

# David Brown Santasalo India

## TERMS OF BUSINESS

Last updated: 18<sup>th</sup> November 2024

### GENERAL PROVISIONS

#### 1. INTERPRETATION AND FORMATION OF THE CONTRACT

- 1.1 In these Terms and Conditions ("Conditions"): "Company" means the David Brown Santasalo India Pvt Ltd and its respective successors and assigns; "Client" means the person, firm or company to whom the Goods are to be supplied or Services are to be performed by the Company; "Goods" and "Services" mean the goods and services respectively to be supplied or performed by the Company (as these may be described in the Order Confirmation (defined below)); Goods also includes any parts, materials or equipment supplied as an incidental part of the Services; "Equipment" means the plant, machinery, tools, parts or equipment in respect of which Services, other than the Goods, are to be performed; any reference to one type of legal or natural person shall import a reference all other types; the word "including" shall be read as meaning "including (without limitation)"; and an obligation on a person not to do something shall also imply an obligation not to permit, consent or acquiesce to that thing being done by another person.
- 1.2 All tender submissions, commercial proposals and quotations issued by the Company are made and orders shall be accepted and shall be deemed to incorporate these Conditions. These Conditions shall apply to all contracts, superseding and excluding all other terms and conditions, including without limitation those which the Client may intend to apply under any order or contractual documentation. Any variations or amendments to these Conditions or the terms of any contract for the sale of Goods and/or Services shall only be effective by written agreement signed by a duly authorized representative of the Company.
- 1.3 No contract for the sale of Goods and/or the performance of Services ("Contract") shall come into force unless and until the Company has acknowledged the Client's purchase order ("Order") through its issuance of a standard form of order acknowledgement or confirmation document to the Client (the "Order Confirmation").
- 1.4 The Contract shall comprise the following documents, which for the purposes of resolving conflicts or inconsistencies between them shall rank in the following order, and to the exclusion of all other terms and conditions that might be implied by law or which the Client's purports to include within the Contract (including any expressly included within or incorporated by reference within Client's Order documents): the Order Confirmation; these Conditions; and documents referred to in the Order Confirmation; and any other documents referred to in these Conditions.
- 1.5 These Conditions comprise provisions set out under the heading "General Provisions" and provisions set out under the heading "Country-specific Provisions". In the event of any conflict or inconsistency between them, the Country-specific Provisions shall prevail.
- 1.6 All tender submissions, quotations or commercial proposals issued by the Company are provided solely as invitations to initiate business discussions with the Company and do not constitute offers capable of acceptance, even if they are accompanied by or refer to these Conditions. No binding agreement or offer shall be deemed to exist unless expressly confirmed in writing by a duly authorized representative of the Company.
- 1.7 These Conditions are written in both English and Spanish. In the event of any conflict or inconsistency between the two versions, the English shall prevail.

#### 2. DESCRIPTION OF GOODS AND SERVICES

- 2.1 All information provided to the Client by the Company in relation to the Goods or Services before entering into a Contract (including but not limited to the Company's proposal or quotation) and the descriptions and illustrations contained in the Company's catalogues, price lists, website and other advertising materials are approximate and are for general description and identification purposes only and such information and descriptions shall not in any circumstances constitute a sale by description, nor shall any statement made in a similar document or any other statement, whether oral or written, made by or on behalf of the Company, be deemed to be a statement by which the Client has been induced to enter into the Contract. Unless otherwise expressly agreed in writing, any specimen of Goods which may be submitted by the Company to the Client is intended for identification and illustration purposes only and the Contract shall not be deemed to be a contract for the sale of Goods by sample.
- 2.2 Certified drawings and sketches may be supplied, if necessary, only after the Company has received and accepted the Order; however, the Company does not undertake to supply copies of detailed, manufacturing-grade drawings unless otherwise explicitly agreed.

#### 3. PERFORMANCE AND COMPATIBILITY INSPECTION TESTS; OBLIGATIONS OF THE CLIENTS

- 3.1 Any inspections or tests that the Company may agree to carry out at the request of the Client, in addition to those it normally undertakes or those explicitly specified in the Contract, shall be conducted at the Client's expense.
- 3.2 All performance figures given by the Company are those estimates that the Company expects to obtain from the tests, but the Company shall not be held liable for any failure to obtain the figures given, unless the failure directly constitutes a failure to comply with a specification expressly stipulated in the Contract.
- 3.3 The Client is solely responsible for forming its own judgment about the adequacy, compatibility or suitability of the Goods and Services for its intended purpose, the sufficiency of their rated performance and capacity for its requirements, as well as the sufficiency of the scope of work of the Services. Except to the extent expressly stated in the Company's Acknowledgment of the Order, the Company assumes no responsibility or commitment as to the suitability, adequacy or sufficiency of the Goods or Services for the Client's specific requirements and in entering into any contract with the Client will do so on the assumption that the Client exercises its own skill and judgment in the selection of Goods and Services that meet its requirements.

