requirements and analyzed whether the technical specifications and performances are feasible. Based on its planning and design, Supplier has concluded that it is possible to construct the System according to the requirements set forth in the Contract Price, as defined in Section 10 herein.
- 2.04 Supplier shall perform the deliveries and services itself. The use of subcontractors requires the advance written consent of RÖCHLING. This requirement shall not apply to the procurement of purchased parts that are used in the production of the System.

3 Documents

- 3.01 Supplier shall provide RÖCHLING with two (2) complete editable sets of all the documents necessary for the operation of the System, (languages to be specified elsewhere in the Contract), including without limitation, operating instructions, maintenance instructions, documentation and program descriptions, at the delivery of equipment to the RÖCHLING Plant. The documents must contain all the information, descriptions etc. with sufficient attention to detail to enable RÖCHLING to operate and maintain the entire System. Furthermore, Supplier shall provide RÖCHLING with a maintenance plan and spare parts/wear parts lists upon the delivery of the System, with information about the prices and delivery times of the items contained in the plan and list.

4 Target Quality

- 4.01 Supplier has reviewed the RÖCHLING Requirements, all the quality specifications and guaranteed performance data and all foreseeable interfaces and tolerances and determined that Supplier can and will manufacture and deliver the System in accordance with these requirements.
- 4.02 Supplier shall deliver and operate the System, in accordance with the terms and conditions of the present Contract and in observance of all relevant laws, statutes, codes and regulations, etc., in existence at the time of the Final Acceptance ("**Applicable Laws**"). The System provided under this Contract shall meet and be capable of use or operation in compliance with any Applicable Laws in effect, including those regarding occupational safety and health and the environment, including any environmental, performance standards, effluent limitations, emissions limitations, discharge requirements or operational standards contained in any applicable environmental law then in effect and any permits required under any environmental law then in effect.

5 Warranties of Supplier

In addition to any warranty or guarantee of the System expressly made or extended by Supplier elsewhere in this Contract, Supplier warrants, represents, and guarantees to RÖCHLING the following:

- 5.01 The System will be new and free of all liens and encumbrances where applicable.
- 5.02 The System will be merchantable and fit for the particular purpose to which the System will be put.
- 5.03 The System will be free from all defects, including but not limited to latent defects.
- 5.04 The System will perform in accordance with the trial tests and guarantees set forth in the approved design review and will meet the requirements of the Contract.
- 5.05 The System and all workmanship will be in accordance with best industry standards and proven technology and workmanship for the System for use in the automotive industry.
- 5.06 System shall be engineered and designed in a professional manner and in accordance with first-class standards for the engineering and design of a system of a similar nature for use in the automotive industry.
- 5.07 The System will meet and be capable of use or operation in compliance with all Applicable Laws, including but not limited to those in effect regarding occupational safety, health, and the environment, effluent limitations, emissions limitations, discharge requirements or operational.
- 5.08 All software provided by Supplier as part of the System will be free of any harmful programs or data incorporated into the software that disrupts proper operation and will be compatible with RÖCHLING's computer hardware or software.
- 5.09 The System will use performance parts that conform to the latest technological standards at the time of the conclusion of the present Contract.
- 5.10 The System will meet or exceed technical descriptions and parameters detailed in the specifications; and
- 5.11 The System shall not infringe upon or misappropriate any patented or unpatented inventions, copyrights (both statutory and non-statutory), trade secrets, proprietary rights, know-how or other intellectual property rights under the laws of the United States or the laws of the location where Supplier is located or operates.

6 Remedy for Defect

- 6.01 All warranties in the Contract shall survive inspection, testing, acceptance and payment and shall run to RÖCHLING, its successors, assigns and all subsequent owners of the System for the duration specified herein.
- 6.02 For a period of two years after Final Acceptance, Supplier will repair or replace any part of the System that is defective or otherwise not in conformance with the promises and warranties contained in the Contract. This duration shall be suspended during any period of time that Supplier fails to perform its warranty obligations, and the warranty period shall be extended accordingly.
- 6.03 If the defect is based on a faulty design, faulty materials or faulty work, Supplier shall be responsible for all costs to produce a conforming System, including the costs of the dismantling, reassembly and transport costs.
- 6.04 For a period of two years after Final Acceptance, Supplier will repair or replace any part of the System that fails to operate as intended, for reasons that include but are not limited to, component failure, or cessation of function under conditions of ordinary use. This duration

shall be suspended during any period of time that Supplier fails to perform its warranty obligations, and the warranty period shall be extended accordingly.

