



## SALE CONDITIONS

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These Sale Conditions govern the sale and license of the goods and services rendered by LPE to Customer.

### 1) Quote- Purchase Order - Purchase Order Confirmation

LPE quotation ("Quotation") supersedes any prior quotes, writings, discussions and/or oral agreements between LPE and Customer. Quotation shall not have the binding effects of a contractual offer. Its whole or partial acceptance by Customer with a purchase order making express reference to the Quotation ("Purchase Order") will not bind LPE in any manner until such Purchase Order is finally and expressly accepted in writing by LPE with an order confirmation ("Purchase Order Confirmation").  
Prices listed shall nonetheless be valid for one month from date of the Quotation.

### 2) Agreement

The agreement between Customer and LPE (the "Agreement") shall be composed of the following contractual documents:

- (i) The Quotation
- (ii) The Purchase Order
- (iii) The Purchase Order Confirmation

Terms and conditions contained in the Quotation shall apply unless expressly derogated by the later contractual documents which are in writing and signed by an authorized representative of LPE.

### 3) Requirements of Purchase Order

The Purchase Order shall be irrevocable for a period of 90 days and must be transmitted to LPE by to :

[sales@lpe-epi.com](mailto:sales@lpe-epi.com).

or by fax to :

LPE  
Via Falzarego , 8  
20021 Bollate (Milan) – Italy  
Tel: +39/02/383415.1  
Fax: +39/02/38341595

### 4) Prices

Prices quoted with reference to each item in the Quotation include (i) the price for the sale of the LPE product(s) ("Reactor") mentioned therein; (ii) the consideration for a non-exclusive, non-sublicensable, non-assignable, non-transferable, limited and revocable license to use the Software (as defined herein) embedded into such Reactor.

Quoted prices only include what is expressly mentioned the Quotation and, in particular, do not include:

- (i) Software updates or upgrades and Software maintenance fees;
- (ii) Any federal, state, municipal or other taxes or duties now in force or enacted in the future, including custom duties, value added tax, sales tax or similar taxes (exclusive of taxes based on LPE net income). Any such tax or duties imposed on, or measured by the transaction between LPE and Customer, shall be the sole responsibility of Customer and be paid by Customer in addition to the prices quoted or invoiced. In the event



LPE is required to pay any such tax or duty at the time of sale or thereafter, Customer shall immediately reimburse LPE therefor.

LPE shall invoice Customer for any charge due hereunder in accordance with the shipment and delivery terms or any other arrangement with Customer.

## **5) Terms and Conditions of Payment**

Payment terms are subject to the provisions set forth in section C (Special Sale Conditions) of the Quotation.

Payments will be made by wire transfer (SWIFT), net of bank commissions for LPE, to the bank account specifically indicated by LPE in the Purchase Order Confirmation. Customer undertakes to verify with due diligence and reasonable care that the order confirmation actually comes from email accounts of LPE. Customer undertakes to report any suspicious payment requests to LPE before any payment is made. The Customer acknowledges and accepts that any potential payments made to third parties in violation of the provisions of this paragraph shall not release the Customer from its payment obligations towards LPE.

In case of late payment, interests will be due on the overdue amount at the rate of 1% per month or fraction thereof, or at such lower rate, which may be allowed by the applicable laws as the highest allowed interest rate.

If the Product is delivered in installments, Customer shall pay each installment as provided above. Each installment shall be treated as a separate transaction, but in the event of any default of Customer LPE may decline to make further shipments without affecting in any manner LPE's rights hereunder. If, despite Customer's default, LPE elects to continue to make shipments, this shall not constitute a waiver by LPE of its rights as originated from such Customer's default or in any way affect LPE's legal remedies for such default.

In the event of failure of a timely payment, the scheduled delivery date shall not be valid and LPE reserves the right to discharge any duty hereunder and to cancel the Agreement. Customer agrees that LPE will not be liable for any damages or costs whatsoever vis-à-vis the Customer.