#### 4. **DELIVERY OF GOODS AND EQUIPMENT**

- 4.1 The Company shall deliver the Goods and Equipment to the specified delivery location and in accordance with the trade terms (if any and, for example, Incoterms) specified in the Order Confirmation.
- 4.2 This paragraph only applies if no trade terms are specified in the Order Confirmation. Where the Goods or Equipment are to be delivered at the Company's own premises, delivery will be deemed to have taken place when the Goods or Equipment are ready for collection and the Company has informed the Client accordingly. Where the Goods or Equipment are to be delivered at any other place, the Company shall deliver them to that place at its own expense.
- 4.3 If the Client fails or refuses to collect the Goods or Equipment within 14 days of being informed by the Company that they are ready for collection or otherwise to take delivery of the Goods or Equipment at the appointed time, the Company shall be entitled (without prejudice to any other rights and remedies it may have against the Client) to: store the Goods and/or Equipment at the sole risk of the Client, making an appropriate charge to the Client for storage; give written notice to the Client requiring it to remove the Goods and/or Equipment from the Company's premises or from any other site at which they may be stored; and/or, if the Client fails to comply with the notice within 30 days, to treat the Contract as having been repudiated by the Client; and/or to sell or otherwise dispose of the Goods and/or Equipment at the Client's expense.
- 4.4 The Company may deliver the Goods in installments and perform the Services in sections, in any sequence determined by the Company. Deliveries of further instalments and further sections may be withheld until the Goods and/or Services comprised in earlier instalments and/or sections have been paid for in full.

#### 5. **RISK AND TITLE**

- 5.1 Risk in the Goods and liability for the insurance of the Goods shall pass to the Client in accordance with the Incoterms specified in the Order Confirmation or (in the absence of such terms in the Order Confirmation) at the time of delivery.
- 5.2 Notwithstanding the delivery and transfer of risk of the Goods or any other provision of these conditions, the title to Goods shall not pass to the Client until the Client has paid the price in full, along with any other outstanding amounts owed by the Client to the Company under the Contract or any other agreement.

#### 6. **INSTALLATION SUPERVISION**

- 6.1 When the Contract provides for supervision of the installation of the Goods by the Company, the following provisions shall apply.
- 6.2 The Company shall provide the services of an engineer or other qualified personnel to advise and assist on the installation of the Goods or Equipment and, if specified in the Contract, checking the accuracy, testing and commissioning of the Goods or Equipment.
- 6.3 The Client shall, at its own expense, provide all necessary equipment, labor and other facilities required for the installation of the Goods. All employees assigned by the Client shall remain as the Client's employees and under the Client's control and the Company shall not be liable for any act or omission of such employees. The Client warrants that all such employees are English speaking, suitably qualified, trained and experienced in the duties assigned to them.

#### 7. **PRICE**

- 7.1 Unless otherwise agreed in writing by the Company, the price of the Goods and/or Services is quoted on delivery ex-works and excludes sales tax and any other allocable taxes or duties (if any).
- 7.2 In the event that the Company incur extra cost due to the suspension, delay or interruption of work resulting from the Client's instructions or lack of instructions or any other cause for which the Client is responsible, such extra cost shall be added to the price of the Goods and/or Services and shall therefore be paid by the Client.
- 7.3 A certificate from the Company's auditors about the correctness of any price increase made in accordance with this Clause shall be sent to the Client, if required, and shall be accepted as a final charge.
- 7.4 The following paragraphs shall only apply to the Company's performance of Services:
- (a) The supply of any spare parts or materials by the Company as an integral part of the Services shall be charged in addition to the price quoted at the Company's standard rates or shall be dealt with by a separate purchase order at the Company's applicable charges applicable from the Engineer's point of departure and return to the point of departure. Travel time will be charged accordingly at the daily on-site rate or overtime rate, as applicable.
- (b) Remaining charges may include items not received, subject to the tax regulations of the respective country.
- (c) Any waiting time incurred by the Company's engineer, including passing weekends or local holidays or delays caused by the Client, will be charged at the appropriate daily rate.
- (d) Charges quoted are based on established time estimates. If additional hours are required to complete the work, which are not attributable to non-compliance by the Company, the additional time shall be charged at the Company's rates quoted in its quotation or set out in the Company's Acknowledgment of the Order (such acknowledgment takes precedence in the event of a dispute), or if not so quoted, at the Company's prevailing rates at the date of the Contract.
- 7.5 The Company reserves the right, in its absolute discretion, to make final determinations regarding any dispute concerning the definition, scope, or extent of the Services, which shall be binding and conclusive upon the Client.

