

# GENERAL TERMS AND CONDITIONS OF HEERING

(ONLY APPLICABLE FOR USA AND CANADA)

## 1 Definitions

- 1.1 **Agreement:**  
shall mean the agreement between the Customer and Heering for the delivery of Products and/or Services.
- 1.2 **Customer(s):**  
shall mean any natural person or business entity with whom Heering and its employees deal in the course of its business, including service dealers and distributors of Heering Product(s), representative(s), agent(s), successor(s) and including visitors of the Heering website.
- 1.3 **Error:**  
shall mean any substantive failure of the Products and/or Services to comply with functional or technical specifications mutually agreed upon in writing by the Parties.
- 1.4 **Heering:**  
shall mean Heering B.V. with its registered office in Vaassen, The Netherlands listed in the Trade Register of the Chamber of Commerce under number 08125998.
- 1.5 **Party or Parties:**  
shall mean Heering and Customer, individually or collectively.
- 1.6 **Product(s):**  
shall mean the Heering products provided pursuant to the Agreement, including but not limited to climate control systems, ventilation systems, trailer and truck bodies, trailer and truck chassis and/or (other) components, units or spare parts.
- 1.7 **Service(s):**  
shall mean the full assortment of Heering's services, including but not limited to warranty or maintenance services.
- 1.8 **Terms and Conditions:**  
shall mean these International General Terms and Conditions of Heering.

## 2 Applicability

- 2.1 These Terms and Conditions apply to all offers of Heering and exclusively govern the relationship between Heering and Customers, and any Agreement or other agreements between Heering and Customers, and any subsequent amendment to any agreement or the Agreement. These Terms and Conditions shall be applicable even if Heering uses third parties to deliver Products.
- 2.2 No other terms and conditions shall be binding upon Heering unless accepted by it in writing. Heering expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind Heering.
- 2.3 Heering reserves the right to amend these Terms and Conditions at any time. New or amended general terms and conditions shall be applicable upon thirty (30) days notice to Customer.
- 2.4 In case of inconsistencies between the terms of an Agreement and those contained in these Terms and Conditions, those in the Agreement shall control.

## 3 Offers and Acceptance

- 3.1 All offers of Heering are non-binding and may be revoked at any time, unless Heering stated otherwise in writing. Any amendments made by Heering in writing shall entail a new offer, automatically revoking the previous offer. Any amendments by Customer of a Heering offer will be deemed a new offer by Customer, which Heering may accept or reject in its sole discretion. Offers will only be deemed accepted by Heering if it does so in writing.
- 3.2 All information, data or undertakings provided verbally or in documentation, price lists or other material related to Products and/or Services, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included and confirmed in writing in the Agreement with Heering.
- 3.3 All offers are based on the information and documentation provided by Customer, and Heering may rely on the accuracy thereof. Customer warrants the accuracy, completeness and reliability of the information and documentation, even if it originates with or is acquired from third parties.

- 3.4 Customer hereby understands and accepts that all samples, drawings, models, figures, dimensions, weights or any other specifications for Products and/or Services are estimates only, although Heering will use best efforts to ensure their accuracy.

## 4 Prices and Taxes

- 4.1 Unless stated otherwise in writing by Heering, all prices are based on delivery Ex Works Vaassen, The Netherlands (Incoterms 2010). Configurations and prices of Products and/or Services are subject to change at any time, and Heering shall at all times be entitled to modify price lists, brochures, printed matter, quotations and other documents. Customer agrees to any such changes of prices or configurations if it does not object in writing to Heering within seven (7) business days of when Customer receives an invoice incorporating said changes. However, Customer will not be entitled to reject modifications to configurations and prices made by Heering as a result of circumstances beyond Heering's control, including but not limited to newly-enacted rights or obligations under the law, or a material increase in the price of raw materials or other cost-determining factors such as the price of auxiliary materials, wage costs, freight charges, import duties, and currency value. Heering may, at its sole discretion, increase the Product price accordingly.
- 4.2 All prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on Heering or Customer by any taxing authority (other than taxes imposed on Heering's income), related to Customer's order, unless Customer has provided Heering with an appropriate resale or exemption certificate for the delivery location, which is the location where Products are used or Services are performed. In case of changes in law such that a tax is levied that is or becomes irrecoverable with a consequent increase to the costs to Heering of delivering the Products and/or Services, whereby and to such an extent Heering is entitled to increase its prices accordingly and retro-actively.
- 4.3 The prices or fees quoted are in Euros, or in another currency if stated by Heering in writing. Customer shall bear any exchange rate risk, unless otherwise agreement in writing.
- 4.4 All Agreements for the delivery of Products and/or Services to Customer shall be treated as separate agreements.