## **6) Modifications to product specifications**

LPE shall have the right to alter or modify the specifications of the products sold or licensed hereunder, provided that such alterations or modifications do not materially affect the overall product performance.

## **7) Software Personal, Nonexclusive License and patented parts of the Reactor**

The Customer acknowledges and agrees that the software embedded in the Reactor (the "Software") is not and has not to be understood as sold to the Customer, but it is solely licensed to the Customer under the terms and conditions of this clause. LPE is and shall remain at any time the sole and exclusive owner of any right in and to the Software.

LPE grants herewith to the Customer a non-exclusive, non-sublicensable, non-assignable, non-transferable, limited and revocable license to use the Software (the "License"), described by section E of the Quotation, for the sole purpose of enabling the Customer to use the Reactor within its premises and, in any case, for internal use only.

The Customer acknowledges and agrees that:

- (i) the Reactor and the Software are different and severable items;
- (ii) the Reactor can be operated also by means of software other than the Software;



(iii) the Customer is not authorized to assign the License to any third party, including without limitation in case of resale or lease of the Reactor to any third party.

Upon resale or lease of the Reactor to any third party, the License shall be deemed as automatically revoked.

Without prejudice for any further damage suffered by LPE, in case of breach of the present clause, the Customer undertakes to pay a penalty of Euro 150.000 in favor of LPE.

Unless otherwise provided by any applicable provision of law, Customer may not copy, duplicate, reproduce, examine, analyze, develop, reverse engineer, decompile or disassemble the Software, nor may it lease, rent, assign or otherwise transfer its title thereon.

Patented parts of the Reactor are protected by patent laws. In any case, without LPE's advance written approval, Customer shall not, directly or indirectly, either personally or through third parties, modify, alter or change in any manner whatsoever any patented part of the Reactor, nor purchase any such part other than from LPE or LPE qualified and approved manufacturers.

Customer acknowledges and agrees that all the wearing parts, consumables and spare parts supplied by LPE as well as all quartz parts and graphite parts supplied directly by LPE or by a supplier qualified by LPE as LPE Qualified and Approved Manufacturer (the "Goods") have been manufactured, conceived and intended to be used exclusively in combination between them and with the Reactor, according to the instructions provided by LPE (inter alia, instructions on the authorized use of the supplied Goods and Reactor). In this regard, Customer undertakes not (a.) to use any Good, Reactor as well as any other item provided by LPE or LPE Qualified and Approved Manufacturers, in combination with any other Reactor, device and equipment which have not been provided by LPE or by LPE Qualified and Approved Manufacturer; (b.) to disassemble, dismantle, alter or modify any Good, Reactor as well as any other item provided by LPE or by LPE Qualified and Approved Manufacturer, unless prior written authorization by LPE. ALL WARRANTY TERMS WILL BE VOIDED IF THE ABOVE CONDITIONS ARE NOT FULLY SATISFIED.

Customer agrees that the products of LPE as well as their additional parts contain valuable confidential information ("Confidential Information") and agrees it will not modify, reverse engineer, decompile, create other works from, or disassemble any products or parts which embody Confidential Information.

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

## **8) Packaging**

Products shall be suitably packed in accordance with the common requirements of carriers and in such a manner as to achieve a reasonably low transportation cost.

Product is packed in strong wooden crates export type with tilt / shock indicator. Product parts are vacuum-sealed in plastic foil. Moisture absorbers are provided inside each crate. Product is properly packed by LPE and necessary measures shall be taken to protect the contract goods from moisture, rain, rust, corrosion, shock and damages. The package is suitable for long-distance transportation. The Customer shall be liable for any damage and/or loss of the goods attributable to inadequate, improper or longer than 2 (two) months storage after delivery.

## **9) Delivery, property and risk**

Unless otherwise provided for elsewhere in the Agreement, products will be sold FCA Milan, LPE facility per Incoterms 2010 for all Products..

Delivery shall take place and property and risk shall pass to Customer according to the terms of the sale as per ICC Inco terms of the most recent edition available at the date of Quotation.



