

TERMS AND CONDITIONS OF SALE (EUROPE and EXPORT)
Gardner Denver Thomas GmbH (“Company”)
Registered Office: Livry-Gargan-Str. 10, 82256 Fürstentfeldbruck, Germany

SAVE TO THE EXTENT THAT COMPANY HAS OTHERWISE AGREED IN WRITING, THESE TERMS AND CONDITIONS GOVERN ALL OF COMPANY’S CONTRACTS TO THE EXCLUSION OF OTHER TERMS AND CONDITIONS (“TERMS”). COMPANY’S QUOTATIONS AND ESTIMATES ARE NON-BINDING AND DO NOT CONSTITUTE OFFERS CAPABLE OF ACCEPTANCE BY YOU (“CUSTOMER”). ANY ORDER PLACED BY CUSTOMER WILL ONLY BE ACCEPTED BY COMPANY’S CONFIRMATION, EITHER IN WRITING OR ELECTRONIC FORM, OF SUCH ORDER.

1. FORMATION OF THE CONTRACT; ORDER

(a) Quotation shall only be binding if Company provides Customer with an order acknowledgement to the purchase order issued by the Customer (“Order”). Unless stated otherwise, the Quotation is valid for 30 days after the issuance date. The Company shall endeavor to issue an order acknowledgement within 8 working days provided that: (i) the Order strictly conforms to the Quotation, (ii) all technical clarifications have been finalized; and (iii) all information regarding the Customer as may be reasonably required to be fully compliant with any applicable laws including export obligations has been provided. Once the Company sends the order acknowledgement to the Customer, the Order is binding. The Customer must notify the Company of any error or omission appearing in the order acknowledgement within seventy-two (72) hours of its receipt. Thereafter, the Order is final, and Company shall not be liable to Customer for any claims regarding such errors or omissions.

(b) No alteration to or variation of any Order shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorized representative, taking into consideration, as the case may be, the impact on the price, time of delivery and the planning or any other contractual obligation affected by such change.

(c) No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of this Order except as expressly stated in this Order. The Customer’s only remedies shall be for breach of contract as provided for in these terms and conditions.

(d) The Customer is bound by an Order for a period of three weeks from the date of receipt by the Company of such Order, unless the Customer declares anything to the contrary when making such Order. If the acceptance or refusal of the Order must be declared abroad, the binding period shall be increased to 4 weeks.

(e) The minimum order value is 300 EUR. Orders with a value of less than 300 EUR net are subject to a minimum value surcharge of 50 EUR. The minimum order value for delivery of accessories and spare parts for purposes of performing repairs is 50 EUR.

(f) These Terms shall be construed in accordance with the laws of Germany excluding the UN-Sales law and is subject to the exclusive jurisdiction of the courts of Munich, Germany.

2. PRODUCTS; PACKAGING

(a) The Company designs, manufactures and markets various products and related spare parts, goods and services (the “Products”).

(b) Unless Products are made to the particular specification or special requirement of the Customer, the Company reserves the right to change, discontinue or modify the design and construction of any Product (including making technical changes as well as changes in form, color, material and/or weight) or to substitute material equal to or superior to that originally specified, without notice to the Customer.

(c) The Company may not take back any packaging materials for which there exists a dual system of waste disposal (“Grüner Punkt”) or the like that has been recognized by the competent authority in accordance with the packaging regulations as amended. The Company may not take back any packaging materials in the event the Company uses a suitable waste disposal enterprise in accordance with the packaging regulations as amended. In such case, the Customer shall be obliged to make available and hand over the packaging material to the disposal enterprise.

(d) To the extent the Company is obliged to take back any packaging materials, the Customer must return such packaging materials to the Company's facility during the Company's general business hours. The returned packaging materials must be free of any foreign substances and sorted by different packing types. To the extent the Customer agrees to waive its right of return against the grant of a flat-rate disposal charge, the Customer shall be obliged to hand the used packaging materials over to a recognized disposal enterprise that guarantees proper disposal in accordance with the provisions of the packaging enterprise.