## 5 Payment

- 5.1 Unless agreed upon in writing otherwise, 40% of the order price is due upon acceptance of an order by Customer and Heering, and 40% of the order price is due no later than six (6) weeks before delivery of the Products. Customer agrees to pay 20% of the Price and any remaining sums due to Heering, without the right to set-off any amount, upon completion of the Products, or upon completion of the Services, whichever is applicable and if both applies, whichever comes first. However, all amounts will be due immediately, in case Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- 5.2 Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.5% a month, or the highest rate allowed by law, if lower, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- 5.3 Payments made by Customer shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the Agreement which have remained outstanding for the longest period of time, even when Customer specifies that the payment relates to another claim.
- 5.4 Customer shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged disturbance of, defect or Error in the Products and/or Services or on any other account whatsoever.
- 5.5 If Heering believes that Customer's financial position and/or payment performance justifies such action, Heering has the right to demand that Customer immediately furnish security in a form

to be determined by Heering and/or make an advance payment. If Customer fails to furnish the desired security, Heering has the right without prejudice to its other rights, to immediately suspend the further execution of the Agreement, and that which Customer owes to Heering for whatever reason will become immediately due and payable.

- 5.6 Customer shall be liable for amounts which Heering incurs to collect payment, including without limitation, collection agency fees, reasonable attorneys' fees and arbitration or court costs.
- 6 Lead Times, Implementation, Risk of Loss, Services**
- 6.1 Heering shall deliver the Products and/or Services in accordance with the Agreement. Delivery and/or development times and dates are merely estimates, as well as lead times or any other deadlines, and Heering cannot be held liable for any damages as a result of delay in delivery of the Products and/or Services. Unless otherwise agreed in writing, failure to meet delivery times or delivery dates stated shall never be considered fatal, and if the time for delivery is exceeded, Customer shall not be entitled to cancel or terminate the Agreement, or to claim any damages.
- 6.2 If any delivery period or lead time risks to be exceeded, Heering will inform Customer as soon as reasonably possible and the Parties will enter into consultations in order to determine a new delivery period.
- 6.3 Heering is entitled to engage the services of third parties for the execution of an Agreement. Heering is entitled to make partial deliveries.
- 6.4 Unless agreed in writing differently, delivery of Products shall be made Ex Works Heering, Vaassen, The Netherlands, as this term is specified in the latest Incoterms version. Customer must accept delivery of Products during normal business hours within one week of notification in writing by Heering, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with Heering's rates or local charges.
- 6.5 Upon completion of the Product(s) but prior to delivery, Heering shall inform Customer and Customer shall then conduct a pre-delivery inspection at Heering's premises in Vaassen, The Netherlands, within one (1) week after such notice is given. Customer shall report any deficiencies, shortages or errors in writing to Heering immediately following the pre-delivery inspection but in any case within two (2) business days after the inspection. Following the inspection and/or final adjustments made, Heering will proceed with the actual delivery of the Product(s) to Customer in accordance with paragraph 6.4 above.
- 6.6 In case it has been agreed that delivery will be other than on the basis of EX WORKS Heering, Vaassen, The Netherlands, Heering shall inform Customer when the Product(s) have arrived at the place of delivery. Within one (1) week after such arrival, Customer shall conduct a pre-delivery inspection of the Product(s) at the place of delivery but prior to actual delivery. Customer shall report any deficiencies, shortages or errors in writing to Heering immediately following the pre-delivery inspection but in any case within two (2) business days after the inspection. Following the inspection and/or final adjustments made, Heering will proceed with the actual delivery of the Product(s) to Customer on the basis of the terms of delivery as agreed.
- 6.7 In case of failure of Customer to conduct a pre-delivery inspection, Heering will send one reminder and thereafter the Customer shall be deemed to have irrevocably accepted the Product(s). After acceptance, Customer shall have no right to reject the Product(s) for any reason or to revoke acceptance. Customer acknowledges that a seven (7) day period is a reasonable amount of time to conduct a pre-delivery inspection.
- 6.8 Notwithstanding the above, Heering will have no obligation to replace or repair any Products if the Products have been handled, processed or stored improperly by the Customer, or if the Products have already been processed and or if the Customer has not fully met its obligations under these Terms and Conditions.
- 6.9 The risk of loss or damage of Products shall pass to Customer at the moment of delivery Ex Works, or when the Customer, or an agent or subcontractor acting on its behalf, has effectively assumed control of the Products, whichever is sooner, even if Heering has not yet transferred ownership thereof. Any damage