The time quoted for expected delivery is an estimate only. LPE shall do its reasonable efforts to deliver the Product within the time quoted, provided however in no event it shall be liable for losses or damages of any kind caused to Customer by a later delivery.

In case, for any reason, LPE and Customer agree on installments delivery of the Product, payment release will be agreed accordingly and each installment shall be treated as a separate transaction. In the event of any default of Customer in relation to payment terms, LPE may decline to make further shipments without affecting in any manner LPE's rights hereunder and without any liability whatsoever towards Customer. If, despite Customer's default, LPE elects to continue to make shipments, this shall not constitute a waiver by LPE of its rights as originated from such Customer's default or in any way affect LPE's legal remedies for such default.

If Customer is unable to accept delivery of the Product at the date scheduled and confirmed by LPE for delivery, it shall immediately so inform LPE and the parties shall attempt to arrange for an alternative delivery location, provided however that LPE shall have no obligation to find an alternative location. Should Customer be unable to accept the Product within 90 days as from the scheduled and confirmed date for delivery, LPE shall have the right, at its own discretion, to (i) either terminate the Agreement, or (ii) store the Product in a warehouse or in any other convenient location at Customer's expenses with the effect for LPE of being so released from any liability for loss or damage of the Product after such date, in either case retaining the advance payments made by Customer as liquidated damages and keeping the right to be indemnified by Customer for any further damages. Upon the scheduled and confirmed date for delivery, LPE is authorized to invoice Customer the full Price as if delivery had been made.

#### **10) Carriage**

Should a form of sale be agreed involving LPE's responsibility for choice and payment of carrier, the provision of this article 6 shall apply.

Transportation cost, if any hereunder, (by any transportation mean) will be charged and invoiced separately to Customer.

Carriage dates, if any, stated by LPE in the Quotation or any following documents are approximate only and merely represent LPE's estimate of the time required for the carriage. LPE shall not be liable in any manner whatsoever for any loss or expense (consequential or otherwise) incurred by Customer as a result of any delay on carriage for any reason.

#### **11) Security interest**

LPE hereby reserves a first degree privileged security interest for the unpaid purchase price or any part thereof on the Product sold and delivered.

Customer hereby agrees to perform all acts necessary or appropriate to assist LPE in perfecting and maintaining such security interest. In the event of default by Customer of any of its obligations to LPE, LPE shall have the right, without liability to Customer, to repossess the Product.

At LPE request, Customer shall grant LPE with other security interest.

#### **12) Assembly**

LPE personnel shall install the Product at Customer's facility on a mutually agreed upon schedule. Crating may be opened only in presence of the appointed LPE responsible; failure to do so shall cause the warranty to become ineffective. Customer shall provide electrical, heating and air conditioning environment, cable installation and other facility requirements as specified in LPE's applicable installation specifications manual which is incorporated by reference herein. Upon request LPE will provide Customer with such manual. Positioning, unpacking, equipment transportation inside Customer's factory will be done by Customer's personnel and with Customer's lifting and transport media under the supervision of an LPE's technician. LPE



personnel will perform the Reactor assembly, which includes electrical connections only among the parts of the system.

### **13) Ready for start-up and acceptance**

Should the Agreement provide for acceptance tests after installation, the provisions of this article 13 shall apply.

Customer shall notify LPE in writing that facilities are tested and ready for start-up according to the LPE facilities check-list enclosed in the installation specifications. Said notification must reach LPE within 60 days after delivery. LPE shall subsequently send its engineers to perform final check-up, calibration start-up and acceptance tests as agreed in the Agreement. All such activities will be performed using facilities and materials supplied by Customer. Customer shall perform all necessary actions to comply with local safety, environmental and all other regulations concerning facilities and equipment installation.

In the event LPE is unable to perform the acceptance tests within 90 days from delivery date due to Customer's default or other reason whatsoever beyond LPE's control, the Product will automatically be considered as fully accepted.