#### 8. **PAYMENT**

- 8.1 Unless otherwise agreed in writing, all payment shall be due on the 21st day of the month following the month in which the Delivery is made/ completed. Without prejudice to other remedies available to the Company, all payment terms extended by the Company shall automatically lapse immediately if any payment is overdue in any respect by the Client to the Company. In such an event, the Company reserves the right to suspend any further performance or deliveries with the Client until all overdue amounts are settled.

8.2 The Company shall be entitled to treat any failure by the Client to pay the price of the Goods and/or Services or any part thereof on the due date of payment, as a material breach of the Contract, whereby the Company is released from further performance of its obligations (including its obligation to make deliveries or additional deliveries) under the Contract.

8.3 The Client shall indemnify the Company for all legal expenses, collection costs, administrative fees, and any other costs incurred in the recovery of overdue amounts. The Client shall pay interest on overdue amounts (both before and after judgment) at the annual rate of 3% above the base rate set by Financial Benchmarks India Private Limited (or its successor) from time to time, until the total price for the Goods and/or Services and/or such costs and/or charges are paid in full.

## 9. WARRANTIES FOR GOODS AND SERVICES

9.1 The Company warrants to the Client that, subject to the terms and conditions herein and provided that the Client has complied fully with its obligations under the Contract: during the Warranty Period, the Goods shall be free from material defects in design, materials and workmanship; the Services shall be carried out with reasonable skill and care; upon delivery, the Goods and/or Services shall comply in all material respects with any specifications or descriptions specified or stated in the Contract; and subject to the Client complying with its obligations under the Contract, the Client shall obtain good title to the Goods free of any liens, charges, mortgages or other form of security.

9.2 The “**Warranty Period**” means the period of time beginning upon delivery of the relevant Goods or Equipment and ending 18 (eighteen) months later or, if earlier, 12 (twelve) months from the Client’s first commercial use of the Goods or Equipment. Exclusions and Limitation: The Company’s liability under this warranty shall be limited to the repair, replacement, or re-performance of Goods or Services only and excludes any other warranties, express or implied, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, or any other warranty whatsoever, unless expressly agreed in writing. The Company shall not be liable for any indirect, consequential, or incidental losses arising out of or in connection with the use or performance of the Goods and/or Services. This warranty is non-transferable and shall apply only to the Client unless otherwise agreed in writing by the Company.

## 10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

### Liability for delay

10.1 Unless the Order Confirmation clearly states otherwise, any dates or periods quoted or given by the Company or stated in the Order Confirmation for delivery of any Goods and/or completion of any Services are only estimates and not legally binding. However, if the Company agrees to legally binding dates or periods for delivery or completion, it shall be liable to pay the Client (on demand) liquidated damages of 0.5% of the Contract price of the delayed Goods or Services for each completed week of delay up to a maximum of 5% of the total Contract price. These liquidated damages amount shall be the Client’s sole and exclusive remedy for delay, and the Company shall have no other financial liability to the Client for delay.

10.2 To the extent that the Company’s performance of any obligation under the Contract is delayed or made more expensive to perform by any failure or delay by Client to comply with its own obligations under the Contract, or where the Company exercises its rights under the Contracts to suspend its performance, the time permitted for Company’s performance shall be extended commensurately and the Company shall be entitled to compensation for any additional costs and expenses suffered or incurred because of the Client’s failure or delay. Furthermore, any delay caused by the Client shall relieve the Company from any liability or penalties under this section.

10.3 Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by “**Force Majeure**”, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this clause. A circumstance referred to in this clause whether occurring prior to or after the formation of the Contract shall give a right to suspension or extension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract. The suspension or extension period shall be equivalent to the duration of the Force Majeure Event, and no liabilities shall be incurred by either party during such period. The party claiming to be affected by Force Majeure shall notify the other party in writing and without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which it incurs and which could have avoided had such notice been given. If Force Majeure prevents the Client from fulfilling his obligations, he shall compensate the Company for expenses incurred in securing and protecting the Goods. Additionally, if such Force Majeure persists for more than 90 days, either party may terminate the arrangement without liability to the other, except for payment obligations for Goods or Services delivered prior to termination.