- 6.05 If Supplier performs repairs or replaces parts of the System as a remedy for defect, all warranties of the Contract shall apply to the new work, with a new warranty period running for corrective work, commencing upon the latest date of performance of the new work.
- 6.06 In urgent cases, and in the event of simple disruptions that do not require the participation of Supplier, RÖCHLING may perform the repairs itself, at its option. Supplier does not warrant work performed by RÖCHLING; provided, however, that Supplier's warranty shall otherwise remain unaffected. RÖCHLING's labor costs shall be charged to Supplier at 55 dollars/hr. Other related costs (materials, special lifting equipment, special tools, etc.) shall be charged to Supplier at the rate of the actual cost to RÖCHLING. RÖCHLING's entitlement to reimbursement for self-performed repairs shall not exceed the reasonable cost Supplier would have incurred to remedy the defects.
- 6.07 Supplier shall affirmatively assist RÖCHLING as quickly as possible upon the occurrence of any disruption that is potentially the fault of Supplier, using best efforts to keep downtime of the System to a minimum.

7 Timeline

- 7.01 Time is of the essence for all of Supplier's obligations in the Contract. Supplier will use best efforts to avoid a delayed start of production ("SOP") for the customer of RÖCHLING ("**SOP Customer**"). Supplier will provide a detailed schedule referred to herein as the Timeline ("**Timeline**"), which is created, updated and presented weekly (without the requirement of a request from RÖCHLING), stating the production progress percentage in the form of an Excel sheet, Microsoft Project "**Project Status**" (RÖCHLING Automotive template or approved equivalent). All revisions of any Timeline must be approved in advance by RÖCHLING.
- 7.02 Supplier will send the first Timeline to RÖCHLING within 2 weeks after the Contract is executed by the Parties. The Timeline shall conform in all respects to the obligation undertaken by Supplier in the Contract. The Timeline, and therefore any deadlines contained therein, shall not be changed without the approval in writing by both RÖCHLING and Supplier.
- 7.03 Supplier will devote sufficient resources and effort to meet the Timeline. In the event of insufficient progress by Supplier, whereby the reasonable inference arises that Supplier will fail to meet the Deadlines in the Timeline, RÖCHLING shall be entitled to take immediate corrective action in its discretion. RÖCHLING may, at its option (a) supplement the resources of Supplier, and charge the resulting cost to Supplier, with RÖCHLING resources or the employment of third-party contractors; or (b) terminate Supplier and finish the work through other means. In either event, Supplier shall be liable for all costs and damages incurred for the delay. Prior to exercising either of the foregoing options, RÖCHLING will provide notice to Supplier with an opportunity to present a recovery plan; provided however that the decision as to whether Supplier can meet the deadlines after demonstrated delay is committed to RÖCHLING's reasonable discretion.
- 7.04 **LIQUIDATED DAMAGES.** In the event of a delay in completing the System that is the fault of Supplier, Supplier will pay to RÖCHLING the per-day amount of Liquidated

Damages set forth in the Master Agreement, if any, multiplied by the number days between the scheduled and actual Final Acceptance according to the Timeline. The parties agree that damages to RÖCHLING resulting from Supplier's delay would be certain, but inherently difficult to quantify in that delay will impact RÖCHLING's reputation, relationships with its customers, and concessions and actions which are damaging to RÖCHLING. The parties hereby agree that the amount of Liquidated damages is not a penalty, but rather a reasonable measure of damages based upon the experience of the parties and the nature of the losses that will foreseeably result from the delay.

