



## GENERAL TERMS AND CONDITIONS OF SALE

### Section 1. Scope

These General Terms and Conditions (“**GTC**”) apply to all products sold by the Supplier, including Software (“**Products**”) and all Product-related services (“**Services**”) provided by the Supplier, and are agreed to by, on the one hand, the legal entity ordering the Products (“**Customer**”) by means of the Customer’s or the Supplier’s ordering documents, incorporating by reference the GTC (“**Order**”) and, on the other hand, the Acrelec entity signing the Order Confirmation (“**Supplier**”), and shall take effect on written acceptance of the Order (“**Order Confirmation**”) by the Supplier.

In the Agreement, “**Software**” refers to any software product, including and without the following list being exhaustive, operating systems, computer and microprocessor programs, object code, source code and software instructions integrated in or used with the Products, whether written or customized by the Supplier or resold from already existing third-party programs.

### Section 2. Orders, prices, and payment terms

#### 2.1. Orders

Unless otherwise agreed, the terms of the Supplier’s ordering documents shall supersede the terms in any Customer purchase order or other similar document, and no non-Acrelec terms shall apply to the Order.

If the Supplier and the Customer (“**Parties**”) agree that other terms shall apply to the Order such terms (“**Special Conditions**”) shall be incorporated herein and shall prevail and take precedence over any conflicting terms and conditions hereof.

The GTC, together with the Order, the Order Confirmation and any applicable Special Conditions are hereinafter referred to as the “**Agreement**.”

The Parties agree that the Order (the offer) from the Customer is only contractually accepted by the Supplier if the Supplier sends the Customer a written Order Confirmation (the acceptance thereof). The Supplier may unilaterally refuse to accept an Order for any reason (such as but not being limited to a change in price or characteristic from that previously listed in a catalog, information sheet, or the like) and without any liability.

Orders shall be non-cancelable, and any sums paid nonrefundable.

No changes to Orders may be made by the Customer after the Order Confirmation, unless the Parties mutually agree to such changes and any associated difference in price, delivery timing, and any other terms.

The Customer hereby warrants that the person or entity ordering the Products under the Order is duly authorized to enter into the present Agreement on the Customer’s behalf.

#### 2.2. Prices

Prices quoted by the Supplier shall be valid for thirty (30) calendar days from the date of quotation. Quotations for Services are made on the basis that such Services will be performed in the country or countries specified in the Order (“**Territory**”).

The Supplier shall sell Products to the Customer at the Supplier’s prices in force at the date of acceptance by the Supplier of the Order. The prices for Products shall be Ex-Works (Incoterms 2020) at the Supplier’s premises and shall be inclusive of the Supplier’s standard packaging.

Unless otherwise provided in the Agreement prices shall not include transport, installation, set up or maintenance.

All prices quoted are exclusive of applicable sales tax and any other taxes, duties and charges levied or assessed in the United States or elsewhere in connection with the sale, purchase, and export or import of the Products. The Customer shall be responsible for payment of all taxes, duties, customs broker fees, and related governmental charges.

The Supplier reserves the right to increase the price of the Products, minimum order quantities or applicable transport and freight charges, at its sole discretion without notice.

### **2.3. Payment terms**

Unless otherwise agreed, an invoice for fifty percent (50%) of the total value of the Order shall be issued by the Supplier upon Order Confirmation, and an invoice for the balance shall be issued when the Product is ready for delivery.

Unless otherwise agreed, invoices are due and payable within ten (10) calendar days of the invoice date, without discount for early payment.

Payment may be made by bank transfer, cheque, credit card or debit card, and the corresponding invoice number must be indicated with each payment.

Payment is deemed as performed on the date on which the funds are fully credited to the Supplier's account.

Payment shall be made in the currency specified in the invoice without withholding, deduction or set-off, whether arising from incomplete or defective performance or otherwise.

If the Customer disputes any invoice the Customer shall notify the Supplier in writing within ten (10) working days of receipt of such invoice; otherwise

the Customer shall be deemed to have irrevocably waived its right to dispute such invoice.

### **2.4. Due date payment default**

If the Customer remains in default of any payment obligation for thirty (30) calendar days or more after the issue of a written demand therefor, without limiting the Supplier's remedies hereunder, including termination rights described in section 11 herein, the Supplier shall be entitled to the following:

- a) all sums due from the Customer to the Supplier under the Agreement shall become payable immediately;
- b) the Supplier shall be entitled to suspend further deliveries of any Products to the Customer, or demand advance payment for any new orders, until payment of all outstanding amounts has been made in full;
- c) the Supplier shall be entitled to suspend access to any Software enabling use of the Products and to any Services, and/or remotely stop the functionality of the associated Products;
- d) the Customer shall pay the Supplier interest on all sums outstanding at an annual rate equal to four percent (4%) above the prime rate published in The Wall Street Journal as of the first business day of the month the amount is initially due, compounded monthly, until payment is made in full (whether before or after judgment), or the greatest amount allowed by law, whichever is less;
- e) the Customer shall promptly reimburse the Supplier for any fees and costs incurred in collecting the payment, repossessing the Product, and enforcement of the Agreement; and

- f) The Supplier reserves the right to set off any amount due by it to the Customer, however arising, against any sums due by the Customer to the Supplier for whatever reason.