to the Products, or any loss related thereto, shall be for the account of the Customer.

- 6.10 THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGEDLY DEFECTIVE PRODUCTS IS THE REPLACEMENT OR REPAIR OF SUCH PRODUCTS OR PARTS OF SUCH PRODUCTS, AT NO COSTS FOR CUSTOMER.
- 6.11 Maintenance is not included in any Agreement unless explicitly stated in writing. If maintenance is provided for in the Agreement, Customer shall provide Heering access to all materials relevant for such maintenance, and must provide for adequate working space and facilities, and access to and use of information, and Customer's resources and facilities as reasonably determined necessary by Heering. If Customer fails to provide such access, resulting in Heering's inability to maintain or service the Products, Heering shall be entitled to charge Customer its standard rates for all related travel time and time Heering personnel is present at the Customer's premises. Customer must notify Heering in advance if Customer's premises, or parts thereof, might pose a health or safety hazard to Heering's employees or subcontractors. Heering may postpone services until Customer remedies such hazards, without being liable to Customer for any damages. Customer will always have a representative present when Heering provides services at Customer's site.
- 6.12 Heering shall provide Services on the basis of a best efforts obligation, unless and in so far as Heering has explicitly undertaken in writing to achieve a specific result and the result in question is sufficiently determined.
- 6.13 Customer understands and agrees that downtime or inaccessibility may result from Heering's warranty or maintenance services related to the Products, and Heering shall not be liable for any damages relating to such downtime or inaccessibility.
- 7 Intellectual Property Ownership and Right of Use**
- 7.1 All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentations, etc., in relation to Heering products and/or services, including modifications thereto, delivered and/or used by Heering, are owned by Heering or its licensor(s). No transfer or other grant of rights is given to the buyer, unless explicitly stated in writing. This applies even if products and/or services have been specifically designed, developed or compiled for the buyer. Heering will grant buyer a limited license to use the product delivered to buyer by Heering, for the purpose of poultry transport in the North American territory only. Buyers may not, nor may enable and/or allow third parties to (i) copy, modify, translate, or reverse engineer any products, including software; (ii) remove any copyright, trademark or other proprietary rights notices on products, including software.
- 8 Customer's Cooperation and Awareness**
- 8.1 Customer shall timely provide Heering with all details and information required by Heering for the development of Products and/or the delivery of Services, specifications for which will be set forth by Heering in writing.
- 8.2 Customer understands that the development of Products and/or the delivery of Service shall be done by Heering based on details, information, specifications and requirements supplied by the Customer, and Heering shall rely thereon, and Customer shall guarantee that they are accurate and comprehensive, and meet the specifications as Heering shall set forth in writing.
- 8.3 If Customer furnishes materials or data on information carriers to Heering in connection to the development of Products or the delivery of Services, these shall meet specifications as Heering shall set forth in writing, and Heering shall be entitled to suspend performance of the Agreement, as well as charge additional costs in accordance with its customary rates, in the event that such software, materials or data are not made available in the time required or in the prescribed quality or manner.
- 8.4 Due to the complexity and the specific purpose of the Products, Customer shall, prior to placing the order, research the specification and performance of the Products, in order to satisfy

