

General VEMA Terms and Conditions for VEMA InSite Construction



valid from 08 | 2023

A. General VEMA Terms and Conditions ("Terms")

1. Scope and definitions

- 1.1. These General VEMA Terms and Conditions for VEMA InSite Construction apply to the provision and use of the VEMA InSite Construction service ("**InSite Services**") offered by VEMAventuri AB ("VEMA") to the customer.
- 1.2. General terms and conditions of the customer that conflict with, deviate from, or supplement these Terms do not become part of the agreement between the parties, even if VEMA is aware thereof, unless VEMA has expressly agreed in writing to the application thereof. Where the customer objects to the application of these Terms, referring to the customer's own terms and conditions, the application of the customer's terms and conditions is hereby expressly objected to.
- 1.3. "**Application**" or "**App**" means the application offered by VEMA to download via the Google Play Store or Apple App Store for the use of the InSite Services on mobile devices using the Android or iOS operating system.
- 1.4. "**Backend-System**" or "**Backend**" means the system used by VEMA based on a cloud solution (Microsoft Azure) to store and process the data collected via the hardware.
- 1.5. "**Hardware**" means (i) the main unit for collecting the data and transmitting the data to the Backend-System of InSite Services; (ii) the sensors for measuring various data (such as temperature, pressure, fill level and compaction of concrete, etc.); (iii) the nodes for transmitting the data collected from the sensors to the main unit and (iv) additional accessories, such as cables for connecting the nodes with the sensors and transmitting data to the main unit.
- 1.6. "**Web Portal**" means the user interface provided to the customer for entering data and visualising the results of data analyses within the scope of the InSite Services and access thereto; the Web Portal is provided by VEMA.
- 1.7. "**Purchased Item**" means the new or used goods provided by VEMA within the scope of a separate purchase agreement for the use of the InSite Services.
- 1.8. "**Leased Item**" means the new or used goods provided by VEMA within the scope of a separate lease agreement for the use of the InSite Services.
- 1.9. **Specific VEMA Terms and Conditions**; these are as follows:
- 1.10. Specific VEMA Terms and Conditions for the **Sale of Hardware** (Sec. B)
Specific VEMA Terms and Conditions for the **Leasing of Hardware** (Sec. B).

2. Conclusion of contract

- 2.1. Offers made by VEMA are always non-binding and subject to change up until the time at which a contract is concluded. If an offer made by VEMA is expressly designated in writing as binding, VEMA is bound by that offer for a period of 30 days commencing upon receipt thereof by the customer.
- 2.2. Placement of an order for Hardware and/or services by the customer is deemed to constitute a binding offer aimed at concluding a contract with VEMA.
- 2.3. Unless otherwise agreed, contracts are not concluded upon placement of the order by the customer, but rather upon the customer's receipt of the order confirmation of VEMA or upon provision of the services by VEMA.
VEMA reserves the right to change and/or amend the provisions of these Terms. VEMA shall make any changes and/or amendments only for material reasons, particularly due to new technological developments or changes in applicable laws, including case law. In the event that the relevant changes of and/or amendments to these Terms is carried out during the term of an existing contract, VEMA shall send the amended version of the Terms to the customer by e-mail, highlighting the changes and/or amendment. If the customer does not object to the application of the changed/amended Terms in text form within four (4) weeks after receiving the e-mail, the changed/amended Terms are deemed to be accepted. VEMA shall separately inform about the possibility of objecting and the significance of the four-week time limit.

3. General description of VEMA InSite Services

- 3.1. InSite Services is a service offered by VEMA for visualising and analysing data collected via the Hardware components regarding the relevant condition of the concrete (e.g., temperature, pressure, fill level, degree of compaction of the concrete) and further data (e.g., climate data, data on loads that occur), which the customer can use to make various inferences (such as drawing conclusions regarding the time of stripping based on the assumed strength of the concrete). Access to the data and results of analysis takes place via the Web Portal, to which VEMA provides access and possibility of use within the scope of the InSite Services, or via the App.
- 3.2. Depending on the agreement with the customer, InSite Services are offered by VEMA either (i) as standalone services (as described in Sec. 3.1), i.e. without the associated Hardware components; or including (ii) the sale or (iii) rental of the Hardware.