### **Section 3. Delivery**

The Supplier shall deliver the Products no less than twelve (12) weeks after the Order Confirmation provided that the Customer is not in default of any of its obligations hereunder. Delivery dates are estimates only such that late delivery thereafter shall not constitute a breach by the Supplier. The Supplier shall use carriers of its choice. The carrier and associated insurance costs shall be paid for in advance or promptly reimbursed by the Customer, at the Supplier's sole discretion.

The Customer or its authorized representative shall, on delivery, sign the Supplier's delivery note ("**Delivery Note**") confirming receipt of the Products.

The risk of loss, damage or destruction of the Products shall pass to the Customer on delivery.

Unless otherwise provided in the Agreement, the Supplier shall deliver the Products Ex-Works (Incoterms 2020) at the Supplier's premises stated in the Order.

The Customer shall, within forty-eight (48) hours of delivery of the Products, notify the Supplier of any damage to the Products occurring during transit and shall, if requested by the Supplier, assist the Supplier in obtaining recovery against any carrier or insurer for loss or damage to the Products.

The Customer shall, within five (5) working days of delivery of the Products, notify the Supplier of any claim for non-delivery of Products, or for any apparent defects, or apparent non-conformity of the Products with the Order, excluding any loss or

damage occurring during transit which is subject to the preceding paragraph.

If at the Customer's request the Supplier agrees to postpone delivery of the Products, the Supplier may charge the Customer all reasonable additional costs of handling and storage of the Products, provided that the Customer shall remain liable to pay for the Products (and any applicable sales tax and any other taxes, duties and charges) in accordance with the payment terms of the Agreement.

### **Section 4. Transfer of ownership**

Title to the Products, excluding Software, shall pass to the Customer upon receipt by the Supplier of full payment of the Products.

Until title to the Products is transferred to the Customer, the Customer shall:

- a) keep the Products in the same condition as when delivered by the Supplier and clearly identifiable as the property of the Supplier;
- b) ensure that the Products are not and will not be subject to seizure, theft or other similar measures deriving from the Customers' activity, or any third party's activity;
- c) keep the Products insured against the risks of loss, damage or destruction to replacement value with a reputable insurance company and exhibit to the Supplier on request evidence of the Customer's compliance with this clause; and not under any circumstances sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of the Products. The Customer must promptly notify the Supplier in the event of any liens, seizures, or other dispositions or encumbrances by third parties (provided that such

notification shall not excuse the Customer for any breach and liability arising therefrom).

In application of the previous paragraph, the Supplier shall be entitled to repossess the Products at the Customer's exclusive expense (including attorney fees and costs), and consequently the Customer hereby grants the Supplier, or any entity which represents or is appointed by the Supplier, the irrevocable right to enter the premises where the Products are stored for the purpose of their repossession.

### Section 5. Supply of Services

If the Customer requests maintenance and support from the Supplier, the terms of such maintenance and support shall be as set out in the Supplier's standard maintenance agreement.

The Customer shall be responsible for the installation of the Products unless otherwise explicitly agreed by the Parties in writing, such as indicated by a separate line item in the Order and Order Confirmation.

The Customer shall be responsible for the collection, treatment, recovery, and environmentally sound disposal of the Products at its own cost at the end of life of such Products in accordance with applicable law.

Where services relating to the supply of the Products, such as installation, repair, upgrading or training ("**Installation Services**"), are included in the Order, the following terms shall apply between the Parties.

5.1 The Supplier shall:

- a) use reasonable efforts to meet any performance dates specified in the Special Conditions, but any such dates shall be estimates only such that late delivery

thereafter shall not constitute a breach by the Supplier;

- b) use reasonable care and skill in the provision of the Installation Services; and
- c) use reasonable efforts to provide the Installation Services in accordance with the agreed description or specifications for the Installation Services as set out in the Agreement (hereinafter the "**Specifications**") in all material respects.