8 Progress Assurance

- 8.01 Supplier will provide RÖCHLING with information on the status of completion of the System at any time upon RÖCHLING's request. RÖCHLING will have the right to review the progress of the work on the System and will be provided access to Supplier's working documents and production facilities (including those of any subcontractors) for the component and systems manufacturing upon one (1) days' notice. Upon the occurrence of any material delay, RÖCHLING shall have the right to send a RÖCHLING employee to Supplier's production facility to monitor progress on an ongoing basis, and Supplier will provide full cooperation and transparency in allowing the monitoring activities.
- 8.02 Progress reports must be submitted weekly to the RÖCHLING Equipment Engineer by 12:00 P.M on Friday. Progress reports shall inform RÖCHLING of any disturbances or delays in the Timeline, whether caused by the fault of Supplier, requested changes or additional orders made by RÖCHLING, or other circumstances. The interval between Progress Reports shall be shortened appropriately to address the corrective measures being taken for delays and disruptions. Any and all anticipated changes in cost or schedule shall be fully presented in every Progress Report.
- 8.03 Separate from its obligation to provide timely and accurate Progress Reports, Supplier will immediately inform RÖCHLING in writing of any events and causes that put the adherence to the Deadlines at risk, stating the duration of the imminent delays and outlining an appropriate recovery plan.
- 8.04 If any material delay affecting a deadline is the fault of RÖCHLING (or otherwise not the fault of Supplier), the Deadlines in the Timeline shall be adjusted accordingly, provided that Supplier has given the notice required by the Contract in time for recovery measures to be adopted. Reasonable costs incurred by Supplier as a result of such delay will be subject to the approval of RÖCHLING and reimbursement.
- 8.05 Any delay or extension of time related to the fault of RÖCHLING shall be limited to the actual amount of time, day-for-day that RÖCHLING's required performance was late, and Supplier will not ask for or receive an extension based on Supplier's other projects or the shifting of resources to other Supplier activities (i.e. a "scheduling window" argument).

9 Changes to the System

- 9.01 Supplier will not make changes to the System without the prior written approval of RÖCHLING. Upon the discovery of any circumstance giving rise to the need for any change to the System, Supplier will give written notice to RÖCHLING of such circumstance(s) at the earliest possible time, but in no event later than two (2) business

days following discovery of the circumstance giving rise to the need for the change. Any request for change to the System must fully set forth the proposed change in the design and manufacture of the System, as well as the proposed impact on the Timeline and the Contract Price.

- 9.02 Upon agreement by RÖCHLING and Supplier, all proposed changes to the System shall be documented in a modification to the Contract, hereinafter referred to as a “**Change Order.**”
- 9.03 Under no event shall any issue affecting money or time be changed by oral agreement. In order to be enforceable against RÖCHLING, all changes to the Contract must be the subject of a Change Order approved in writing.
- 9.04 Supplier will keep detailed documentation about all changes to the System, including the status of all proposed changes and all executed Change Orders, in a consecutive log or change history, hereinafter referred to as the “**Change Log.**” Supplier will regularly coordinate the agreed-upon Change Log with RÖCHLING as part of the Progress Report.
- 9.05 For any changes to the Contract that require the agreement of RÖCHLING in writing, including but not limited to changes in the Contract Price, changes in the Timeline, or changes that are the subject of a Change Order, such changes shall require the signature of one of the RÖCHLING representatives who has signed the Master Agreement, specifically to include the Senior Buyer or the Purchasing Manager. The Supplier will not contend that change to a Timeline or the Contract Price has been approved by RÖCHLING without the aforementioned signature.

10 Payment

- 10.01 In exchange for all the obligations of Supplier contained in the Contract and for delivering the complete System described therein, RÖCHLING will pay Supplier the Contract Price. The Contract Price is the total amount set forth in the Master Agreement. The Contract Price may be payable in increments or milestones as set forth in the Master Agreement.
- 10.02 The Contract Price is a firm, fixed, lump sum price that includes all costs and charges for a complete and usable, turnkey operation System, and which include, but is not limited to, the following,
- (i) costs of the design review, Trial 1 at Supplier,
 - (ii) costs of optimization loops
 - (iii) costs of packaging, shipping for transport or return freight to the Destination
 - (iv) setup, assembly and Trial 2 (3-hour test) at RÖCHLING,
 - (v) documentation & training for RÖCHLING staff,
 - (vi) costs & expenses of all travel for Supplier’s staff, as well as other Supplier’s services,
 - (vii) the Final Acceptance – close of the List of Open Points
- 10.03 Upon a properly submitted and formatted invoice, RÖCHLING will make interim payments at the milestones of completion identified in the Contract. RÖCHLING will pay the initial award payment and the first milestone payment at net thirty (30), with all subsequent invoices paid net thirty (30).