In the event LPE is unable to attain the performance stated in the Acceptance Procedure due to facilities not in compliance with LPE Installation Specifications within 90 days from date of shipment, the Product will be considered as fully accepted.

The acceptance performance measurements and Reactor performance will be done only with the utilization of:

- (i) LPE property bubbler and exhaust gas scrubber approved by LPE;
- (ii) LPE approved quartz parts and graphite parts design;
- (iii) Reactor installation according to LPE specification.
- (iv) Systems other than those listed above must be approved by LPE in writing.

### **14) Exclusions**

Reactor and services subject to the Agreement are only those which are expressly mentioned as such therein. In particular and without limiting the generality of the foregoing, following items are NEITHER included in LPE basic supply NOR in assembly, start-up or acceptance activities:

- susceptors, supports and caps unless in case of specific agreements
- any gases, cooling water and DI water, compressed air
- handling of specialty gases and relevant lines , components , connections , bottles and the like , which must be supplied by Customer through certified personnel with proper gas handling licence
- electrical power supply to main switch, ground lines to all parts of the system
- water drain, reaction gas exhaust, air extraction blower
- gas cylinders, process gasses, chemicals, storage tanks
- masonry and building works of any kinds
- inside and outside transports and lifting media



- wafers for calibration and production
- all fluid pipelines outside the Reactor and among parts
- all expenses and additional costs concerning transportation, freight insurance, import and export permits and licenses, duties, taxes, custom charges etc.

#### **15) Proprietary information**

LPE reserves the right to supply, at its own discretion, all the necessary information for the proper installation, test, operation and maintenance of the Product in accordance with the published specifications for such Product. LPE retains for itself all proprietary information and intellectual property rights arising out of the work performed by LPE in compliance and/or in connection with the Agreement or related to products developed by LPE as a result thereof, including the sole right to manufacture such products. Customer warrants that it will not manufacture or engage to have manufactured such products. Should LPE cease to supply and support the Product purchased under the Agreement, LPE shall furnish to Customer the necessary engineering drawings and Software documentation for operating and maintaining the Product delivered hereunder.

All information (included, but not limited to, data of any nature, LPE business, projects, plans, products, services, technical designs, engineering drawings, Software and documentation), patents and trademarks disclosed or revealed to Customer are protected by intellectual property copyright and patents laws and shall remain in the full ownership of LPE. This information shall be considered classified and confidential and shall not be processed, revealed, disclosed, transferred by Customer to any third party, under any circumstance. Customer shall perform any and all necessary efforts in order to maintain such information classified and confidential.

#### **16) Limited warranty**

LPE warrants the Product sold or licensed hereunder against faulty workmanship or the use of defective materials for a period of twelve (12) months from the date of shipment of the Product (in line with the Incoterms), which may also be evidenced by LPE with the LPE invoice date. Customer's remedies and LPE's liability with respects to the Product delivered hereunder may only be modified or amended by a written instrument, signed by a duly authorized officer of LPE and accepted by Customer.

Customer must give written notice to LPE of any alleged defectiveness of the Product within 8 days from the date it has or ought to have discovered such defectiveness. This term shall not be postponed under any circumstance.

LPE's sole and exclusive liability and Customer's sole and exclusive remedy under this warranty shall be, at LPE's option, to repair or replace any such defective Product. Such remedies are available only after LPE's examination of such Product and provided such defects were not caused by Customer's misuse, neglect, improper installation or testing, attempts to repair or by other causes beyond the range of normal usage, or by accident, fire or other hazard. Repair or replacement of a part does not extend the warranty period beyond the initial warranty period as defined above.

All Product(s) which Customer considers defective shall be returned to LPE. The method of shipment shall be approved by LPE in advance. Any replaced part shall return into the full ownership of LPE.

LPE shall not be liable under any warranty clause for defectiveness of the Product if at the time of the conclusion of the Agreement Customer knew or could not have been unaware of such defectiveness.