5.2 The Customer shall:

- a) ensure that the terms of the Order and any information it provides in the Specifications are complete and accurate;
- b) cooperate with the Supplier in all matters relating to the Installation Services;
- c) provide the Supplier, its employees, agents, consultants and sub-contractors with prompt and uninterrupted access to the Products and the Customer's premises where the Products are located, or are to be installed and the Installation Services performed (hereinafter the "**Location**"), and provide such other facilities as may reasonably be required by the Supplier;
- d) provide the Supplier with such information and assistance as the Supplier may reasonably require in providing the Installation Services, and ensure that such information is accurate in all material respects;
- e) obtain and maintain all necessary licenses, permissions, and consents which may be required in connection with the performance of the Installation Services at the Location prior to the commencement of the Installation Services; and

- f) keep and maintain all Supplier materials that the Supplier reasonably requests to leave at the Location in safe custody at the Customer's risk and maintain such Supplier materials in good condition until returned to the Supplier.

5.3 If the Services include a pre-installation inspection, the Supplier shall be entitled to invoice the Customer for the reasonable costs of any additional pre-installation inspection deemed necessary by the Supplier as a result of the Customer's noncompliance with the Specifications or other prerequisites reasonably requested by the Supplier.

5.4 All building and construction work (and materials) required shall, unless indicated as forming part of the Installation Services in the Specifications, be provided by Customer, including (without limitation) cable laying, plastering, grouting, filling, flooring and carpet changes. The Customer shall provide all required power and communications (e.g., cable, telephone, etc.) supplies before the planned date for installation. All materials to be furnished by the Customer pursuant to the Agreement shall be of the highest quality and furnished, installed, and finished in strict conformity with the Specifications and applicable laws.

5.5 The Customer shall be responsible for determining the Location and its suitability for installation of the Products. The Customer shall undertake any required structural engineering necessary to certify the structural integrity of the Location to bear the weight of the Products, in location and during access, and any equipment necessary to undertake such access and installation. The Customer shall ensure minimum clear access as shown on the Specifications and any drawings. Time is of the essence for all actions of the Customer

(e.g., Specifications, building and construction work, site preparation, cooperation, and the like) necessary or desirable for the Installation Services occurring thereafter.

5.6 Any installation work to be provided as part of the Installation Services shall be performed by the Supplier on consecutive working days and during the Supplier's working hours. If at the Customer's written request, the Supplier agrees to perform the work outside the Supplier's working hours, then the additional charge for such work shall be paid by the Customer. Where installation is subject to delay not solely attributable to the Supplier ("**Customer Delay**") or the Supplier is prevented from working full time or on consecutive working days for any cause, the additional cost of redeploying its engineers, or withdrawing and returning to the Location, or of retaining engineers at the Location without work, and all delay, waiting or wasted time and any resulting damage to the Products shall be paid for by the Customer. If the Supplier's engineer or technician is required to leave the Location due to a Customer Delay, the Customer shall be responsible for the engineer or technician's delay, waiting and wasted time and all damage to the Products.

5.7 Installation of any Product shall not be conditional on the Product being put into use. The Customer shall, following installation, sign a field service report furnished by the Supplier signifying completion of the Installation Services.

5.8 The Installation Services do not include the 'making good' of any Location required as a result of the Installation Services.

5.9 The Supplier shall have no liability for and Customer shall indemnify and hold the Supplier harmless against all and any liability or claims (including reasonable legal fees and expenses) arising from any act or omission of the Customer or any of its end customers or end users which

prevents or hinders the Supplier's performance of any work within the scope of the Installation Services which is reasonably required for the safe or efficient operation of the Products or the performance of the Installation Services.

### **Section 6. Discontinuation of Production**

The Supplier may suspend or discontinue production of any of the Products at any time for any reason, including, without limitation, the unavailability of components. In such cases, the Supplier shall make reasonable efforts to give the Customer not less than six (6) months' notice of suspension or discontinuance, or otherwise shall give such notice as is reasonable if the suspension or discontinuance is due to Force Majeure.

The Supplier shall make reasonable efforts to:

- a) inform the Customer of the date after which orders for the Products affected shall no longer be accepted; and
- b) complete the manufacture of affected Products ordered by the Customer prior to such date.

### **Section 7. Warranties**

7.1 Unless otherwise agreed for a period of thirty (30) days from the date of delivery of the Products to the Customer or from the agreed installation date where Installation Services are provided (the "**Product Warranty Period**") the Supplier will at its discretion, repair (including parts and labor) or replace any Products that are defective as a result of defects in design, workmanship or materials, or credit or reimburse the Customer with the price thereof, provided that the Customer has given the Supplier written notice of the defect within the Product Warranty Period. The Customer shall pay all carrier and associated insurance costs incurred in returning defective Products to the location

designated by the Supplier for repair or replacement. Subject to 7.5, the Supplier shall pay all carrier and associated insurance costs incurred in returning repaired or replacement Products to the Customer's delivery address set out in the Agreement.