### Liability for defects, non-conformities and other quality issues

10.4 The paragraphs falling this heading pertain to the Company’s obligations relating to and its liability for any breach of the warranties stated in clause 9.1 above.

10.5 The Warranty Period shall not be extended by the fact that a defect, non-conformity or other issues was latent or could not be discovered by the Client within the Warranty Period.

10.6 The Company shall have no obligation or liability for any breach of which is not notified by the Client in writing, including all reasonably detailed particulars of the nature and circumstances of the claim, within 14 (fourteen) days of the end of the Warranty Period.

10.7 The Company’s liability and obligations shall also be conditional upon the Client complying with its obligations under clause 11.1(g) below above.

- 10.8 The Company's liability and obligations shall be automatically suspended during any period in which the Client is overdue for payment of any sum due to the Company under or in connection with the Contract. This suspension shall remain in effect until all outstanding payments are fully settled by the Client.
- 10.9 The Company shall have no liability or obligation to the extent a defect, non-conformity or other issue is caused by or its consequences are made worse by any of the following: any design furnished by or on behalf of the Client; Company's compliance with any instructions or requests of or on behalf of the Client or the end user of the relevant Goods or Equipment; negligent or malicious damage by anyone other than the Company or its representatives; use, maintenance, repair, storage, installation, commissioning or transportation of the Goods or Equipment otherwise than in accordance with good industry practice or any instructions or recommendations of the Company or the manufacturer of the relevant Goods or Equipment (or parts thereof); use of the Goods or Equipment for a purpose for which they were not intended by the manufacturer; subjection of the Goods or Equipment to abnormal operating environments or loads; or modification or repair of the Goods or Equipment by any person other than the Company or its representatives.
- 10.10 If the Client's warranty claim proves invalid, the Company shall be entitled to compensation for the costs and expenses it incurs in connection with the claim notice.
- 10.11 Unless otherwise agreed, the necessary transportation of the Goods and/or parts thereof (and, if relevant, the Equipment) to and from the Company in connection with the repair of defects shall be at the Client's expense. The Client shall follow the Company's instructions regarding such transportation.
- 10.12 Unless otherwise agreed, the Client shall bear any additional costs incurred by the Company as a result of the Goods or Equipment being located at a location other than the place of original Delivery.
- 10.13 Defective parts or pieces which have been replaced shall be made available to and shall become the exclusive property of the Company.
- 10.14 The Company shall remedy breaches of the warranties by repairing the defective Goods or re-performing the defective Services covered by this warranty or, if in the Company's opinion they cannot be satisfactorily repaired or re-performed and by either refunding an equitable portion of the price of the defective Goods and/or Services (having regard to, among other things, the use the Client has already had of the Goods or Equipment prior to making its claim) or, at the Company's option, replacing the Goods. Goods and Services supplied pursuant to a claim under this warranty shall be subject to the same warranty covering the original Goods and Services supplied, for the balance of the original warranty period only plus the amount of time the period time elapsing between the date on which the Client notifies the Company of its claim and the date on which the Company delivers the repaired or replacement Goods or the Equipment to the Company.
- 10.15 Unless the Company expressly agrees otherwise, all Goods shall be repaired or replaced and all Services shall be re-performed at the same location at which they were originally delivered or performed by the Company.
- 10.16 The warranty given by the Company regarding the repair, maintenance, upgrading or other after-sale services does not constitute an "as new" warranty, unless is expressly warranted in the Contract to that effect. Except to the extent expressly agreed in the Contract, only the services actually performed and work actually carried out by the Company are warranted.
- 10.17 In the event that, following valid notification of a breach, the Company fails to remedy the breach within a reasonable time the Client shall be entitled, after given the Company a final warning in writing at least 7 days in advance, to have the defect, non-conformity or issue remedied by a third party contractor at the Company's expense.

The Client shall indemnify and hold harmless the Company from and against any and loss, damage, cost or expense (including reasonable legal fees and costs) which may be suffered or incurred by the Company in the handling, defense, compromise or satisfaction of any claims or proceedings addressed to the Company by any third party, including but not limited to claims brought by any of the Company's employees or agents, which arise from any negligence of the Client or any breach by the Client of any of its obligations or warranties under these Conditions. The Client shall, upon written request, defend the Company in any such claims or proceedings; however, the Company reserves the right to participate in such defense at its own expense.