3. DELIVERY; TRANSFER OF TITLE AND RISK OF LOSS; DELAYS

(a) All sales are FCA Company's facilities (FCA, Incoterms 2020 Company's plant unpacked). The Company will invoice packaging separately. The Company, in its sole discretion, may select the carrier unless otherwise specified by the Customer.

(b) The legal title, right to possession and control, beneficial ownership and all other incidents of ownership ("title") shall pass to the Customer as follows:

(i) Until payment in full has been made of all sums due to the Company:

(1) Title in the Products supplied by the Company, even if the Products are affixed to or incorporated into other goods of the Customer or any third party, shall remain with the Company.

(2) The Company its agents and employees shall have an irrevocable license to enter the premises of the Customer to inspect or recover such Products or any part thereof.

(ii) If payment of all monies due to the Company from the Customer is received in advance of delivery of the Products, title in the Products shall pass when the shipment arrives ex ship port of discharge country of destination or arrives at the first point of entry for customs purposes in the country of destination in the event of any other mode of transport.

(iii) The Company will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from the Company.

(c) Notwithstanding that the title in the Products may not have passed to the Customer, the risk of loss in the Products shall pass to the Customer at the time of first tender of delivery to the Customer, its agent or any carrier.

(d) To the extent the Company agrees to be responsible for delivery only, the risk of accidental loss or accidental deterioration of the Product passes to the Customer as soon as the item has been delivered to the carrier. If the Company agrees to be responsible for erecting or mounting the Product, then the risk of accidental loss or accidental deterioration passes to the Customer upon completion of such services. If the delivery, erection or mounting is delayed at the Customer's request or for any other reason that the Customer is responsible for, then the Customer shall bear the risk of accidental loss or accidental deterioration during such delay period.

(e) The cost of returning products for maintenance or disposal will not be covered.

(f) The Customer must notify the Company, in writing, of all obvious defects in the delivery and services of the Company and any shortages in Products within a period of not more than 10 days from the Customer's receipt of such deliveries or services, otherwise the assertion of warranty claims is excluded.

(g) The Company is permitted to make partial deliveries as long as they are reasonable for the Customer. Each partial delivery may be invoiced separately by the Company.

(h) In the event of delay beyond any date agreed for the Company's performance of its obligations under this Order that is caused by circumstances beyond either party's control, the Company will be entitled to a reasonable extension of time. In the event of any such delay that is caused by the Customer, the Company will be entitled to a reasonable extension of time and to compensation for any costs, expenses and losses it suffers by reason thereof.

(i) While dates or periods for readiness for dispatch or delivery of goods are given in good faith and used in the Company's internal planning process, the same are not of the essence of or in any way terms of the Order or representations of fact. All shipping dates given are approximate, and while effort is made to maintain schedules, the Company will not be liable for damages on account of delay. Delivery dates are only firm upon the Company's notification to the Customer that the Products are ready for shipment in accordance with the Incoterms in the Order. In case of delay by the Customer in furnishing complete schedules or information, delivery dates may be extended for a reasonable time depending on factory conditions. The Company shall not be responsible for reasonable or excusable delays nor shall the Customer refuse to accept delivery because of any such delays, including without limitation, due to events of force majeure as set forth in these Terms.

4. ENGINEERING CRITERIA

- (a) The Products are sophisticated engineering products; accordingly, the Customer undertakes:
- (i) That it has provided and will promptly provide all the information reasonably necessary to enable the Company to (i) evaluate the requirements for performing and (ii) perform the Order, and that all such information is full and accurate;
 - (ii) That all premises, plant, engineering support, spare parts, connected machinery and inputs that it is required to provide for the design, engineering, installation, testing and use of the Products are of good engineering quality;
 - (iii) Fully to co-operate with the Company in the design, engineering, installation, testing and use of the Products;
 - (iv) To use the Products in accordance with the Product literature; and
 - (v) Not under any circumstances, to use any unapproved spare part, connected machinery, service, repair, or use the Products in any manner as may render the Products dangerous and agrees that any breach of these negative criteria will negate all specific and implied conditions and obligations on the part of the Company relating to the quality of the Products.
- (b) The Customer further agrees that it will be liable to the Company for any costs, expenses and losses it suffers due to any breach of these undertakings.
- (c) The Company's obligation to proceed with any changes requested by the Customer to either Goods or Services or changes to the dates of delivery shall be conditioned on the parties first reaching an agreement or an equitable adjustment to the price and/or time requirements of the order.