- himself that the Product(s) is/are appropriate for his needs and intended purposes.
- 8.5 By placing the order, Customer acknowledges that Heering has supplied the necessary information in order for Customer to assess the suitability and the performance of the Products and/or Services.
- 8.6 Prior to using the Product(s), Customer shall take all necessary precautions such as conducting tests and to take measures it considers necessary and appropriate under the circumstances. Customer is responsible for obtaining information and documentation on the possible consequences of using the Product(s), as well as the compatibility of the Product(s) with other components. Further Customer shall itself, as an informed professional, assess the consequences of a possible malfunction of the Product(s) and Customer shall put in place processes and back-up procedures, including a technical back-up redundancy, in order to minimize the consequences of any malfunction.
- 8.7 Customer acknowledges that the Product(s) itself will not guarantee the integrity of the cargo transported and that an entire solution will be needed to ensure that integrity. Customer is aware that the Product(s) is/are designed and fitted for the transport of day-old chickens. However Heering cannot and does not guarantee the fitness of the Product alone for such kind of transportation. Therefore, an temperature-controlled supply chain solution for transportation is required including a back-up redundancy.
- 8.8 Customer represents and warrants that it has put in place a full solution ensuring the maintenance and the homogeneity of the temperature and compensate for any malfunction of the Products. Customer undertakes to maintain the Product(s) in a proper, timely and adequate manner. Customer undertakes to enter into adequate maintenance agreement(s) for the Product(s) and to ensure that preventive visits be made on a periodic basis at least once a year.
- 8.9 Customer shall take out all necessary insurance to cover the risks related to the use of the Product(s), especially with respect to the cargo transported with or in combination with the Product(s).

## 9 Confidential Information

- 9.1 Confidential Information means (i) the existence and terms of any agreement between the Parties and (ii) any non-public, confidential or proprietary information relating to a disclosing Party, whether or not technical in nature, including any that is designated by the disclosing Party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing Party; or (v) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.
- 9.2 Each Party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other Party and that it will observe the same due care with respect to such information as it would observe with respect to its own Confidential Information. The other Party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing Party's prior written consent, which consent may be granted or withheld in such Party's sole and absolute discretion.
- 9.3 Each Party agrees that it will restrict the circle of employees or third parties it retains who have access to the other Party's Confidential Information as much as possible and provide such access only on a need to know basis and after binding such employees and third parties to the same level of confidentiality as set forth in these Terms and Conditions.