7.2 Except as otherwise provided in this Agreement, the Products are supplied on an "AS IS" and "AS AVAILABLE" basis. In this regard, the Supplier does not warrant that the Products will be free of all errors or that use thereof will be uninterrupted; provided that the Supplier shall use reasonable care and skill to ensure that any errors in Products interfering with the proper operation thereof for the purpose for which they were designed, are corrected, provided always that the Customer has given the Supplier notice of any such error within the Product Warranty Period and is able to reproduce such error and demonstrate it to the Supplier.

7.3 The Supplier will rectify any failure to provide Services with due care and skill provided the Customer has given the Supplier notice of such failure within thirty (30) days of completion of the Services ("the Service Warranty Period").

7.4 The Customer shall, within the Product Warranty Period or the Service Warranty Period as applicable, give the Supplier prompt notice of any defect, error or failure, providing the Supplier with all information regarding such defect, error or failure which the Supplier may reasonably require and comply with all reasonable suggestions or instructions which the Supplier may offer with a view to the diagnosis and/or remedy of such defect or error.

7.5 If the Supplier establishes that a reported defect, error or failure is not covered by the warranties given under this Section 7 (Warranties), the Customer shall be liable for the costs of the

Supplier's investigative and remedial work and the repair or replacement of the Products at the Supplier's then current prices, and for all associated carriage and insurance costs.

7.6 The Supplier shall not be liable for any failure of the Products or Services caused by the use thereof in conjunction with any other equipment or Software which has not been provided by the Supplier or caused by any use of the Products other than for the purposes for which they were designed.

7.7 The warranties given under this Section 7 (Warranties) shall be void if any person or entity, other than the Supplier or a repairer nominated by the Supplier, has modified, altered, added to or repaired the Products or has attempted to do so.

7.8 THE SUPPLIER SELLS PRODUCTS AND SERVICES TO THE CUSTOMER SUBJECT TO THE AGREEMENT TO THE EXCLUSION (TO THE EXTENT PERMISSIBLE BY LAW) OF ALL OTHER TERMS, CONDITIONS, GUARANTEES AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR CORRESPONDANCE TO DESCRIPTION OR SAMPLE.

7.9 The remedies provided by this Section 7 shall be the Customer's sole remedies in respect of any breach of warranty to the exclusion of all other remedies.

7.10 The warranties provided herein shall be void if the Products are subjected to abnormal or improper usage, care or maintenance, or are used other than in compliance with the instructions provided by the Supplier.

7.11 The following shall be excluded from any warranty or requirement of return, repair or replacement provided herein: work required to repair, replace, correct, or recalibrate a Product

arising from 1) the Product being used in an abnormal or improper manner, including a material change in the use or usage of the Product, 2) vandalism, misuse, abuse, or accidental damage, 3) failure to keep the Product clean, free from any foreign objects, paper clips and similar items, and in proper, or in accordance with manufacturer's recommended, environmental conditions, 4) failure to keep the Product cleaned in accordance with all instructions and recommendations as may be issued from time to time by the applicable manufacturer(s) or the Supplier, 5) contamination of the Product by or exposure to any liquid, dust or other material (other than dust which is present in normal ambient conditions of commercial operations), 6) failure arising from spikes in or irregular power supply, 7) malfunction of a part or attachment not originally attached to the Product or a defect in the Product caused by its attachment to or operation with such a part or attachment; 8) use of unapproved media or unapproved consumables on or with the Product, 9) an event of Force Majeure, 10) the movement of, or work having been undertaken upon, or the relocation or reinstallation of the Product by a person or entity not approved by the Supplier, 11) restoration and reloading of the Software for the Product, 12) use of the Product by untrained personnel, 13) any failure by the Customer to provide access to the Product in accordance with these terms and conditions, or 14) delay, waiting or wasted time where no reported fault is found by the Supplier.

7.12 Cables and excluded products listed in any Addendum or Special Conditions shall be excluded from any warranty or requirement of return, repair or replacement.

## **Section 8. Intellectual property rights**

**8.1. "Intellectual Property Rights"** shall include all rights in inventions, patents, utility models, rights to

Products, design rights, trademarks, semiconductor design rights and mask works, topography rights, service marks, rights in the nature of passing off and unfair competition, rights in designs, trade dress, business and trade names, domain names, topography rights, copyrights (including copyright in Software) and neighboring and related rights, moral rights, database rights, know-how, trade secrets and other confidential information, and all other intellectual property rights and rights of a similar or corresponding character which may exist now or in the future subsist in any part of the world (whether registered or not or the subject of an application for registration) and including all rights to apply for, and obtain, registrations in respect of any and all of the foregoing, each for their full term including extensions, revivals, reissues, continuations, continuations-in-part, divisionals, reexaminations and renewals thereof.