5. DRAWINGS; DESIGNS; SOFTWARE AND CONFIDENTIALITY

- (a) All of the Company's specifications, designs, drawings, indications of physical, chemical and electronic properties and indications of the Products, including, without limitation, inlet pressure or vacuum, pressure output and power consumptions (the "Designs") are made in good faith and are approximate indications only and are not binding in detail.
- (b) The Designs (including all copyright, design right and other intellectual property in them) shall, as between the parties, be the property of the Company; and the Customer is not entitled to make any use of the Designs other than for the purpose of this Order.
- (c) Any inventions, modifications, improvements, techniques or know-how affecting the Products made or gained in the course of performing this Order, shall belong to the Company absolutely.
- (d) Neither party shall disclose to third parties nor use for its own purposes any confidential information or trade secrets of the other party.
- (e) Each party warrants that it has the necessary intellectual property rights to enable it to perform its contractual obligations and will promptly inform the other on discovery of any potential or alleged infringement of intellectual property rights.
- (f) Software programs embedded in or provided with any of the Products under the Order ("Software") will fully remain the property of the Company. The Customer shall not disclose to any third party any program, documentation or subsequent upgrade of any Software, without the prior written consent by the Company, nor may they be copied or otherwise duplicated, even for the Customer's internal needs apart from a single back-up copy for safety purposes.
- (g) The Company grants the Customer a non-exclusive, non-assignable right to use the software, including any related documentation and updates, for no other purpose than that of operating the Product, for which such software is intended. For programs and documentation created and delivered at the Customer's request, the Company shall grant that Customer single end user licenses for non-exclusive non-assignable exploitation. The Company will not provide the Customer with any source code for the Software.

6. PRICES; PAYMENT

- (a) Prices quoted are net FCA Company's facilities (FCA, Incoterms 2020) Company's plant unpacked and are subject to all costs associated with packaging, insurance, training, installation and transportation as well as VAT and other applicable taxes (unless specifically agreed in writing to the contrary).
- (b) The Company's prices are subject to adjustment to take account of any variation in the Company's delivery times and costs (beyond the reasonable control of the Company) including (but not limited to) variations in the cost of materials, freight and logistics, labor, and/or overheads, exchange rate fluctuations, alteration of duties, changes to the specification by the Customer and other costs since the date of the

quotation or (if no quotation is issued) the order acknowledgement. The Company accordingly reserves the right to adjust the delivery time and the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.

(c) If prices are not expressly agreed to by the Company and the Customer, then the Company will apply its list prices in force at the time the order is placed.

(d) If the Company agrees to be responsible for erecting or mounting the Product, then the Customer shall bear, apart from the agreed remuneration, all ancillary costs required, such as travelling expenses and costs of the transport of tools and of the personal luggage as well as daily allowances.

(e) All invoices shall be paid in euros within 14 days from the date of invoice (the “Due Date”) unless expressly agreed otherwise, without any deduction or withholding on account of any rights of equitable set-off which the Customer may have (save where the same are undisputed or have been finally determined in a legally binding manner). The Company reserves the right to require payment in part or in full or the provision of such security or guarantees from or on behalf of the Customer as the Company deems necessary before the commencement of the performance of the Contract. The Company shall have the right at any time to review the credit limit requirements relating to the Customer and to increase or reduce the same by notice in writing to the Customer. The Company, in its sole discretion, may accept payment for Products by cash in advance or by money-down with scheduled progress payments. The Company shall, without prejudice to its other rights, have the right by notice in writing to the Customer to demand immediate payment of all monies due from the Customer to the Company for any goods delivered at any time.

(f) The Company may charge interest on any sums still outstanding on the Due Date at the rate of the most recent European Central Bank refinancing rate plus 10 percent or the maximum rate allowed by law.