LPE's warranty for the Product is subject to the express condition that all wearing parts, consumables and spare parts used on the Products have been exclusively supplied by LPE and that all quartz parts and graphite parts have been either supplied directly by LPE or by a supplier qualified by LPE as LPE qualified and approved manufacturer. An updated list of suppliers qualifying as LPE qualified and approved manufacturer can be obtained by Customer from LPE upon request.



Customer acknowledges and agrees that all the wearing parts, consumables and spare parts supplied by LPE as well as all quartz parts and graphite parts supplied directly by LPE or by a supplier qualified by LPE as LPE qualified and approved manufacturer (the "Goods") have been manufactured, conceived and intended to be used exclusively in combination between them and with the Reactor, according to the instructions provided by LPE (inter alia, instructions on the authorized use of the supplied Goods and Reactor). In this regard, Customer undertakes not (i) to use any Good, Reactor as well as any other item provided by LPE or LPE qualified and approved manufacturers, in combination with any other Reactor, device and equipment which have not been provided by LPE or by LPE qualified and approved manufacturer; (ii) to disassemble, dismantle, alter or modify any Good, Reactor as well as any other item provided by LPE or by LPE qualified and approved manufacturer, unless prior written authorization by LPE. ALL WARRANTY TERMS WILL BE VOIDED IF THE ABOVE CONDITIONS ARE NOT FULLY SATISFIED.

THE WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES FURNISHED BY LPE ON THE PRODUCT. WARRANTY TERMS AND CONDITIONS SET FORTH HEREIN EXPRESSLY DEROGATE AND STAND IN LIEU OF ANY AND ALL OTHER WARRANTY TERM AND CONDITION WHICH WOULD HAVE BEEN OTHERWISE APPLICABLE, INCLUDING WARRANTY RULES OFFERED BY NATIONAL OR CONVENTIONAL LAWS APPLICABLE TO THE AGREEMENT. ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND EXCLUDED BY LPE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL LPE BE LIABLE FOR ANY SPECIAL INDIRECT INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF LPE SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE WITH RESPECT TO THE PRODUCT DELIVERED HEREUNDER OR SUBSEQUENT USE THEREOF.

*With regard to the Epitaxial Reactors model PE3061D and PE3061T:*

*Epitaxial processes are carried on at extremely high temperatures. The reaction chamber is coated with a gold layer designed to significantly reduce power consumption of the Reactor thanks to the reflection of the energy radiated by the susceptor during process.*

*Reaction chamber and relevant gold coating require adequate cooling, which will minimize but not completely eliminate stress. Therefore, during reaction chamber functioning, gold flaking or detachment of some gold pieces will happen. Under normal conditions, this will not cause deterioration to the Reactor performance unless when the exposed surface becomes too big.*

*In addition, several variables (e.g. process temperature, gas flow, thickness of the epi layer, P.M. intervals, quartz wet cleaning procedures, quality of D.I. cooling water and others) will affect the life time of the gold coating, which therefore cannot be accurately predetermined.*

*It is recommended to send the chamber for gold coating refurbishment, either at LPE or at LPE' Approved Vendors, when power consumption increases at least + 6%, compared to the power delivered with a new reaction chamber by the generator under same process conditions.*

*In any cases, LPE suggest gold coating factory refurbishment, either at LPE or at LPE' Approved Vendors, once per year.*

*LPE limited warranty of the gold coating layer on the reaction chamber is for a term which is the earlier of: 6 months under normal operating conditions, or 18 months from shipment, under proper storage environment.*

*LPE limited warranty will become effective only when gold coating deterioration increases power consumption by at least + 6% in less than 6 months, when compared to the power delivered by the generator for the same process with a new reaction chamber.*

*For avoidance of doubts, LPE limited warranty will not cover gold flaking/pieces detachment if 6% power increase is not met within said 6 months.*



## **17) Limitation of liability**

LPE shall not be liable for any loss, damages or penalty resulting from failure or delay in the performance of any of its obligations under the Agreement due to force majeure or any cause beyond its reasonable control, including, without limitation, earthquakes, fires, floods, wars, civil or military disturbances, acts of terrorism, sabotage, strikes, epidemics, pandemics, riots, power failures, computer failure, loss or malfunction of utilities, transportations and/or communication services, accidents, labor disputes, acts of civil or military authority and/or governmental actions and/or action of regional or local authorities, inability to obtain labor, materials (including spare parts), equipment or transportations. In the event of any such partial or complete failure to perform, LPE may cancel the Agreement without any further liability for either party.