#### **Liability to third parties**

- 10.18 No third party shall have any rights under the Contract unless otherwise expressly stated or obvious from the wording of the relevant provision.
- 10.19 The Client shall indemnify, defend and hold harmless the Company and its affiliates, including their directors, officers, employees, representatives and contract workers with respect to the handling, defense, settlement or satisfaction of any claim, allegation, suit, proceeding or litigation made or bought by any third party which arises out of or in connection with the Contract.

#### **General**

- 10.20 The Company shall not be liable to the Client or any other person in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss of anticipated profits; loss of production or productivity; loss of revenue; loss of goodwill or reputational damage; loss of contract; loss of use; loss of management time; loss of anticipated savings; loss of opportunity punitive or exemplary damages, or for any special, indirect or consequential losses.
- 10.21 All obligations, warranties and representations that might be implied into the Contract by law are, to the fullest extent permitted by law, expressly excluded.
- 10.22 Nothing in the Contract shall be construed or interpreted as excluding or limiting the Company's liability for death, personal bodily injury or illness, fraud, infringement of intellectual property, breaches of confidentiality, breaches of data protection provisions, breaches of provisions within the David Brown Santasalo Third Party Code of Conduct, or any other liability that may not be lawfully limited or excluded under applicable law.

- 10.23 The Company's maximum aggregate and cumulative liability under or in connection with the Contract, however arising, shall be limited to the total amount of Contract price (excluding any applicable value added tax, sales tax or other revenue taxes) actually paid by the Client.
- 10.24 The Company shall be entitled to, by informing the Client in writing (including in the form of an invoice or credit note), satisfy any sums or liabilities it may owe to the Client by offsetting them against any sums or liabilities that the Client owes to the Company.
- 10.25 The Company's obligations and liabilities under the Contract shall extend to all its obligations and liabilities to the Client and any third party arising out of, under or in connection with the Contract. The foregoing applies even if such obligations and liabilities arise in respect of or as a consequence of a breach of the Contract or statutory duty, in tort or a negligent act or omission giving rise to a remedy under the civil law. Accordingly, except as expressly provided in the Contract, the Company shall not be obligated or liable to the Client or any third party in respect of any damage, loss, cost or expense suffered by the Client or any third party arising out of, under or in connection with the Contract, and all such rights, obligations and liabilities (except any liability the Company may have for personal injury or death arising out of its negligence, which is not limited) are subject to the maximum aggregate limit of liability set out above.
- 10.26 All claims of whatsoever nature by the Client under or in connection with this Contract shall be extinguished and shall be absolutely barred unless a suit is brought within three (3) years of the date of delivery of the Goods or, in the case of Services, on the date of commencement of their performance, provided, however, that nothing in these Conditions shall prevent the Parties from submitting to another limitation period to which they are entitled under the law.

## 11. CLIENT'S RESPONSIBILITIES

- 11.1 The Client shall, in addition to its other obligations to the Company under the Contract or at law, all at its own expense:
- (a) ensure that the Order specifies the Client's requirements (if any) for dispatch instructions (including for any special markings on the packing cases) and packaging standards.
  - (b) take delivery of the Goods or Equipment at the appointed time, or promptly inform the Company in writing if any delays are anticipated along with its reasons.
  - (c) provide the Company and its representatives in a timely manner with all such information, materials, articles and things which are specifically required of it by the Order Confirmation and/or which the Company might reasonably request in order to facilitate the Company's performance of the Contract, including ensuring that such information is accurate and complete.
  - (d) where the Services or any remedial activities are to be performed at a location other than the Company's own premises, ensure that: such location is suitable, safe for and easily accessible by the Company and its representatives; ensure Company's representatives are granted access to such location at the appointed time; ensure that the Company is given reasonable prior notice of any local policies, rules, regulations or requirements concerning security, healthy and safety, or protection of the environment which are applicable to that location; ensure that the Company is informed reasonably far in advance of performing the relevant Services activities of any conditions or circumstances affecting or existing at the location of which the Company would not otherwise be aware but which might reasonably be anticipated to have a bearing upon Company's performance of the Services; and ensure that Company is given the use or benefit of such tools, equipment (including craneage), facilities, consumables (including water, compressed air and electricity) and personnel which are specifically required of it by the Contract or which the Company might reasonably request in order to facilitate the Company's performance of the Contract.
  - (e) provide, give or procure any permission, approval (including approval of drawings or technical information) or license to the extent expressly contemplated by the Order Confirmation or which the Company otherwise reasonably requests, all without undue delay.
  - (f) where Services are to be performed at the Company's own premises, deliver the Equipment to those premises in sufficient time for the Company to commence performance of the Services on time;
  - (g) in respect of any claim for breach of the warranties in clause 9.1 above: deliver the relevant Goods or Equipment to the place at which the Company's remedial activities are to take place; give the Company and its representatives all such information (including maintenance records) and assistance as they might reasonably require for the purpose of investigating the circumstances and validity of the Client's claim, including access the Goods or Equipment at any location which they are located; until the Goods or Equipment is in the Company's custody, safeguard the Goods or Equipment against further loss or damage and promptly notify the Company of any risk of damage; and arrange for (as relevant) the decommissioning and disconnection or uninstallation of the Goods or Equipment from any other property to which they are connected or integrated prior to the commencement of the Company's remedial activities and (unless such activities are part of the original scope of the Services) for reconnecting, reinstalling and reintegrating and recommissioning such Goods or Equipment following their being repaired, replaced or subjected to reperformance by the Company, ensuring that such activities are completed in accordance with the Company's instructions and specifications.
  - (h) **to comply with and ensure that its directors, officers, agents and representatives comply with the David Brown Santasalo Third Party Code of Conduct, the latest version of which is available for download from [dbsantasalo.com/legal/ethics-compliance](https://dbsantasalo.com/legal/ethics-compliance).**