- 9.4 Immediately following the receipt of a written request to this effect by the disclosing Party the receiving Party will return any and all Confidential Information received from the disclosing Party or destroy such Confidential Information, if the disclosing Party so requests.
- ## 10 Duration, Termination and Suspension of Performance
- 10.1 The duration of the Agreement for recurring or periodic Services is one (1) year, unless otherwise agreed in writing by the Parties. Such an Agreement shall automatically renew for subsequent one (1) year periods unless one Party notifies the other Party in writing, with a notification period of three (3) months before the expiration date of the initial or extended period, that it will terminate the Agreement.
- 10.2 Any Agreement for a certain project or sale will end after completion of such project or sale.
- 10.3 Customer cannot terminate the Agreement for convenience, exception in accordance with the provisions above.
- 10.4 If Customer believes that Heering has failed to perform under the Agreement, it must notify Heering in writing and allow two (2) weeks for Heering to cure if it has failed to perform.
- 10.5 If Customer fails to make payment of any amount due on the due date or Customer otherwise fails to perform its obligations under the Agreement or these Terms and Conditions, or if Heering reasonably expects that Customer will not fulfill its obligations, Heering may in its sole and absolute discretion suspend performance under its Agreement with Customer and/or terminate the Agreement (in whole or part), with immediate effect, without being liable for any damages to Customer.
- 10.6 Notwithstanding the above and without any obligation to return any service fee or prepaid expenses, Heering may terminate its relationship with Customer, or may terminate or suspend Heering's delivery of Products and/or Services at any time: (i) if Customer is in breach of these Terms and Conditions and/or the Agreement; (ii) if Heering reasonably suspects that Customer is using Products and/or Services to breach the law or infringe third party rights; (iii) if Heering reasonably suspects that Customer is trying to unfairly exploit or misuse the complaint policy, or any of Heering's policies; (iv) if Heering reasonably suspects that Customer is using Products and/or Services fraudulently, or that Products and/or Services provided to Customer are being used by a third party fraudulently; (v) for a force majeure event that continues for more than ten (10) days upon notice; (vi) if Customer fails to pay any amounts due to Heering; (vii) if required due to change in laws/regulation by a regulator or authority with a lawful mandate, or by any of Heering's partners; (viii) in respect to a particular Heering Product and/or Service, upon thirty (30) days' notice if Heering decides to cease offering that Product and/or Service; (ix) the bankruptcy of the Customer has been applied for; (x) an attachment is levied on the goods of Customer; (xi) Customer is liquidated or discontinued; and/or (xii) Customer is in violation of any applicable laws or regulations.
- 10.7 Upon suspension and/or termination, all invoiced sums will become immediately due and payable. In the event of suspension of performance by Heering, Heering may at its sole discretion resell any Products and/or Services ordered by Customer, at a public or private sale without notice to Customer and without affecting Heering's rights to hold the Customer liable for any loss or damage caused by breach of contract by Customer.
- ## 11 Repairs, Maintenance and Warranty
- 11.1 Heering does not warrant or guarantee that its Products or Services comply with any or all laws and regulations in jurisdictions outside of the European Union. It is the Customer's sole responsibility to review and ensure that the Products and Services can be used in the Customer's home jurisdiction.
- 11.2 Provided that Customer allows and enables Heering to remotely monitor the Products at all times using Heering Link telematics, and provided that Customer will comply with all reasonable guidelines and maintenance advice by Heering, Heering warrants its Products and/or Services against Errors and defects in materials and workmanship for one (1) year as of the date of notification of availability under Section 6.4 above, during which time it will use its best efforts to repair any Errors as may be found during such period. Parts of the Products provided by