LPE'S LIABILITY UNDER OR FOR BREACH OF THE AGREEMENT SHALL IN ANY CASE NOT EXCEED THE PURCHASE PRICE LESS REASONABLE RENTAL FOR PAST USE. IN NO EVENT SHALL LPE BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY CUSTOMER. IN NO EVENT SHALL LPE BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE. THIS IS THE MAXIMUM LIABILITY UNDER THIS AGREEMENT, TORT, OR OTHERWISE.

## **18) Patent infringement**

LPE agrees that it will, at its own cost and expense, defend any lawsuits or proceedings instituted by an unaffiliated third party against the Customer (each a "Claim"), and pay any award of damages assessed against the Customer in such Claim by a court of final jurisdiction, to the extent that the Claim alleges that the said Products or part thereof as delivered by LPE to Customer under this Agreement infringe any third party patent, trademark or copyright (hereafter, "Third Party Right"). To qualify for such defense and payment, Customer must give LPE immediate notice in writing of the institution of the Claim, allow LPE to control the defense, and fully cooperate (at no cost) with LPE in the defense and related settlement negotiations, including promptly giving LPE all needed information, assistance and full authority to enable LPE to carry out its obligations under this paragraph.

Notwithstanding the previous paragraph, LPE shall not be responsible for indemnifying or be held liable for any Claim that alleges any of the following (collectively, the "Excluded Claims"): (i) infringement of combination patents covering the use of this Product in combination, operation or use with other equipment or materials not furnished by LPE; (ii) infringement of method or process patents; (iii) infringement of any Third Party Right that is the result of any modification not authorized in writing by LPE or use of the Product or part thereof that goes beyond or is otherwise not consistent with the LPE specifications regarding the Product and its use; (iv) infringement of any Third Party Right for any equipment, device, or part specified by Customer but not manufactured by LPE; (v) to the extent the claim is based on open source software; and/or (v) infringement of any Third Party Right to the extent such infringement arises from or relates to LPE's compliance with any part of the specifications for the Product or part thereof that was supplied or requested by Customer. Customer shall protect, defend, indemnify, and hold harmless LPE and its employees, subsidiaries and affiliates, from all suits, claims, losses, damage awards, demands, judgments or other liability, including reasonable costs, expenses and attorney's fees of defending same, arising out of or based upon any of the following: (i) the Excluded Claims; and/or (ii) sales or use of LPE Products by Customer. In the event of a Claim to which Customer is entitled to indemnification under the first paragraph of this Section 18, wherein the Product furnished by LPE is held in and of itself to constitute infringement and its use enjoined, LPE will, at its own sole cost and expense, and at its sole discretion, either: (i) obtain adequate license to such Third Party Right, or (ii) modify the relevant Product so that it is no longer infringing the Third Party Right, or (iii) replace the relevant Product by non-infringing equipment, or (iv) repurchase the Product by repayment to Customer of the sales price of the relevant Product paid by Customer to LPE, less straight-line depreciation over seven years. LPE shall not be liable for any costs or expenses of defense incurred by Customer in connection with any Claim to which Customer is entitled to indemnification under the first paragraph of this Section 18, without LPE's prior and specific authorization.