- 10.04 The Supplier hereby irrevocably waives any rights it may now have or which it may acquire to file liens of any kind against RÖCHLING's property to the extent permitted by law in Supplier's jurisdiction.

11 Trial 1 (T1) at Supplier

- 11.01 The first Trial ("**Trial 1**" or "**T1**") of the System shall take place at Supplier's location, with the attendance of RÖCHLING designated observers. Supplier's Project Manager shall be present for Trial 1. The System shall be checked and technically examined for functionality.
- 11.02 After T1 of the System at Supplier is agreed by the parties to be successful, Supplier will transport and deliver the System to the Destination.
- 11.03 It is the intent of the Contract that only one T1 should be necessary. Should further iterations of T1 become necessary based on the results, Supplier shall reimburse RÖCHLING's costs for subsequent repetition of the Trial 1 at Supplier's facility.
- 11.04 One optimization loop is to be planned by the Supplier, both in cost and timing.
- 11.05 All trials shall be documented exclusively on the record form created by RÖCHLING. Any open points shall be set down in writing ("**List of Open Points**" "**LOP**").

12 Transport

- 12.01 Supplier shall transport the System to the unloading point at the Röchling Plant ("**Destination**") with the allocation of risk determined by DAP (Incoterms 2020), including packaging and transport insurance, and excluding import tax. The System shall remain at the risk of Supplier and Supplier shall be responsible during the transport of the System and shall repair, renew and make good, at its own expense, all such loss and damage however caused, whether or not due to the fault of Supplier and including, but not limited to, loss or damage caused by collision, riot, fire or force or violence of the elements.
- 12.02 Loading and unloading activities and the setup of the System are not the responsibility of RÖCHLING. Specific requests for support and offers of support may be made separately. . Notwithstanding the foregoing, RÖCHLING will provide support through the provision of an indoor crane (if available on-site) free of charge, and through the provision of the forklift trucks if available in the Röchling plant. Mobile cranes that may be necessary shall be hired locally for the period of operation by, and at the expense of, Supplier. This work shall, however, take place, under the supervision and responsibility of Supplier.
- 12.03 At least three working days before the arrival date, Supplier's Project Manager shall inform in writing of the precise arrival time.

13 Trial 2 (T2) at RÖCHLING

- 13.01 The trial 2 ("**Trial 2**" or "**T2**") shall be performed by Supplier at the Destination. Although RÖCHLING will have support staff in attendance, implementation shall be Supplier's responsibility.
- 13.02 The System shall remain at the risk of Supplier and Supplier shall be responsible during the Trial 2 and shall repair, renew and make good, at its own expense, all such loss and damage however caused, whether or not due to the fault of Supplier.

- 13.03 Trial 2 will be a 200-piece performance and operating mode test, unless otherwise stated in the Master Agreement. The List of Open Points from Trial 1 shall be fully addressed and processed.
- 13.04 After Trial 2 of the System is agreed to have been successful, RÖCHLING shall have the right to use the System for its intended purpose.

14 Final Acceptance & List of Open Points

- 14.01 Following Trial 2, Supplier & RÖCHLING will meet to discuss any remaining open points. If both Parties agree to the results of that List of Open Points meeting and there is final acceptance and LOP closure ("**Final Acceptance**"), RÖCHLING shall make a declaration of the final payment.

15 Training / Instruction of RÖCHLING Personnel

- 15.01 Supplier is obligated to train selected RÖCHLING personnel in the operation and service of the System at the RÖCHLING Plant ("**the Plant**"). Training includes, in particular, start up and shut down of the System and its components, instruction on operation, service, repair and maintenance, conduct in the event of disruptions as well as obtaining and retaining the agreed quality and performance data. Training and instruction must also especially include conveying technical knowledge necessary to operate the System.