(g) The Company, in its sole discretion, may require that payment for export orders be by irrevocable letter of credit, which shall be in a form acceptable to the Company and confirmed by a German bank of international reputation.

(h) In case of any non-payment, the Company shall be entitled (without prejudice to its other rights) to suspend performance and charge the Customer for all costs and expenses occasioned thereby and/or at any time thereafter to terminate this Order in accordance with these Terms.

(i) In the event of Termination in accordance with these Terms or in the event of non-payment (in full or in part) for the Products by the Due Date, the Customer hereby irrevocably licenses the Company (insofar as it is able) to enter upon any premises to repossess the Products.

(j) In the case of an agreed return of Products free from defects, the Customer shall be charged an inspection and administrative fee of fifteen (15%) of the invoice amount (with a minimum of fifty (50) Euros).

7. WARRANTY

Except as otherwise provided in Company’s quotation or agreed by the Company in writing, the Company warrants the Products within the following conditions:

(a) “Warranty Period” shall mean the period beginning on the date of dispatch of the Products as per the applicable Incoterm (or relevant part thereof) and ending 12 months thereafter, except to the extent the Company specifies another warranty period in writing. The warranty period for Spare parts is twelve (12) months following delivery date and repair parts 6 months following the repair date not exceeding the original warranty period. The warranty excludes the consumables.

(b) The Company warrants that the Products will be free from material defects caused by inadequacy or neglect in the Company’s workmanship or materials during the Warranty Period (the “Warranty”).

(c) Save as provided for in sub-clauses (d) and (e) below, where any valid claim in respect of the Products or any part thereof which can be shown to the Company’s reasonable satisfaction (on the balance of probabilities) to be based on a breach of the Warranty, is notified to the Company during the Warranty Period, the Company will (at the Company’s sole option) repair or replace, or (at the Company’s sole option) credit a sum to be agreed with the Customer in lieu of the repair or replacement of, any Product or part thereof. Returned Products must be agreed to in advance by the Company in writing.

(d) In case of defects in the Company’s deliveries and services, the Company must first grant warranty service, at its option, by rectification of the defect or delivery of replacement items (subsequent performance). If such subsequent performance should fail, the Customer can generally demand, at its option, either a reduction of the purchase price or a refund of the purchase price of the defective Product. A subsequent performance shall only be regarded as having failed after it has been attempted twice, unless

no differences result from the kind of object or of the defect or from any other circumstances. In case of a slight lack of conformity with the Order, in particular, in case of minor defects, the Customer has no right of refund.

(e) If the Customer returns a Product after having asserted warranty claims or requests that a Product be taken back by the Company with reference to warranty claims, the Customer shall notify the Company in writing whether and which health hazardous fluids were used with the Product and whether the Product came into contact with health hazardous fluids within the meaning of the hazardous substances law. The Company may refuse elimination of the notified defects if such substances have been used or been in contact with the returned Product, and the Customer shall be liable for any loss or damage that may result from the Customer's failure to give notice. If the returned Product have used or been in contact with such hazardous substances, the Customer shall mark the Products as required by the hazardous substances law and transport the Products exclusively in suitable packaging and by adequate means of transport. If the Customer does not clean the goods according to the declaration of no health risk, the Company may charge the customer for the costs required for the decontamination/cleaning and disposal of the hazardous substances arising in the process. If the device cannot be decontaminated/cleaned even by the Company because of existing health hazards for the employees depending on the type of hazardous substances, the entire device must be disposed of as hazardous waste. The costs incurred for this shall be the responsibility of the Customer.

(f) If due to a defect in title or quality, the Customer, after a failure of subsequent performance, elects to receive a refund of the purchase price, the Customer shall have no other right to damages or to compensation for expenses incurred.

(g) The Company shall be under no liability for any breach of the Warranty:

(i) Unless the Products have been properly installed, used, maintained and serviced;

(ii) Unless the Customer has informed the Company of the defect alleged within the Warranty Period and within 10 days of its discovery;

(iii) In respect of wearing and consumable parts; and/or

(iv) To Products or parts not manufactured by the Company.