- third party suppliers, such as the chassis of trailers, generator sets and lift gates will only be covered by the warranty provided by the suppliers of such parts. However, any such problems encountered in the use of the Products and/or Services, resulting from user errors or inexpert use on the part of Customer, any problems involving any such Errors as could have been brought to light in the context of Customer's initial inspection set forth in Section 6.6 above, or resulting from causes that are not attributable to Heering, shall be for Customer's risk and account.
- 11.3 At its sole discretion, Heering will repair or replace any Errors and/or defective Product during the warranty period at location determined by Heering.
- 11.4 The warranties hereunder do not cover faults or damages arising from faulty, careless, or improper treatment, faulty and unauthorized commission, insecure or over-loading, insufficient bolted loads, compressing the load when braking, hazardous, chemical and/or corrosive products and/or substances, improper storage or unloading, and unauthorized use or misuse of Products and/or Services, and improper or defective environmental circumstances, or a failure caused by a product for which Heering is not responsible.
- 11.5 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HEERING, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE HEERING PRODUCTS AND/OR SERVICES WHETHER EXPRESS, IMPLIED OR STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM HEERING OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.
- 12 Liability, Limitation of Damages and Indemnification**
- 12.1 HEERING DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO PRODUCTS AND/OR SERVICES. NEITHER HEERING NOR ITS OFFICERS OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING FROM OR RELATING TO ALL SUCH PRODUCTS AND/OR SERVICES.
- 12.2 CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR ALL USE OF THE PRODUCTS, EVEN IF SUCH ACTIVITIES WERE TO OCCUR WITHOUT CUSTOMER'S PERMISSION. HEERING DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE ACTS AND OMISSIONS OF CUSTOMER'S USERS WHILE USING THE PRODUCTS. NEITHER HEERING NOR ITS OFFICERS OR EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL SUCH ACTS AND OMISSIONS.
- 12.3 IN NO EVENT SHALL HEERING, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS.
- 12.4 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, HEERING'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE TOTAL PAID BY CUSTOMER FOR THE PRODUCTS AND/OR SERVICES IN CONNECTION TO WHICH THE DAMAGING EVENT OCCURRED.
- 12.5 THE LIMITATIONS ON HEERING'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT HEERING, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.
- 13 Indemnification**
- 13.1 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HEERING, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY USE OF THE HEERING PRODUCTS AND/OR SERVICES OR BREACH OF THIS AGREEMENT BY CUSTOMER.
- 13.2 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HEERING, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND THREATENED CLAIMS BY ANY THIRD PARTY, INCLUDING EMPLOYEES OF CUSTOMER ARISING OUT OF, UNDER OR IN CONNECTION WITH (1) THE DEATH OR BODILY INJURY OF ANY THIRD PARTY, INCLUDING ANY AGENT, EMPLOYEE, CUSTOMER, BUSINESS INVITEE OR BUSINESS VISITOR OF CUSTOMER, OR, (2) THE DAMAGE, LOSS OR DESTRUCTION OF ANY TANGIBLE PERSONAL OR REAL PROPERTY AT CUSTOMER'S PREMISES, BOTH ONLY TO THE EXTENT THAT SUCH WAS NOT A RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY HEERING OR ITS PERSONNEL.
- 14 Insurance**
- Heering and Customer shall pay all necessary costs to maintain sufficient insurance policies to cover its personnel and premises for activities contemplated by or performed in connection with the Products and/or Services.
- 15 Severability**
- If any provision of these Terms and Conditions, the Agreement or any other agreement between the Parties, is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.
- 16 Force Majeure**
- Heering will not be liable for any delay in performing or failure to perform any of its obligations under these Terms and Conditions or the Agreement caused by events beyond its reasonable control. Heering will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.
- 17 Assignment**
- Customer is not permitted to assign, delegate or otherwise transfer the Agreement or any rights hereunder. Any such attempted assignment, delegation or transfer will be null and void. Heering is permitted at its sole discretion to assign the Agreement or any rights or obligations hereunder to any third party, without giving prior notice.
- 18 Entire Agreement**
- The Agreement and these Terms and Conditions contain the entire agreement between Heering and Customer regarding Customer's purchase of the Products and/or Services, and supersedes and replaces any previous communications, representations or agreements, or Customer's additional or inconsistent terms, whether oral or written.

**19 No Waiver**

The failure to exercise, or delay in exercising, a right, power or remedy provided by the Agreement or these Terms and Conditions or by law shall not constitute a waiver of that right, power or remedy. If Heering waives a breach of any provision of these Terms and Conditions or the Agreement, this shall not operate as a waiver of a subsequent breach or that provision or as a waiver of a breach of any other provision.

**20 No Beneficiaries**

Any agreement between the Parties is for the sole benefit of the Parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the Parties thereto, any legal or equitable rights thereunder.

**21 No Partnership**

Nothing contained in any agreement between the Parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Parties. Neither of the Parties may pledge or purport to pledge the credit of the other Party or make or purport to make any representations, warranties, or undertakings for the other Party.

**22 Injunctive Relief**

Customer acknowledges that Heering shall suffer irreparable injury in case of breach of the obligations under Articles 7 and 9. Accordingly, in the event of such breach, Customer acknowledges that Heering will be entitled to injunctive relief in any state or federal court of competent jurisdiction within the State of New York. Customer further submits to the personal jurisdiction of such courts for the purposes of any such action.

**23 Governing Law and Forum Choice**

Unless stated otherwise in writing, all agreements between the Parties shall be governed by and construed in accordance with the laws of the state of the Netherlands, without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. With respect to any disputes arising between the Parties, Parties hereby submit exclusively to the personal jurisdiction of the courts in Amsterdam, The Netherlands. The parties consent and agree that each such court is a convenient forum for, and has proper venue over, the resolution of all legal actions, proceedings and disputes arising out of or relating to their relationship. ANY CAUSE OF ACTION AGAINST HEERING, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH ACTION IS PERMANENTLY BARRED.