16 Spare Parts / Wearing Parts

- 16.01 Supplier ensures that the parts listed on the spare parts list ("**Spare Parts List**") are available for a period of at least five (5) years after Final Acceptance. RÖCHLING will keep a warehouse for parts listed on the Wearing Parts List as agreed between the Parties.
- 16.02 Parts that are subject to natural wearing are listed by Supplier ("**Wearing Parts List**") at the latest during the acceptance test at Supplier, communicated to RÖCHLING and offered to RÖCHLING as a "**Wearing Parts Package**" with prices and realistic delivery times. RÖCHLING will check the Wearing Parts List and negotiate and order it as a Wearing Parts List at its own discretion. Supplier will inform, train, and cooperate with RÖCHLING in a manner designed to bring about preventative service without delay, professionally and with the correct parts.

17 Provision of after-sales service

- 17.01 Within the two-year warranty period, Supplier is obligated to immediately send a specialist in the event of non-performance of the System in order to effect repairs. This must occur on the same day, if the defect is reported before 9:00am and on the morning of the following day, if the defect is reported after 9:00am. This requirement also applies to notifications of defect on Fridays. In the case of emergencies, Supplier will provide weekend support.

18 Indemnification

- 18.01 Supplier agrees to defend, indemnify, and hold harmless RÖCHLING (including its subsidiaries and affiliates and their respective employees, officers and representatives) and RÖCHLING's employees, officers and representatives, and its successors and assigns (collectively, the "RÖCHLING Indemnitees"), from and against all costs, suits, claims, losses, damages and expenses (including reasonable attorney's fees incurred in investigating and defending same) related to or arising out of any allegation of breach of warranties, misrepresentation, breach of this Contract, tort (negligence), or any act or omission committed by Supplier, its employees, agents, subcontractors, or other representatives ("Supplier's Agents"). The foregoing indemnity obligation of Supplier shall include, but not be limited to, damage to property and injury to persons caused by: (i) the failure of any of Supplier's Agents to comply with all applicable rules and regulations (RÖCHLING's, RÖCHLING's affiliates' and otherwise) governing security, maintenance and safety at or about RÖCHLING's or RÖCHLING's affiliates' premises; (ii) any claim against RÖCHLING and/or RÖCHLING's affiliates by or on behalf of any of Supplier's Agents for injury or otherwise; or (iii) any claim against RÖCHLING and/or RÖCHLING's affiliates resulting from Supplier's failure to maintain workers' compensation or other public or private insurance with respect to any of Supplier's Agents.
- 18.02 In connection with any demands, claims or any other legal proceedings (whether at law or in equity) covered by this Section, RÖCHLING and/or RÖCHLING's agents, servants and employees retain the right to be represented, at their sole option, by attorneys of their own selection, at their own expense. The exercise of this right to select their own attorneys will in no way detract from or release Supplier from its obligation to indemnify and hold harmless RÖCHLING and/or RÖCHLING's agents, servants and employees. The extent of Supplier's indemnity obligation shall not be limited to the amounts of the insurance coverage provided for in this Contract.
- 18.03 In the event that Supplier defaults on its obligations under this Section Supplier agrees that it will be liable for all reasonable expenses and attorneys' fees incurred by RÖCHLING to enforce the provisions of this Section.

19 Breach, Default, and Termination

- 19.01 Upon the occurrence of any breach of the Contract by Supplier, RÖCHLING will provide written notice specifying the nature of the breach in reasonable detail. If, within ten (10) days following the date of such written notice: (a) Supplier has not remedied such breach; (b) the breach is not capable of being remedied during a ten (10) day period and Supplier has not commenced to remedy the breach during such ten (10) day period and continuously used commercially reasonable efforts which are expected to cure the breach within an amount of time acceptable to RÖCHLING; OR (c) the breach cannot be cured; then RÖCHLING shall be entitled to declare the breach a default of the Contract. RÖCHLING's remedies for default include, but are not limited to terminating the Contract, including any or all of the Contract documents, in whole or in part, upon written notice of termination.

