

# APPLIED General Conditions for technical assistance and advice

VALID FROM 2020-01-01

## 1. Applicability

These General Conditions shall apply in full on technical assistance, advice and other consultancy type services (including engineering consultancy services or application engineering services) ("Advice") provided by APPLIED to a third party ("Recipient") unless otherwise explicitly agreed in writing by APPLIED. No other provisions shall be applicable, regardless of whether they were explicitly rejected or not in any individual case. The services to be performed by APPLIED hereunder shall be conclusively deemed to be subject to these General Conditions, which shall supersede any provisions, terms and conditions contained in Recipient's purchase order or other communication from Recipient to APPLIED. APPLIED's performance is expressly conditioned upon Recipient's acceptance of these General Conditions without modification.

## 2. Scope of the Advice

The scope, purpose and the intended use of the results of the Advice shall be determined by APPLIED, unless otherwise is agreed in writing. APPLIED shall incur no liability or obligation to the Recipient arising out of any other use or application thereof by the Recipient.

## 3. Term of provision of Advice/ Fee and payment terms

Dates or periods for the provision of the Advice are approximate and are given for information purposes only. A delay in provision of the Advice, including completion of the Advice later than the date or dates provided by APPLIED, shall not constitute a breach of contract and shall not entitle the Recipient to any remedy unless APPLIED has guaranteed a date for completion of the Advice in a written warranty which expressly modifies the provisions of these general conditions. Fees and payment terms shall be agreed separately.

## 4. Confidential Information

Each party undertakes for itself and for its employees, agents and representatives to treat the other party's Confidential Information ("Confidential Information" shall mean any and all information related to the processes, product range, internal affairs and/or business of the parties (and their affiliates) - including but not limited to technical, practical and commercial information - that a party may disclose to the other party directly or indirectly in writing, orally, or otherwise) as strictly confidential and not disclose or communicate such Confidential Information to any third parties. Confidential Information may be disclosed only to those representatives and employees of a party to whom such disclosure is necessary for the purpose of the Advice. APPLIED shall, however, be entitled to communicate the Recipient's Confidential Information to another company within the APPLIED Group. APPLIED shall see to it that such company adheres to the provisions in these general conditions. Neither party may use the other party's Confidential Information for any other purpose than the intended use of the result of the Advice (see Section 2 above). No obligation of use, disclosure or confidentiality shall apply to information which (i) was known by the receiving party (or an affiliate of the receiving party) prior to receipt from the other party; (ii) was known to the public prior to receipt by the receiving party from the other party or which becomes known to the public subsequent to receipt from the other party through no fault of the receiving party or the receiving party's employees, agents or representatives; (iii) subsequent to receipt by the receiving party from the other party, is made available to the receiving party (or an affiliate of the receiving party) by a third party which is legally entitled to do so; (iv) if such disclosure is required by law, court order or stock regulations or (v) is developed by the receiving party (or an affiliate of the receiving party) independently of the other party's Confidential Information. Each party shall provide proper and secure storage for the other party's written Confidential Information. All copies of the other party's Confidential Information will be returned to the other party immediately upon the request of the other party, unless such documents are required as a part of a party's internal decision making process or maintenance of company records.

## 5. Recipient's Warranty

The Recipient warrants that use by APPLIED of designs or instructions provided by Recipient or on behalf of the Recipient shall not cause APPLIED to infringe any patent, registered trademark, copyright, design right or similar rights protected by law. Recipient shall defend, hold harmless and indemnify APPLIED against any claims of infringement

and resulting damages and expenses (including, without limitation, attorney and other professional fees and disbursements) relating to the Advice covered by this Agreement.

## 6. Intellectual Property

APPLIED shall retain control and ownership of all inventions, designs and copyright and any other intellectual property owned, controlled or possessed by APPLIED. The Parties agree that APPLIED shall own all right, title and interest in and to all Results ("Results" shall mean any ideas, inventions, discoveries, know-how, data, documentation, reports, materials, writings, designs, computer software, processes, principles, methods, techniques and other information, recorded in any form, that are discovered, conceived, reduced to practice or otherwise generated as a result of or in connection with any Advice performed under these general conditions by or on behalf of APPLIED or the Recipient, and any patent, trade secret, copyright or other intellectual property rights pertaining to any of the foregoing.) The Recipient shall make full disclosure of all Results. If and to the extent the Recipient has generated Results, the Recipient hereby assigns and transfers, without additional consideration, to APPLIED all right, title and interest in and to such Results. APPLIED shall be entitled to apply for and obtain in APPLIED's own name patents, design rights or any other legal protection on Results. The Recipient shall, and shall cause its employees and agents to execute, or cause to be executed, all papers necessary to effect the foregoing, including assignments as necessary or useful to vest all right, title and interest in and to the Results in APPLIED, without additional consideration.

## 7. Limitation of liability and indemnity

The obligations of APPLIED arising out of the provision of the Advice are strictly limited to the professionally competent performance of the Advice. APPLIED cannot and does not make any promises, guarantees or warranties, express or implied, that the Advice will have any influence on the product or process performance or that it will improve Recipients profitability or that the product or process will be fit for a particular purpose. APPLIED further does not guarantee attainment of the intended result of the Advice. This is a commercial agreement between business entities, and, except as otherwise specifically provided herein, ALL WARRANTIES, EXPRESS AND IMPLIED, ARE SPECIFICALLY DENIED AND EXCLUDED BY APPLIED TO THE FULL AND MAXIMUM EXTENT PERMITTED BY LAW. This is an agreement for the commercial sale of services and any transfer of goods by APPLIED to Recipient is incidental to that commercial purpose. This is not a contract for the sale of goods nor should it be interpreted as such by any court, arbitration panel, government agency or legal tribunal. If APPLIED fails to provide the Advice in a professional manner then the Recipient shall promptly notify APPLIED thereof in writing, specifying the problems, and APPLIED shall promptly carry out an investigation. APPLIED shall at its own expense use reasonably endeavours to remedy a defective Advice. APPLIED's obligations shall not extend to defects which are due to the Recipient not complying with instructions given by APPLIED or which are caused by improper or abnormal use or by events outside the control of APPLIED or which are due to the Recipient having provided APPLIED with incorrect or incomplete information. The above mentioned obligation of APPLIED to remedy a defective Advice is the only remedy available to Recipient. IN NO EVENT SHALL APPLIED BE LIABLE FOR MONETARY CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, PROFITS OR REVENUE OR CLAIMS OF RECIPIENTS CUSTOMER, OR SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES, OR PENAL DAMAGES OF ANY NATURE), ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY USE OR RELIANCE BY RECIPIENT OF THE ADVICE. Recipient shall reimburse APPLIED for all costs and damages paid or payable by APPLIED to a third party as a consequence of APPLIED providing Advice to the Recipient, unless such cost and damages are due to APPLIED having been grossly negligent.

## 8. Arbitration and applicable law

All disputes arising in connection with the provision of Advice shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules supplemented as necessary by the procedural rules of law of the country of APPLIED's place of business most closely connected with the Advice. All such disputes shall be governed by the substantial law of the country of APPLIED's place of business.

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