The Customer is not authorized to use the name, logo, trademark, trade names, graphics, drawings and models, design, image or any other elements for which the rights are held by the Supplier in any of the former's advertisements, communications, publications or other elements, without the Supplier's prior written agreement thereto. The Customer has no right or license to reconstruct any portion of the Products. Any implied license to use the Products by Customer is limited to sole use of the Supplier-supplied Products by only the Customer and its retail customers at the Customer's facility, and no reproduction, copying, manufacturing or making of derivations thereof is allowed by or implicitly licensed to the Customer or those acting with or on behalf of the Customer.

The Customer shall not remove, try to conceal, damage, cover or alter any trademark which belongs to the Supplier. Neither the Customer, those acting

with or on behalf of the Customer, nor the Customer's representatives or agents shall register or use trademarks, text, slogans, images, or derivations thereof, that may cause a risk of confusion or association with the Supplier's Intellectual Property Rights, the facts of which being considered most favorably toward the Supplier and as determined in the sole discretion of the Supplier.

If the Customer's Specifications contain drawings, images, photographs, designs, descriptions, models, samples, or other data, the Customer warrants that third-party proprietary rights are not infringed or misappropriated through their use.

## **8.2. Intellectual Property Rights indemnity**

The Supplier shall indemnify, defend and hold harmless the Customer from and against all lawsuit losses, liabilities, damages, costs and expenses incurred by the Customer, arising out of or related to any third-party claim that the Products infringe a patent, copyright, trademark, trade secret or other intellectual property right of any third party, provided that the Customer:

- a) promptly notifies the Supplier in writing of any such actual lawsuit claim or threatened claim, whichever occurs first;
- b) allows the Supplier to conduct and/or settle all negotiations, proceedings and litigation arising from any such claim using counsel of its choice and upon settlement terms at the sole discretion of the Supplier; and
- c) gives the Supplier all reasonable assistance in connection with the conduct of such negotiations, proceedings, and litigation, acting in accordance with the reasonable instructions of the Supplier in connection therewith.

The Supplier's obligation to indemnify under this subsection shall not apply, and the Customer shall



indemnify, defend and hold harmless the Supplier and its affiliates from and against all claims, actions, threats, losses, liabilities, damages, costs, and expenses, including reasonable attorney's fees incurred by the Customer, arising out of or related to any third-party claim:

- a) where any infringement or misappropriation arises as a result of the Products having been altered, modified or combined with other apparatus or Software, such as in a contributory or inducing indirect infringement assertion;
- b) to the extent that such claim relates to aspects of the Products developed or manufactured to designs or specifications provided by the Customer, or which otherwise incorporate documents, materials, ideas, data or other information provided by the Customer;
- c) where such claim relates to the Products being used other than for the purpose for which they were designed; or
- d) where such claim relates to a Software Product, if such Software Product is other than the latest version of the Software Product released by the Supplier.

If any of the Products or their use become, or in the opinion of the Supplier, may become, the subject of a claim in respect of the infringement of the Intellectual Property Rights of a third party, the Supplier may, at its sole discretion:

- a) use reasonable efforts to obtain for the Customer a right to use the Products by procuring a license or otherwise;
- b) where technically possible, modify the Products to remove the infringement;
- c) replace the Products with other non-

infringing products with substantially equivalent functions and performance; or

- d) refund the depreciated price of the hardware Products calculated on a straight-line basis over four years commencing upon the date of delivery at 25 percent (25%) per year or part thereof.

The monetary indemnification and liability of the Supplier to the Customer shall be capped at and not exceed the price of the Products and Services paid for by the Customer to the Supplier, related to the third-party claim. The terms of this subsection 8.2 constitute the entire liability that may be incurred by the Supplier and constitute the Customer's sole remedy for any actual or alleged infringement of Intellectual Property Rights.

Except as provided in this subsection, the Supplier shall not be liable in respect of any claim of infringement of any third-party Intellectual Property Rights.

### **Section 9. Software licenses and subscriptions**

All Software will be licensed to the Customer in compliance with the terms and conditions of applicable licensing agreements enclosed with the Software.

All Software subscription services will be provided to the Customer in compliance with the Supplier's applicable Software subscription terms and conditions.

### **Section 10. Liability and statute of limitations**

Except as provided herein, the Supplier's maximum liability to Customer for any cause whatsoever (whether the claim is in contract, tort, warranty, intentional act, or otherwise) shall under no circumstances in the aggregate exceed the total amount paid to the Supplier by the Customer under the Order.