- 19.02 In the event of bankruptcy, receivership, dissolution or insolvency of Supplier or assignment by Supplier for the benefit of creditors of Supplier, RÖCHLING shall be entitled, at its option, to terminate this Contract, and subsection (1) above shall apply.
- 19.03 Upon termination of Supplier for default, RÖCHLING may immediately take possession of all materials, component parts, equipment, drawings, documents and supplies located on RÖCHLING premises and/or require all portions of the System in progress or in transit (including, without limitation, drawings, specifications and other engineering work product, on whatever media is available) and all work or services performed by Supplier up to and including the date of termination (including, without limitation, drawings, specifications and other engineering work product, on whatever media is available) to be delivered to RÖCHLING, and either finish the System with its own forces or employ any other person or persons to finish the System involved, or any combination of such options. Supplier will fully cooperate with the turnover of all such assets and RÖCHLING's efforts to complete the System. In the event that the cost and expense of finishing the System exceed the amount remaining to be paid to Supplier to complete the System had this Contract or any of the other Contract documents not been terminated, then Supplier shall be liable for and shall pay such reasonable and actually incurred excess cost and expense to RÖCHLING upon demand.

20 Suspension of Work for Convenience

- 20.01 RÖCHLING may, from time to time and at its sole discretion, require Supplier, in writing, to suspend all or any part of the manufacture of the System for such period of time that RÖCHLING determines is appropriate for the convenience of RÖCHLING (each, a "**RÖCHLING Suspension**"). Supplier's sole remedy in the event of any RÖCHLING Suspension shall be an extension of Contract time for a period equivalent to such suspension.

21 Applicable Law / Legal Venue

- 21.01 This Contract shall be governed by and construed in accordance with the laws of the State of South Carolina, but without giving effect to its conflict of laws principles that would make the laws of any other jurisdiction applicable to this Contract, excepting only that the mechanic's lien laws of the jurisdiction in which the particular work is performed shall govern the provisions of any no-lien agreement or lien waiver agreement or requirement as provided in Section 15 above. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to any of the Contract.
- 21.02 Supplier shall at all times comply with all Applicable Laws applicable to the manufacture, delivery and sale of the System or its performance of work hereunder. Any provisions or clause(s) required to be included in a contract of this type by any applicable U.S. Federal, State or local law, ordinance, rule, order or regulation having the effect of law shall be deemed to be incorporated herein and is (are) hereby made a part hereof.
- 21.03 The Parties agree that any and all disputes arising under or as a result of the Contract can be brought only in the United States District Court for the District of South Carolina or the South Carolina state courts, which courts shall have the sole and exclusive jurisdiction over

any such disputes. Supplier agrees to submit to the jurisdiction of the courts identified in this Section and hereby waives any challenges to the jurisdiction of such Courts.

22 Confidentiality and Intellectual Property

- 22.01 Supplier will enter into a Confidentiality Agreement which shall survive the expiration or termination of this Contract and continue to bind the Parties. All information supplied by RÖCHLING to Supplier hereunder shall be considered RÖCHLING's "**Confidential Information**" under such agreement.
- 22.02 Supplier acknowledges and agrees that the RÖCHLING Know-How (as defined below) is secret and proprietary to RÖCHLING, and its affiliates and Supplier must, and must cause its officers, directors, employees, agents, contractors, sub-contractors and any other third parties to whom Supplier discloses Know-How, hold such RÖCHLING Know-How strictly as Confidential Information in accordance with the terms of the Confidentiality Agreement. All RÖCHLING Know-How, together with any associated trade secret, patent, patentable, copyright and other intellectual property rights, shall be the sole and exclusive property of RÖCHLING. Without RÖCHLING's prior written approval (in its sole discretion), the RÖCHLING Know-How shall not be: (a) used by Supplier other than as necessary in connection with performing Supplier's obligations hereunder, (b) disclosed, sold, assigned, or otherwise provided to third parties by Supplier, or (c) commercially exploited by or on behalf of Supplier. For purposes of this Contract, the "**RÖCHLING Know-How**" shall include without limitation all intellectual property and know-how provided by RÖCHLING to Supplier or the System as well as the Developed Know-How (as defined below), and any business strategies, plans and procedures, proprietary information, data, designs, trade secrets, processes and methods related to this order or the System, and any information pertaining to the operations, products, and business plans of RÖCHLING. Without limiting the Confidentiality Agreement, Supplier expressly acknowledges and agrees that the identities of RÖCHLING's existing and prospective customers shall also constitute "Confidential Information" for purposes of the Confidentiality Agreement.
- 22.03 Supplier acknowledges and agrees that all intellectual property and know-how (specifically including, but not limited to, all patent rights, copyright, trade secrets, etc.) developed or derived by Supplier related to or associated with the System and any other work product provided hereunder (collectively, the "**Developed Know-How**") is all "work-made-for-hire" under the United States Copyright Act of 1976, as amended, and therefore, the property of RÖCHLING as the author and owner. If ownership of right, title, and interest in such Developed Know-How is not otherwise deemed to vest exclusively in RÖCHLING as work-made-for-hire, Supplier, without additional compensation, agrees to assign and, upon creation thereof, automatically assigns to RÖCHLING the ownership of all such copyright, trademark, patent, and all other intellectual property rights and claims, and RÖCHLING shall have the right to register such rights and claims in its own name. Upon the request of RÖCHLING, Supplier shall execute, and shall cause its officers, employees, agents, contractors and sub-contractors to execute, such documents as RÖCHLING may deem necessary or advisable to effect such assignments to RÖCHLING. To the extent Supplier engages third parties to perform services hereunder, Supplier shall enter into binding legal agreements with such parties, which agreements shall include such