NOTWITHSTANDING SECTION 17 (LIMITATION OF LIABILITY), LPE'S AGGREGATE LIABILITY AND OBLIGATION UNDER THIS HEADING (PATENT INFRINGEMENT) SHALL BE LIMITED TO A CLAIM FORMALLY COMMENCED WITHIN A TERM OF SEVEN YEARS STARTING ON THE SHIPMENT DATE OF THE PRODUCT SUBJECT TO SUCH CLAIM, AND TO A MAXIMUM





AMOUNT, INCLUDING WITHOUT LIMITATION DEFENSE COSTS, DAMAGES, OR OTHER REMEDIES, NOT TO EXCEED THE SALES PRICE OF THE PRODUCT AS PAID BY CUSTOMER TO LPE, LESS A STRAIGHT LINE DEPRECIATION OVER SAID SEVEN YEARS.

THIS SECTION 18 STATES LPE'S ENTIRE LIABILITY AND OBLIGATION, AND CUSTOMER'S EXCLUSIVE REMEDY, IN CONNECTION WITH ANY SUIT OR PROCEEDING REGARDING THE INFRINGEMENT OF ANY THIRD PARTY RIGHT BY THE SALE AND/OR USE AND/OR OTHER HANDLING OF THE PRODUCT OF LPE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LPE SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PARTY FOR ANY LOSS OR DAMAGE WHATSOEVER NOT EXPRESSLY PROVIDED FOR UNDER THIS HEADING, INCLUDING BUT NOT LIMITED TO INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES.

### **19) Termination**

In any one or more of the following events, Customer shall immediately pay to LPE the full amount of any payment obligations under the Agreement and LPE shall have the right at its own discretion and without prejudice to its other rights to terminate the Agreement by written notice and with immediate effects:

(i) Customer makes general assignment for the benefit of creditors, or transfers all or substantially all of its assets to a receiver or a trustee in bankruptcy, (ii) a proceeding is commenced by Customer for relief under bankruptcy or similar laws, (iii) a proceeding is commenced against Customer for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or (iv) Customer is adjudged insolvent or bankrupt;

upon the failure by Customer to pay any sums due to LPE hereunder within thirty (30) days after the same become due;

upon failure of Customer to perform any of its obligations hereunder, other than the payment of money, within thirty (30) days after receipt by Customer of written notice from LPE specifying such failure.

### **20) Notices**

Notices permitted or required to be given hereunder shall be deemed sufficient if given by registered or certified air mail, postage prepaid, return receipt requested, addressed to the respective addresses or the parties as resulting in the Purchase Order and Purchase order Confirmation or at such other addresses as the respective parties may designate by notice from time to time. Notices so given shall be effective as of the date stamped on the receipt.

### **21) Amendment and severability**

Except as otherwise provided herein, the Agreement shall not be amended or modified, nor shall any waiver of any right hereunder be effective unless set forth in a document executed in writing.

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

### **22) Survivability of remedies**

The failure by LPE to enforce any of the provisions hereof shall in no way be construed as a waiver of such provisions, nor in any way shall it affect the validity of the Agreement or any part thereof or the right of LPE to enforce each and every such provision thereafter.



### **23) Insurance coverage**

From the arrival of the Product at Customer's facility, Customer shall adopt and maintain all reasonable and customary insurance coverage on the Product, including, without limitation, damages occurring during installation, start-up and acceptance tests.

### **24) Arbitration and applicable law**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of Italy, without giving effect to any conflict of law provisions.

Without prejudice to any mandatory law provisions, any disputes arising from and/or connected to this Agreement (including, without limitation, its validity, effectiveness, interpretation, execution and/or termination) shall come under the exclusive jurisdiction of the Court of Milan (Italy).

### **25) PRIVACY**

According to General Data Protection Regulation (Reg. 2016/679 UE – GDPR), LPE S.p.a. (Data Controller) intends to inform the data subject about how the Company collects and process personal data. Specifically, according to art. 13 GDPR, some personal data (name; surname; contact data) collected during the formation and conclusion of the contract will be processed through electronic as well as analogic instruments in order to comply the legal obligations deriving from the contract signed with LPE S.p.a., as well as to guarantee an appropriate level of management of the contractual relationship.