In no circumstances whatsoever shall the Supplier be liable for any loss of the following kinds, whether direct or indirect or consequential, and whether or not foreseeable or actually contemplated: a) loss of profits, loss of revenue, loss of data, corruption of or damage to data, loss of or damage to Software, loss of use, loss of goodwill, loss of agreements, loss of opportunity or loss of business; b) loss or damages representing or calculated by reference to increased cost of working, loss of efficiency, rent or replacement charges for replacement equipment, loss of anticipated savings, the need to increase or incur additional labor charges or the payment to or reimbursement for payments to third parties; and c) consequential, economic, punitive, special or pecuniary loss or damage whatsoever or howsoever occurring.

The Supplier shall not be liable for any loss or damage whatsoever caused by the use of its Products other than in conformity with the Agreement and applicable law.

Notwithstanding the foregoing, nothing in this Agreement shall exclude or limit the liability of either Party for personal injury or death of any person to the extent caused by such Party's negligence, or for fraud or for any statements made fraudulently by such Party.

Customer agrees that to the extent permitted by law, any claim by the Customer arising out of or related to this Agreement must be filed within one (1) year of the occurrence of the event(s) giving rise thereto.

## **Section 11. Termination**

11.1 Either Party may terminate the Agreement with immediate effect if:

- a) the other Party commits a material breach of its obligations under the Agreement, and, in the case of a breach capable of being remedied, does not remedy the breach within thirty (30) calendar days after

receipt of notice in writing from the non-defaulting Party requiring it to do so; or

- b) any sum due by one Party to the other remains unpaid for a period of thirty (30) calendar days after issue of a written demand therefor; or
- c) any of the following occurs (i) the other Party files a petition for relief under the United States Bankruptcy Code, or under any other present or future state, federal or other applicable law regarding bankruptcy, reorganization or other debtor relief law; (ii) the other Party files any pleading or an answer in any involuntary proceeding under the United States Bankruptcy Code or other applicable debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding the other Party's insolvency; (iii) a general assignment for the benefit of creditors is made by the other Party; (iv) the other Party applies for a receiver, trustee, custodian or liquidator of such Party or any of its property or same is appointed; or (v) the other Party fails to effect a full dismissal of any involuntary petition under the United States Bankruptcy Code or under any other debtor relief law that is filed against such other Party or in any way restrains or limits such Party, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition or thirty (30) calendar days after the date of filing of such involuntary petition. The Customer shall promptly reimburse the Supplier for any and all legal fees and costs incurred in connection with this Section 11.1 and/or the Customer's

bankruptcy or insolvency, regardless of whether it pertains to termination or not.

11.2 The Supplier may terminate the Agreement with immediate effect if the Customer suffers a majority change of ownership, or merges or consolidates with any other Party without the advance approval of the Supplier, which may be withheld for any reason.

### **Section 12. Confidentiality**

Each Party shall and shall cause its employees, officers, owners, contractors, agents and affiliates to keep confidential and not use for its own purposes (other than fulfilling its obligations under the Agreement), nor without the prior written consent of the other disclose to any third party, any information of a confidential nature relating to the other (including, without limitation, any trade secrets, confidential or proprietary technical information (such as the Software, electronics, drawings and the like), trading and financial details (such as pricing for the Products and Services, and the like) and any other information of commercial value) which may become known to such Party under or in connection with the Agreement, except that each Party may disclose such information (i) to its accountants, attorneys, and consultants subject to confidentiality requirements, (ii) to its affiliates who execute and deliver a confidentiality agreement similar to this Section 12 (Confidentiality), and (iii) to the extent that disclosure of such information is required by court order, subpoena, or other law, with advance notice thereof being provided to the Supplier and with the Customer assisting to obtain a confidential protective order or the like to prevent public disclosure of the confidential information.

This Section 12 (Confidentiality) shall not apply to any such information which either Party can show is public knowledge or was already known to it at the time of disclosure (without restriction as to

disclosure or use, and corroborated by written evidence) or subsequently becomes public knowledge other than by breach of the Agreement or subsequently comes lawfully into its possession from a third party who was not restricted from disclosing it.

Each Party shall promptly return to the other Party or destroy (and confirm such in writing) upon the other Party's request, all confidential information in written or tangible form or on any other media on the termination or expiration of the Agreement. The terms of this Section 12 (Confidentiality) shall survive the expiration or earlier termination of the Agreement and any agreed renewal of the Agreement.

The Parties' obligations with respect to the non-use and non-disclosure of any confidential information that was disclosed for the execution of the Agreement shall continue for five (5) years from the disclosure date, provided that the Parties' obligations with respect to non-disclosure and non-use of any trade secrets disclosed hereunder shall be of unlimited duration.