provisions as may be necessary to effect the intent of this provision in vesting all right, title and interest in such work in RÖCHLING (as a third-party beneficiary).

- 22.04 Should it be discovered during the course of the order that the use of third-party property rights is necessary for the successful performance of the work, Supplier shall notify RÖCHLING accordingly without delay. RÖCHLING shall decide whether a request for a license is to be made or whether the work is to be continued in a manner that precludes any infringement of the rights.

23 Insurance and Risk of Loss

- 23.01 Supplier has, or will obtain, and will provide RÖCHLING with evidence of same (including a copy of such policies upon request), and will keep in force the following types of insurance and in the following amounts, each in form and with an insurance provider reasonably acceptable to RÖCHLING:

- (i) Workers' Compensation or Workplace Safety insurance, and such other, as applicable, social insurance as may be required, covering all employees engaged directly or indirectly in the performance of this Contract, in such coverage's and amounts as would satisfy the minimum statutory requirements of (a) the province(s) or state(s) wherein the System is being manufactured and any services hereunder are being performed, and (b) the province or state of the principal address or place of business of Supplier; it being understood that, for purposes of the Contract, Supplier's procurement of such coverage's shall be deemed mandatory, regardless of whether the statute in any of said provinces or states permits Supplier to elect not to carry any such coverage. Supplier also shall name RÖCHLING as the Alternate Employer endorsement (WC 00 03 01) to the Workers Compensation policy.
- (ii) Employer's Liability Insurance, with a **\$500,000** per-occurrence limit.
- (iii) Professional Liability, including errors and omissions coverage and Comprehensive General Liability Insurance, including premises operations, products liability, completed operations, blanket contractual, broad form property damage, personal injury, Supplier's protective, explosion, collapse and damage to underground property (XCU hazards) in the following amounts:
 - Professional Liability) **[\$5,000,000]** combined single
 - limits, aggregate
 - Bodily Injury) **[\$5,000,000]** each occurrence
 - and) **[\$5,000,000]** annual aggregate
 - Property Damage)
 - subject to a deductible no greater than **[\$100,000]**
- (iv) Automobile Liability Insurance covering all owned, non-owned and hired vehicles in the following amounts:
 - Bodily Injury) **[\$5,000,000]** each occurrence
 - and)
 - Property Damage)
 - subject to a deductible no greater than **[\$100,000]**
- (v) Cargo/Transportation insurance in the minimum amount of **[\$100,000]**; and