4. Other services of VEMA

- 4.1. As another separate service, VEMA offers on-site initial training in both the use of the Web Portal or

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- App and the use of the Hardware for an additional fee.
- 4.2. Where agreed with the customer, the set-up of the Hardware can be supported by a VEMA service technician.
- 4.3. Where agreed with the customer, VEMA offers remote (phone or Web-based) support during the agreed service times during the term of the agreement.
- 4.4. Where agreed with the customer and against additional fees, VEMA shall enter the data provided by the customer into the Web Portal or App.

5. Term and termination

- 5.1. The term of the contract for provision of the InSite Services is specified in the order confirmation.
- 5.2. Where no specific contract term has been agreed upon by the parties, both parties are entitled to terminate the contract for the provision of the InSite Services with one month's notice to the end of the month.
- 5.3. Nothing herein shall affect the possibility of extraordinary termination for good cause.
- 5.4. VEMA is entitled to terminate the contract and all contracts existing with the customer before the end of the term and to reclaim and retrieve the Hardware at the lessee's expense if:
- the customer is in default of at least two consecutive payments in whole or in part and VEMA has unsuccessfully set a two-week period for the customer to pay the amount in arrears;
 - insolvency proceedings have been applied for or opened against the customer's assets; or
 - the customer uses or maintains the Leased Item improperly or not in accordance with VEMA's specifications in spite of a warning notice. A warning notice is not required in case of grossly improper handling.
- 5.5. In these cases, VEMA is entitled to enter the construction site to retrieve the Leased Item.
- 5.6. Nothing herein shall affect any further contractual or statutory rights of VEMA.
- 5.7. In the event of notice of termination, the further use of the Leased Item pursuant to Sec. 545 of the German Civil Code (BGB) is objected to already at the time of the conclusion of the contract. If the lessee continues to use the Leased Item after the lease term expires, the lease is not deemed to have been extended.
- 5.8. Notice of termination of the contract by the customer must be in written form.

6. Access to and use of the Web Portal and Application

- 6.1. Exclusively for the term of the contract, VEMA grants the customer access to the Web Portal and,

where applicable, the App in order to use the InSite Services by way of "Software as a Service" (SaaS).

- 6.2. The customer is required to create a user account in order to access and use the Web Portal and must provide the required information designated as such during the registration process. Where the InSite Services are used via the App, the App is linked with the customer's user account created via the Web Portal. The use of both the Web Portal and the App is possible only if the customer accepts the terms of use.
- 6.3. The Web Portal is browser-based; therefore it does not require installation and can be used from all common browsers (such as Internet Explorer, Mozilla Firefox, Google Chrome, Safari, etc.). It is the sole responsibility of the customer to ensure a stable Internet connection and to access the Web Portal from an Internet-capable device (such as a smartphone, laptop, etc.).

7. Customer's rights of use

- 7.1. VEMA grants the customer, for the term of the contract, a non-exclusive, limited in geographic scope, non-transferable, non-sublicensable right to use the InSite Services through a defined number of users against payment.
- 7.2. Where VEMA provides new versions of or updates or upgrades to the InSite Services during the term of the contract, the aforementioned right of use applies to them in the same manner.
- 7.3. Beyond the purposes of the relevant contract, the customer is not entitled to use, reproduce, or download the InSite Services or to make them accessible to third parties outside the agreed group of users.
- 7.4. For each case in which the customer culpably enables the use of the InSite Services by other persons not authorised to use them, the customer must pay a contractual penalty, due immediately, in the amount of twelve times the monthly price that would have been charged to provide the services to such person. VEMA reserves the right to assert claims for damages. In this case, the contractual penalty shall be offset against the claim for damages.
- 7.5. Upon request, and where there is a legitimate interest, the customer shall permit VEMA or a third party commissioned by VEMA to verify whether the use of the InSite Services by the customer is within the scope of the contractually granted rights; the customer shall support VEMA in performing any such verification to the best of its ability.
- 7.6. For each customer, multiple users can be set up with their own login details according to the corresponding agreement between VEMA and the customer; depending on the agreement between VEMA and the customer, one or more administrators of the customer can be assigned



(particularly if there are multiple projects), with each administrator being permitted to edit data and make changes (for example regarding the time intervals to be measured; read and write rights). All other users of a customer who have not been assigned such administrator rights will receive only the right to view the data and analyses (read-only right). Moreover, where the use of the InSite Services takes place via the App, the user authorisations granted in the App (i.e., read and write rights for the administrator, read-only right for the customer's further users) shall correspond to those that have been granted to the customer via the Web Portal in accordance with the corresponding agreement.