(h) In the event of a defect arising in the Products at any time, then the Customer will notify the Company in writing of such defect within 10 days of its discovery and:

(i) If it is within the Warranty Period, then the Company will reply stating whether it accepts warranty liability pursuant to sub-clause (c) above and indicating what action it proposes to take (which action may include further investigation by the Company's service engineer) and if it transpires that the defect is not covered by a breach of the Warranty, then the Company reserves the right to make a reasonable charge for such investigation.

(ii) If the Warranty Period has expired, then, without prejudice to clause 8(f), the Company will offer advice (free of charge) and may offer repair or replacement at the Customer's expense.

(iii) Any dispute as to whether a defect is covered by the Warranty shall be immediately referred to an expert to be agreed by the Company and the Customer (or in absence of agreement, to be appointed by the President of the German Institution of Arbitration) whose decision shall be final and binding upon the parties and whose fees shall be shared equally by the parties.

(i) All component parts and accessories not manufactured by the Company shall be warranted for a period of one (1) year from the date of shipment. The warranties specified shall also extend to goods manufactured by others and supplied by the Company.

(j) There are no third party beneficiaries of the Warranty granted by the Company.

(k) Any marketing materials, brochures, catalogs, Product presentations or similar types of documents provided to the Customer do not constitute a legally binding offer and are subject to change without notice.

(l) The only warranties made by the Company are those expressly provided in these Terms. Any other statements expressed in the Order, including but not limited to, proposals, specifications, drawings, or manuals shall not constitute a warranty of the products. THE WARRANTIES SET FORTH IN THESE TERMS ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY. THE REMEDIES SET FORTH IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE REMEDIES OF PURCHASER FOR ANY CLAIMS, EXPENSES, OR DAMAGE ARISING OUT OF OR RELATED TO PRODUCTS DELIVERED UNDER THIS ORDER.

8. LIMITATION OF LIABILITY, INDEMNIFICATION AND FORCE MAJEURE

- a) Company shall not be liable for any indirect, consequential, special damages whether arising in contract, tort (including negligence), strict liability, or otherwise, including without limitation, loss of profits, loss of goodwill, and loss of business opportunity; and
- b) Company's total liability under or in connection with the order shall in no event exceed the total amount paid by the Customer to the Company under the order.
- c) The limitations above do not apply to claims, costs, losses or damages directly relating to: (i) Death or personal injury; (ii) Actual infringement of a third party's intellectual property rights; or (iii) for damages resulting from the violation of essential contractual obligations (obligations whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner relies or may rely); (iv) Company's gross negligence or willful misconduct.
- d) The foregoing limitations of liability shall also apply to acts of representatives or vicarious agents of the Company.
- e) Notwithstanding anything to the contrary in these terms, the Company will not be liable for any loss or damage due to delays arising from causes beyond the reasonable control of the Company, including but not limited to any acts of God, fire, flood, earthquake or explosion, strikes or other labor difficulties, wars, riots, terrorist threats, national emergencies, pandemics or acts of governments. In such events, the Company will have additional time within which to deliver or perform as may be reasonably necessary under the circumstances. If there is a scarcity in any of the Products, the Company will allocate its available supply in its sole discretion.
- f) The Customer shall indemnify the Company against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the Company and/or for which it may be liable to any third party due to, arising from or in connection with, directly or indirectly: (i) the Customer's instructions or lack of instructions; (ii) any failure or delay whatsoever in taking delivery or any other act, neglect or default on the part of the Customer, its servants, agents, or employees; or (iii) the breach of any provision of this Order by the Customer.
- g) The Customer shall indemnify and keep indemnified the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable to any third party due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trademarks, copyright, design, right or other intellectual property right occasioned by the importation, manufacture or sale of the Products if made to the specification or special requirement of the Customer.