## 12. SUSPENSION AND TERMINATION

- 12.1 If a party: commits any breach of any of its obligations under or in connection with the Contract which is either irremediable or if remediable is not remedied within 7 days of the innocent party's demand; has any distress or execution levied its property or assets; makes or proposes to make any arrangement or composition with its creditors (other than for the purposes of a bona fide solvent amalgamation or restructuring); becomes the subject of a court order appointing an insolvency practitioner, administrator or liquidator over its undertaking, business or assets; becomes the subject of any analogous or equivalent orders or proceedings anywhere in the world; ceases to do business or declares an intention to do so, then the other party shall be entitled to terminate the Contract (in whole or party) by giving written notice to the first party. The termination shall take effect upon the first party's receipt of the notice or, if later, upon the expiry of any period stated within the notice.

- 12.2 The Company shall, without prejudice to its other rights and remedies, be entitled to suspend performance of any or all of its obligations under the Contract, upon giving notice to the Client, if: the Client becomes more than 7 days overdue for payment of any amount due to the Company under the Contract or becomes overdue for payment of any instalment of the Contract price which requires to be paid before delivery of Goods or Equipment takes place; or if the Client breaches or the Company (acting reasonably and in good faith) suspects the Client to have breached any aspect of the David Brown Santasalo Third Party Code of Conduct (referred to in clause 11.1(h) above).
- 12.3 The Client shall, without prejudice to its other rights and remedies, be entitled to terminate the Contract insofar as it relates to the Goods or Services so delayed if the maximum liquidated damages payable by the Company pursuant to clause 11.1(h) above accrue and yet the relevant Goods have not been delivered or the relevant Services have not been completed within 7 days of the Client issuing a final written warning to the Company concerning the delay.
- 12.4 Either party shall be entitled to terminate the Contract for its convenience, upon notifying the other party, if the other does not resume performance of its obligations within 90 days of giving a notice pursuant to clause 10.3 (Force Majeure).
- 12.5 The Client hereby acknowledges and agrees that any breach of the David Brown Santasalo Third Party Code of Conduct referred to in clause 11.1(h) above shall be deemed to be both material and irremediable.