### **Section 13. Applicable law**

This Agreement is governed by the law of the State of Delaware without regard to its principles of conflicts of law. If translations of this Agreement, the Order or the Order Confirmation are made, then the English language versions thereof shall control. The Parties had an opportunity to have their own attorneys review this Agreement and were encouraged to do so, and all terms herein were fully negotiated and shall not be construed against the Party drafting such.

### **Section 14. Assignment. Subcontracting**

The Customer shall not assign its rights or obligations under the Agreement without the prior written consent of the Supplier, which may be

withheld for any reason.

The Supplier may transfer the Agreement to any affiliate or purchaser of substantially all its assets related to the Products, and may delegate or subcontract performance of any of its obligations under the Agreement without the Customer's permission. The Customer may not delegate or subcontract the performance of its payment obligations under the Agreement without the prior written consent of the Supplier, which may be withheld by the Supplier for any reason, but the Customer may delegate or subcontract its Specification preparation, building and/or construction work to qualified entities or individuals who have signed confidentiality contracts at least as restrictive as those herein.

#### **Section 15. Notices**

Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing and shall be: (a) delivered by hand, by Express U.S. mail or other next working day delivery service to the address of the recipient Party stated in the Order Confirmation, or (b) sent by email to the email address of the recipient Party stated in the Order Confirmation, provided that within three (3) working days of such email communication a copy of the such notice is sent by Express U.S. mail or other next working day delivery service to the address of the recipient Party stated in the Order Confirmation. The effective date of such notice shall be when hand-delivered, deposited via overnight mail or email sent, whichever occurs first.

All notices by the Customer related to defects or noncompliance with the Order shall include the following:

- a) full details of the Customer's claim set out in a format prescribed by Acrelec;

- b) a copy of the signed Delivery Note;
- c) a copy of the Order Confirmation; and
- d) photographs of any damage (if applicable).

#### **Section 16. Data protection**

Each Party shall observe all laws applicable in the Territory with regard to data protection, including but not limited to federal and state data protection laws and, where applicable, the provisions of the General Data Protection Regulation (Regulation (EU) 2016/679). If the Parties process personal data in connection with and for the purpose of executing the Agreement, they shall take all necessary technical and organizational measures to ensure the security of such data (and to guard against unauthorized or unlawful processing, accidental loss, destruction or damage to such data). In this regard, the Parties shall comply and shall ensure that the Parties' personnel involved in data processing activities shall comply with all relevant legal obligations when processing personal data relating to any employee, worker, customer, client, supplier, agent or other data subject.

The Parties understand that, for the execution of the Agreement, processing of names, positions, departments, signatures, telephone numbers and email addresses may be required.

Each signatory representative of the Parties hereby declares that he/she has been informed of the processing by the other Party of his/her personal data necessary for concluding and executing the Agreement and fulfilling that Party's legal obligations and have been informed of their rights under and in accordance with data protection law.

## **Section 17. General stipulations**

### **17.1. Compliance with law**

In performing its obligations under the Agreement, each Party shall comply with all applicable laws in the Territory. Each Party shall notify the other on becoming aware of any changes in applicable laws material to the validity, enforcement, or performance of the Agreement.

The Customer represents and warrants that it and its owners: (a) are not and will not for the term of this Agreement be listed on the U.S. Excluded Parties List or U.S. Department of Treasury's List of Specially Designated Nationals, or resell the Products to those who are, or be subjected to any law, executive order, embargo, sanction or otherwise limited in its transaction with the Supplier; (b) are not and will not violate any law, regulation, order, policy or other limitation imposed by the United States government including but not being limited to the U.S. Foreign Corrupt Practices Act; and (c) have not been subjected to investigation or sanction for bribery or money laundering.

### **17.2. Indemnity**

2Each Party will indemnify, defend and hold harmless the other Party, its affiliates, and their respective officers, directors, employees, agents, successors and assigns, from and against all losses, damages, costs or liability of any kind (including attorneys' fees), including any costs associated with claims made by a third Party, arising from, in connection with or relating to any of the following: i) negligent acts or omissions or wilful misconduct of its personnel; ii) breach of its obligations under the Agreement; or iii) any theft or other misappropriation of either Party's or its personnel's information, property or funds by the other Party or any of its employees.

The Customer shall maintain all appropriate business and property insurance to cover any accidents and injuries occurring in or on the Customer's facility and property during the delivery, installation and use of the Products and Services, of at least \$5,000,000 for each accident or occurrence. A certificate of insurance from a well-established and reputable insurer shall be provided by the Customer to the Supplier upon request.