9. CANCELLATION AND TERMINATION

- a) In the case where the Products are being designed or adapted to a Customer's specific requirements, then the Customer shall (subject to sub-clause (c) below) be entitled to cancel this Contract ("Cancellation") only by agreement in writing by the parties and upon payment to the Company of such amount as may be necessary to indemnify the Company against all loss and expense resulting from the Cancellation, as described in sub-clause (c) below.
- b) The Company shall be entitled forthwith to terminate this Order in the event of non-payment (in whole or in part) by the Due Date or if at any time before payment in full is made (whether or not payment is yet due) a petition is presented or resolution passed for the winding up or bankruptcy of the Customer or in the event of the appointment of a receiver or administrator of the Customer's business ("Termination").
- c) The Customer may terminate the order, in whole or in part, only upon written notice to the Company. In the event of Customer's termination of the order or any other circumstance leading to the termination of the order, the Customer shall be liable to the Company for a termination charge equal to a pro rata portion of the order price based on the percentage of the work completed at the time of termination; charges shall be, at a minimum, 10% of the order price. If, after conclusion of the contract, it becomes apparent that the claim to payment of the order price delivery is jeopardized by the other party's lack of ability to perform (e.g. through an application for the opening of insolvency proceedings), either party may withdraw from the contract in accordance with the statutory provisions.

10. GENERAL

- (a) The parties shall attempt to resolve all disputes arising under or in connection with this Order by good-faith negotiations by knowledgeable, responsible representatives of each party who are authorized to settle any such dispute. If mediation fails, and unless otherwise agreed, then such dispute shall be finally settled according to the Arbitration Rules of the German Institution of Arbitration e.V. ("DIS") without recourse to

the ordinary courts of law. Unless otherwise agreed, the place of arbitration shall be Munich, Germany and the arbitral tribunal shall consist of one arbitrator. The language of the arbitral proceedings is German, unless otherwise agreed. Each party shall bear its own costs of these procedures; the parties shall equally split the fees of the arbitration and the arbitrator. Notwithstanding the above, either party shall have the right to seek a temporary restraining order or an injunction related to the purposes of this Order, to compel compliance with confidentiality obligations, or to file suit to compel compliance with this clause 10.

(b) Nothing expressed or referred to in this Order will be construed to give any person, other than the parties to this Order, any legal or equitable right, remedy or claim under or with respect to this Order or any provision of this Order. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply to this Order.

(c) If any provision or part of a provision of these terms is found to be illegal, invalid or unenforceable under any applicable law, such provision or part of a provision shall, insofar as it is severable from the remaining terms, be deemed omitted from these terms and shall in no way affect the legality, validity or enforceability of the remaining terms.

(d) Only variations or modifications to the Order which are made in writing signed by Customer and Company shall be enforceable.

(e) The Customer may not assign, novate or otherwise transfer its rights or obligations under this Order without the Company's prior written consent, and any attempt to do so shall be null and void and of no effect.

(f) Any failure by the Company to enforce its rights under this Order will not be deemed a waiver of such rights.

(g) Any action for breach of the Order by the Customer must be commenced within one year after the cause of action has accrued.

(h) In case of any deviations and discrepancies between the German and the English version, the German version shall prevail.

11. SPECIAL PROVISIONS

(a) Neither the Products nor the parts sold under these Terms are designed or manufactured for use in or with any atomic installation or activity. In the event that the goods, services or parts furnished hereunder are to be used in a nuclear facility, the Customer shall, prior to such use, arrange for insurance or governmental indemnity, protecting the Company against liability and hereby releases and agrees to indemnify the Company and its suppliers for any nuclear damage, including loss of use, in any manner arising out of a nuclear incident, whether alleged to be due, in whole or in part to the negligence or otherwise of the Company or its suppliers.

(b) The Customer understands and agrees that the Products may be subject to export and other foreign trade controls restricting resales and/or transfers to other countries and parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States (together, "Trade Control Laws"). Customer shall not export, re-export, transfer, or otherwise dispose of the Products directly or indirectly, except as permitted by applicable Trade Control Laws. Customer shall not do anything that would cause the Company or its affiliates to be in breach of applicable Trade Control Laws. Furthermore, Customer shall protect, indemnify and hold harmless the Company and its affiliates from any fines, damages, costs, losses, liabilities, penalties, and expenses incurred by the Company as a result of Customer's failure to comply with this clause 11.