### 13. **CONFIDENTIALITY**

- 13.1 All information of a confidential or proprietary nature ("**Confidential Information**") which is disclosed, directly or indirectly by one party (the "**Discloser**") to the other party (the "**Recipient**") in connection with the Contract, whether before or after the date of the Contract and in whatever form (including orally or by visual observation), shall only be used by the Recipient for its performance of the Contract, for enforcing its rights under the Contract and for such other purposes as are expressly permitted by these confidentiality provisions or are otherwise permitted in writing by the Discloser. Confidential Information disclosed on the Discloser's behalf shall be deemed to have been disclosed by the Discloser and Confidential Information received by a third party on the Recipient's behalf shall be deemed to have been received by the Recipient. Information shall be deemed to be of a confidential or proprietary nature if: it is marked as such at the time of disclosure; it is expressly declared as such by the person making the disclosure upon or around disclosure; or if it ought reasonably to be considered as such having regards to the nature of the information or the manner or circumstances of its disclosure. Confidential Information shall be deemed to include but is not limited to technical information, product information, pricing information, business plans, customer or supplier information, future intentions, financial information, strategic information, forecasts, operational information, and legal information. Confidential Information shall be deemed to include any extracts, copies, notes, summaries or derivative works thereof. Confidential Information shall not or shall cease to include: any information which is or comes into the public domain other than because of a breach of these confidentiality provisions; which was already known to the Recipient prior to disclosure; information which the Recipient receives from a third party on a non-confidential basis.
- 13.2 A party shall not be in breach of these confidentiality provisions by virtue of it complying with a compulsory order, demand or request from any court, regulator or tribunal of competent jurisdiction, provided that (to the extent lawful and practical) it makes the Discloser aware of the order, demand or request prior to disclosing Confidential Information pursuant to it, only discloses Confidential Information to the extent necessary to comply, and provides reasonable cooperation to the Discloser for the purpose of the Discloser objecting to the disclosure or seeking an injunction or some other legal remedy prevent or restricting disclosure.
- 13.3 The Recipient may not disclose Confidential Information to any other person, except those to whom disclosure is permitted by these provisions, and shall safeguard the Confidential Information from loss, theft, damage or destruction with the same degree of care that it protects its own confidential information. The Recipient may disclose Confidential Information to its own officers, directors, employees and contract workers to the extent they need to know such information for one or more of the purposes permitted by these confidential provisions. The Company may also disclose and use Confidential Information: to its suppliers; to its insurers for the purposes of arranging insurance in relation to the Contract or pursuing or defending any claim in connection with the Contract; to other members of its corporate group for the purposes of complying with internal reporting requirements or procedures; to providers of finance for the purposes of arranging finance in connection with the Contract (including invoice discount and other forms of trade debt insurance); to any bona fide actual or potential acquirer, directly or indirectly, of the Company or substantially the business and assets of the Company; and to its legal, accounting, environmental and other professional advisers for the purposes of seeking their advice in relation to the Contract or enforcing its rights under the Contract. The Recipient shall be responsible for ensuring that persons to whom it discloses Confidential Information pursuant to these provisions comply with these Confidentiality Provisions as if they were directly party to them.
- 13.4 The Recipient shall, within a reasonable time of a written demand from the Discloser, return any Confidential Information disclosed to or held by or behalf of the Recipient in tangible form and shall destroy or expunge Confidential Information stored, recorded, embodied or held in any other form. However, the Recipient shall not be required to return, destroy or expunge any Confidential Information: which is held in an automated backup system; which it is required by law to retain; or which the Recipient considers (acting reasonably) it requires to retain in connection with the prosecution or defense of any claim, suit, litigation, allegation, investigation, inquiry, prosecution or legal proceeding arising out of or relating to the Contract. The Recipient shall continue to comply with these confidential provisions in respect of any Confidential Information so retained, notwithstanding that such provisions might otherwise have expired. Each party acknowledges and agrees that (a) any unauthorized use or disclosure of the other party's Confidential Information may cause irreparable damage to other party, its suppliers, subcontractors or other affected parties, (b) there may be no adequate remedy at law for a breach of the obligations in this Clause, (c) that any such breach may result in harm that is difficult if not impossible to assess on a monetary basis alone, (d) and that legal damages may not be sufficient compensation for such breach or any threat thereof. Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of any Confidential Information and that the other party will be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be available to other party at law or in equity.
- 13.5 These confidential provisions shall expire 2 (two) years after the termination of the Contract or, if later, expiry of the Warranty Period.