### **17.3. Force majeure event**

Except for obligations to pay amounts when due (which are not excused), neither Party shall be held liable for any delay or breach of its contractual obligations resulting from unpredictable circumstances or circumstances beyond its control ("**Force Majeure**"). A Force Majeure event shall include, without limitation, total or partial strikes which hinder the Supplier's operating activities or those of its suppliers, subcontractors or carriers, epidemic or pandemic, war, national emergency, civil disturbance, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations, judicial or administrative decrees, failure of power or utility supplies (including telecommunications), and interruption of transport, energy, raw material or spare part supplies. If a Force Majeure event arises, performance of the obligations affected by such event shall be suspended throughout the duration thereof. The affected Party shall promptly notify the other Party of the commencement and cessation of such Force Majeure event. If a Force Majeure event lasts for more than two (2) months, the Supplier shall be entitled to immediately terminate the Agreement by written notice without liability. If the Agreement is terminated for Force Majeure under this subsection, all Orders for Products placed prior to the date of termination will be deemed to have been cancelled and the Customer shall pay the

Supplier for all Products and Services already supplied, work-in-progress and the cost of materials reasonably ordered by the Supplier in pursuance of the Agreement.

#### **17.4. No waiver**

Any failure or delay by either Party to exercise or enforce any right shall not affect its right to exercise or enforce that right against the other Party, nor shall any waiver of any breach of any provision be taken as a waiver of any subsequent breach or of the provision itself. To be effective, any waiver must be in writing, signed by an authorized representative of the waiving Party, and be delivered to the other Party.

#### **17.5. Entire agreement and variation**

The Agreement embodies the entire agreement between the Parties regarding its subject matter to the exclusion of and supersedes any prior or contemporaneous understandings, agreements, representations, and communications, whether verbal or written. The Parties acknowledge that neither has placed any reliance on any prior communications other than those expressly incorporated in the Agreement. The Parties irrevocably and unconditionally waive any right they may have to rescind the Agreement and/or claim damages for any misrepresentation whether or not contained in the Agreement or breach of any warranty not contained in the Agreement unless such misrepresentation or warranty was made fraudulently.

The Customer also acknowledges that all particulars, descriptions, specifications and details of weight and dimension set out in catalogs, brochures, and similar documents are approximate only and intended for general guidance. No variation or modification of the terms and conditions of the Agreement shall have effect unless it is agreed to in

writing and signed by the Parties' authorized representatives.

#### **17.6. No Third-Party beneficiaries**

Nothing in the Agreement is intended to create any rights with respect to any third party, nor shall the Agreement be construed as benefiting any third party.

#### **17.7. Survival**

Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement (such as but not being limited to payments, warranties, indemnifications, and confidentiality) shall remain in full force and effect. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of such termination or expiry, including the right to claim damages in respect of any breach of the Agreement, which existed at or before the date of such termination or expiry.

#### **17.8. Severability**

If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Subject to the foregoing, each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any court or arbitrator deems any section of this Agreement to be invalid or unenforceable then the court or arbitrator shall rewrite that section to preserve the intent of the Parties if possible, and if not, sever that section from this Agreement.

#### **17.9. Announcements**

Neither Party may use the name of the other Party in any publicity or advertising nor issue any press release or otherwise disclose the existence of this

Agreement, or its terms and conditions, without the prior written consent of the other Party.

#### **17.10. Non-Solicitation**

During the term of the Agreement and for one (1) year thereafter, absent the other Party's written approval, a Party shall not solicit or hire the other Party's personnel.

In case of a breach of this non-solicitation clause, the Party in breach shall be required to pay the other Party an amount in damages representing eighteen (18) months' salary of the employee concerned before tax and social security deductions, in addition to any actual damages incurred.

#### **17.11. No partnership or agency**

The Parties are independent contractors. Unless otherwise agreed in writing, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, or constitute any Party the agent or representative of the other Party. Neither Party nor its employees or other representatives are authorized to bind the other Party or make any representations or any commitment on the other Party's behalf unless previously authorized by such Party in writing.

#### **17.12. Rights and remedies**

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by applicable law.

All disputes arising between the Parties that cannot be settled by informal negotiations, may only be resolved by binding and non-appealable, confidential arbitration before the American Arbitration Association, using the AAA Commercial Arbitration Rules with Expedited Procedures. Only three (3) depositions (or one (1) Fed.R.Civ.P Rule 30(b)(6) deposition, which may constitute multiple witnesses) may be taken by each side (with all related entities of a Party being considered collectively as one side or Party), with a limited document production and only five (5) narrow interrogatories. A three (3) member arbitration panel shall be employed. The site of the arbitration hearing shall be in Delaware, USA. The final, confidential arbitration decision can be enforceable in any court of competent jurisdiction. The Customer shall promptly reimburse all of Supplier's attorney fees and costs should it succeed in enforcing any provision of this Agreement against the Customer.