These personal data may also be disclosed - in order to allow the fulfillment of contractual and legal obligations mentioned - to: all the operators authorized by virtue of regulatory provisions; to collaborators, employees, agents and suppliers authorized by LPE S.p.a., and in particular (where action is required by the Customer or due to Customer needs) to specialized suppliers in the area of after-sales service activities to Customers; to factoring, credit recovery and credit insurance companies; to post offices and couriers; to all those natural and / or legal persons, public and / or private who contribute to the implementation of the processing activities aimed at the correct performance of the contractual activities.

For these purposes consent is not required, as the applicable legal basis is the execution of specific contractual obligations (art. 6 par. 1 letter b of the GDPR). The provision of data is optional but necessary in order to obtain the correct performance of the contractual activities.

If the data subject refuses to provide these data, it will be impossible to conclude the contract properly. The personal data processed for the purposes indicated up to now will be kept only and exclusively for the period covered by the contract and no later than the expiry of suitable terms to guarantee the possible defense of a right of the Company.

The data subject can always exercise all the rights referred to Articles 15-21 of EU Reg. no. 679/2016, including those of access, rectification, portability, updating, opposition and limitation to processing as well as cancellation by writing an email to the address [privacy@lpe-epi.com](mailto:privacy@lpe-epi.com). Anyway, it will always be possible for the interested party to lodge a complaint - with respect to the processing in question - before a competent Authority (such as the Italian Data Protection Authority).

### **26) TRADE RESTRICTIONS**

Customer acknowledges that certain transactions with LPE are subject to sanctions and export control laws and regulations, including but not limited to European Union and United States export control laws and regulations and sanctions laws and regulations enforced by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") ("Trade Restrictions"), which may prohibit or restrict the use, resale, export, reexport, distribution, release, transfer, disposal, or other dealings in respect of certain Products, Software, and technology in connection with certain territories and parties. Customer covenants and agrees to comply with all applicable Trade Restrictions.



Without limiting the generality of the foregoing, Customer specifically represents and warrants that, unless authorized by the appropriate government(s), it shall not (i) use or cause any Products, Software, and technology from LPE to be used for any proliferation, military, military-intelligence, terrorist-related, or other prohibited purposes, or be resold and/or transferred if it is known or suspected that such Products, Software, and technology are intended or likely to be used for such purposes or (ii) export, reexport, transfer, distribute, or release, directly or indirectly, any Products, Software, and technology from LPE to any territories or restricted parties targeted by applicable Trade Restrictions. Customer further covenants and agrees (i) to comply with all conditions of licenses (if any) authorizing its use, receipt, reexport, release, or transfer of the Product, Software, or technology and (ii) not to release or otherwise transfer any Software source code or technology to any dual- or third-country national except in compliance with Trade Restrictions.

LPE may use commercially reasonable efforts to obtain any required license. Any supporting documentation from Customer, including without limitation import certificates and end-user certificates, required to secure the necessary license must be received by LPE for processing at least ninety (90) days prior to scheduled ship date. LPE shall not be liable for its failure to obtain any necessary license or for non-delivery due to denial of a license application. LPE shall not be required to indemnify Customer for any (in) direct losses, costs, or fees (including attorney's fees and costs) incurred for its failure to obtain any necessary license.

Any breach of the foregoing covenants, representations, or warranties constitutes a material breach of this Agreement. LPE's continued obligation to perform under this Agreement is contingent on the receipt of any required license and Customer's continued compliance with the foregoing covenants, representations, and warranties.

LPE may suspend or terminate its performance of this Agreement, without liability, unless and until, in its sole discretion, it determines that any required license has been obtained or the proposed activity is otherwise permitted under Trade Restrictions. Customer shall indemnify and hold LPE harmless from any and all claims, direct, indirect and punitive damages, losses, costs (including attorney's fees and costs) and other liabilities arising from Customer's or its customers' breach of the foregoing covenants, representations, and warranties or non-compliance with Trade Restrictions.

Customer acknowledges that the obligations contained in this Agreement shall survive the termination of this Agreement or other arrangement under which the Products, Software or technology were provided to Customer.