### 14. **INTELLECTUAL PROPERTY**

- 14.1 The Company shall retain all intellectual property rights (including copyright, moral rights, patents, design rights, database rights, rights in inventions, trademarks, rights to apply for registration of any of the foregoing, trade secrets, know-how and rights in confidential information) in all documents, articles, materials, designs, drawings, sketches, diagrams, images, CAD files, manuals, products, prototypes, concepts, ideas, inventions, databases, compilations and other data which it has prior the making of the Contract. All such rights in anything produced, created, conceived, developed, authored or recorded by or behalf of the Company in the course of performing the Contract shall also vest in the Company.
- 14.2 The Company grants the Client and any subsequent acquirer or proprietor of the Goods a non-exclusive, worldwide, royalty-free license to use the Goods and to use, copy and distribute any documents, designs, drawings, models, images, CAD files, sketches, diagrams, manuals, information which are furnished by the Company in connection with the Goods, Equipment or under the Contract strictly for the purposes of ensuring the licensee enjoys normal beneficial ownership or possession of the Goods or Equipment. However, nothing in this license shall entitle anyone to manufacture the Goods or any part of them anew or to require that the Company deliver up any documents, information, drawings, diagrams, instructions, manuals, designs, data or other things which are not expressly specified as deliverables in the Contract. The Client shall take all reasonable steps to prevent unauthorized distribution or duplication of any intellectual property provided by the Company under this license. The Company may (by notifying the Client) revoke such license during any period that the Client becomes overdue for payment of any sum due to the Company under or in connection with the Contract.
- 14.3 The Client grants to the Company a worldwide, irrevocable, sub-licensable, assignable, royalty-free license to use, copy and distribute any drawings, diagrams, models, sketches, images, documents, articles, materials or things furnished by the Client for the purposes of facilitating the Company's performance of the Contract and defending claims, suits, allegations or proceedings brought by third parties alleging infringement of intellectual property rights by the Company or its officers, directors, employees, contract workers or suppliers.
- 14.4 The Client shall (on demand) defend, indemnify and hold harmless the Company, its group companies and their respective officers, directors, employees, representatives and contract workers against any losses, costs, expenses (including legal expenses on an attorney and client basis) and liabilities which they suffer or incur as a result of any claim, allegation, suit, litigation or proceedings brought by a third party for actual or alleged infringement of intellectual property rights in any specifications, drawings, diagrams, models, sketches, images, manuals, instructions, documents, articles, materials or things furnished by the Client in connection with the Contract. This obligation shall survive the termination or expiration of the Contract.
- 14.5 The Company shall (on demand) defend, indemnify and hold harmless the Client and its officers, directors, employees, representatives and contract workers against any losses, costs, expenses (including legal expenses on an attorney and client basis) and liabilities which they suffer or incur as a result of any proved allegation, claim, suit, litigation or proceedings brought by a third party for actual or alleged infringement of intellectual property rights in any Goods or in any drawings, diagrams, models, sketches, images, instructions, manuals, documents, articles, materials, specifications, or things furnished by the Client in connection with the Contract. In this context, "proved" means either settled with the prior written consent of the Company or finally determined as infringement by a court or tribunal of competent jurisdiction. This is without prejudice to the Client's indemnification obligation under 14.4 above.
15. **GENERAL**
- 15.1 The Client agrees to comply at all times with all applicable local, state, federal, and foreign laws, orders, directives, and regulations in force, including, but not limited to those requiring equal opportunity and affirmative action without regard to race, color, religion, sex, national origin, presence of disability, and any other protected characteristic which are specifically incorporated herein by reference. The Client further agrees to provide evidence of such compliance upon the Company's reasonable request. If the Client fails to comply with the provisions of this paragraph, the Company may, upon notice to the Client, terminate the Contract in whole or part, in addition to any other rights or remedies provided by law. If any provision of these Conditions is deemed invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain valid and enforceable. Further, no delay or omission in exercising any right under these Conditions shall constitute a waiver of that right. Any waiver must be in writing and signed by the Company.
- 15.2 The Contract represents the entire agreement between the Company and the Customer with respect to its subject matter. All other terms, conditions, warranties and representations that might be implied by law are hereby excluded to the fullest extent permitted by law, except for any statutory warranties or representations that cannot be excluded by law.
- 15.3 No time or other indulgence granted by the Company to the Client shall operate or be deemed to operate as a waiver or suspension of the Company's rights under these Conditions. The Company shall be entitled at any time, with or without prior notice, to hold the Client to strict performance of any outstanding or recurring obligations set forth under the Contract, including, without limitation, any obligations related to payment, delivery timelines, or performance standards.
- 15.4 Neither party may assign, novate or grant any security over any of their rights or obligations under or in connection with the Contract without the prior written consent of the other Party, except that the Company may freely assign or grant security over such rights to any provider of finance to the Company or any other member(s) of its corporate group, and the Company may also assign or novate such rights and/or obligations to any other member of its corporate group for the time being or any other person which acquires substantially all or the majority of the Company's business and assets.
- 15.5 All notices to be issued pursuant to the Contract shall be made in writing and delivered by email to the last known email address of the recipient party's managing director, finance director or their equivalents or by a reputable courier service to the recipient's registered office or last known primary trading address. Notices delivered by email will be deemed to be received one business day after successful transmission. Notices delivered by courier will be deemed to be received when the courier's delivery records state it was delivered. A business day means a day when banks are generally open for business in the recipient's jurisdiction. Notices sent by email shall include a read receipt or other confirmation of receipt, and it is the responsibility of the recipient to confirm that their email address is accurate and current.

16. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 16 These Conditions and the Contract shall be construed in all respects as an Indian contract and in conformity with applicable laws in India; and the courts of New Delhi shall have exclusive jurisdiction to hear and determine any action in respect of it, save that the Company shall be entitled to seek injunctive or any other relief in the courts of any jurisdiction whatsoever.