- (vi) “All Risks” Builders Risk insurance protecting the respective interests of RÖCHLING, Supplier, and any subcontractors of Supplier covering physical loss or damage to the System during the course of installation and any materials, other equipment or supplies furnished for the System and installation thereof (whether furnished by Supplier or its subcontractors or provided to any of them by RÖCHLING) wherever located. This insurance shall provide limits to the full replacement value of the System up to a maximum of **[\$2,500,000]**. If the “All Risks” Builders Risk insurance is subject to a deductible, which deductible shall be no greater than **[\$100,000]**, any covered losses or damages within the deductible of this policy shall be the sole responsibility of Supplier.
- 23.02 RÖCHLING shall be named as an “additional insured” under each such policy where such designation is permitted. Upon signing this Contract, seventy-two (72) hours prior to the shipment of the System, and at any other time requested by RÖCHLING, Supplier shall furnish RÖCHLING an endorsement showing that RÖCHLING has been named an additional insured and a certificate of insurance completed by its insurance carrier(s) certifying that insurance coverages are in effect and will not be canceled or materially change except ten (10) days after RÖCHLING’s written approval. Supplier hereby waives its right to subrogation. All insurance specified in this Section shall contain a waiver of subrogation in favor of RÖCHLING, its affiliates and their respective employees for all losses and damages covered by the insurances required in this Section, including coverage for damage to RÖCHLING’s property in Supplier’s care, custody or control.
- 23.03 For all personal property of RÖCHLING that is delivered into the possession of Supplier during the performance of the Contract, the parties agree that Supplier is a bailee of such property, that Supplier shall secure it against loss or damage, and that Supplier shall bear the risk of loss of same.

24 Assignment and Subcontracting

- 24.01 Supplier may not assign (by operation of law or otherwise) or delegate (whether by subcontract or otherwise) this Contract or any of its rights or obligation hereunder without RÖCHLING’s prior, express and written consent, which may be withheld at RÖCHLING’s sole and absolute discretion, and any purported assignment or delegation without such consent shall be null and void ab initio and of no force or effect. Notwithstanding RÖCHLING’s consent to any subcontract or assignment, Supplier shall remain primarily and fully liable for all of its obligations hereunder. For purposes of this Contract, any transaction that results in the transfer of 15% or more of Supplier’s voting equity or otherwise results in a change of control of Supplier (whether by ownership of securities, contract or otherwise) and shall be deemed an assignment of this Contract and shall, if completed without RÖCHLING’s prior written consent, constitute an incurable material breach of this Contract by Supplier. In case of such material breach, RÖCHLING shall be entitled to terminate this Contract with immediate effect.

25 Miscellaneous Provisions

- 25.01 RÖCHLING’s obligation to make payments to Supplier hereunder are subject to any unsettled claims RÖCHLING may have against Supplier in connection with this Contract.

RÖCHLING shall have a right of setoff for any claim against Supplier, whether or not it relates to the Contract or the System.

- 25.02 Supplier shall be an independent contractor in all respects connected with this Contract. Supplier is not and shall not represent itself as an affiliate or agent of RÖCHLING. Nothing contained herein or any other documents comprising a part hereof shall be deemed to constitute or create a relationship of agency, joint venture, partnership or any relationship other than that as herein specified. Supplier shall have no authority and shall not represent that it has any authority to assume or incur any obligation of any kind in the name of RÖCHLING.
- 25.03 Previous agreements made between the Parties lose their validity on signing this Contract, unless they are expressly confirmed in writing by both Parties. The Contract regulates the thus establishes a legal relationship between the Parties totally and finally.
- 25.04 This Contract contains the entire agreement of the Parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions.
- 25.05 Any amendments or changes to this Contract must be in writing signed by each of the Parties. RÖCHLING's identified Purchasing Department personnel as set forth in the Master Agreement are the only persons with the authority to authorize and sign a material change to this Contract, particularly as it relates to time or money. The specific Engineer or Project Manager for RÖCHLING does not have such authority to bind RÖCHLING.
- 25.06 Any provision of this Contract, which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. The voided or invalidated term is to be replaced by a valid term which comes as close as possible to the contractual purpose. This will also apply in the case of contractual gaps.
- 25.07 The rights and remedies of the Parties under this Contract are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have. No single or partial exercise of any such right or remedy by a Party, and a failure to enforce any such right or remedy, will not constitute a waiver of such right or remedy or preclude any further exercise thereof or of any other right or remedy of such Party.
- 25.08 All titles and headings in this Contract are intended solely for convenience of reference and will in no way limit or otherwise affect the interpretation of any of the provisions hereof.
- 25.09 This Contract is made solely for the benefit of the Parties hereto and their successors and permitted assigns, and no other person or entity has, or is entitled to enforce, any rights, benefits or obligations under this Contract.

[END OF DOCUMENT]