8. System availability

- 8.1. The customer can generally use the InSite Services 24 hours a day, seven days a week (operating hours). Despite reasonable efforts by VEMA to ensure the availability of the Web Portal or App, constant availability cannot be guaranteed. Temporary restrictions, interruptions, delays or downtime may occur due to circumstances outside VEMA's control (such as unforeseen technical issues, power outages). The same applies in the event of any necessary maintenance or repair work by VEMA involving the Web Portal or App.
- 8.2. Despite reasonable security precautions taken by VEMA in accordance with the applicable state of the art, it is impossible to completely eliminate all adverse effects, disruptions, non-availability, downtime or interruptions of the use of the Web Portal or the App for example due to malware, viruses or cyberattacks.
- 8.3. VEMA shall establish a support service (via Web app or e-mail) for the customer to take reports of issues.

9. Obligations of the customer

- 9.1. The customer shall fulfil all obligations necessary for the performance of services and handling of the contract on time, in full, properly and professionally.
- 9.2. The customer undertakes to insure the hardware appropriately against damage, destruction and theft and to demonstrate to VEMA upon request that such insurance has been obtained and continues to be in force. The customer is obligated to assign the claims against the insurance company to VEMA upon request in the event of a damage.
- 9.3. The customer is obligated to always use the latest version of the InSite Services provided by VEMA and, in particular, to install all updates, upgrades and new versions of the Application without delay after they become available.
- 9.4. Both when using the Hardware and with regard to access to and use of the Web Portal or App, the

customer must observe the relevant instructions for use and other information and specifications provided by VEMA to the customer upon or after the conclusion of the contract.

- 9.5. The customer bears sole responsibility for correct and complete entry of data in the Web Portal or App. VEMA has no influence over this unless the customer explicitly commissions VEMA to enter certain data provided by the customer.
- 9.6. Moreover, the customer bears sole responsibility for determining the target values, properly calibrating the concrete and using the Hardware in accordance with the instructions for use and any other applicable specifications that may exist.
- 9.7. If and insofar as data of the customer must be integrated into the Application, the customer must ensure that all data are available in a quality suitable for integration purposes. The data must be provided by the customer in due time with appropriate lead and review time, in the necessary frequency and in the required format.
- 9.8. The customer shall protect the use and access authorisation as well as identification and authentication safeguards assigned to it and its users against access by unauthorised third parties and shall refrain from sharing these with unauthorised users. As soon as the customer has any indication that the use and access authorisations have been unlawfully obtained by a third party or could be misused, the customer is obligated to notify VEMA thereof immediately for the purpose of mitigating harm.
- 9.9. The customer shall refrain from misusing, or allow the Application to be misused in any way. Either acting on its own or through unauthorised third parties, the customer shall also refrain from making any attempt to access information or data without authorisation and from interfering or causing any other party to interfere with the applications operated by VEMA or penetrating data networks of VEMA without authorisation.
- 9.10. Without prejudice to any obligation of VEMA to back up data, to the extent that it is possible for the customer, the customer shall back up the data and content transmitted and entered to VEMA regularly and in accordance with the level of risk involved and shall prepare its own backup copies in order to ensure reconstruction in the event of loss of data and/or information.
- 9.11. Transmission of the data to the Backend-System of VEMA (or its service provider with regard to the cloud solution used by VEMA) is carried out via the Hardware components. These Hardware components have their own limited storage capacity to protect against data loss. VEMA is not responsible for any data losses, adverse effects or interruptions occurring during the transmission of data to the Backend.



- 9.12. The customer is obligated to check the Hardware components regularly to ensure that they are functional, in particular regarding data transmission, and to notify VEMA without delay in the event of any problems or errors detected.
- 9.13. Furthermore, the customer is obligated to provide all relevant acts of cooperation without delay and at no cost, particularly if VEMA requests to do so and the necessary measures do not exceed reasonable effort.
- 10. Data analysis**
- 10.1. The data collected by the Hardware components and entered by the customer in the Web Portal or in the App on the customer's own responsibility form the basis for the analysis by VEMA in the Backend and the relevant presentation of the analysis results in the Web Portal or in the App. The data are analysed in the Backend by executing various algorithms. The analysis results do not constitute decisions or recommendations; responsibility for making certain decisions based on conclusions from the analysis results rests solely with the customer.
- 10.2. The customer is obligated to review the analysis results without delay and, if there are reasonable doubts concerning their correctness, to notify VEMA without delay, indicating the details of the suspected error.
- 10.3. VEMA is entitled to use the data, analysis results and further information received via the Hardware components and the Backend in non-personal or anonymised form without limitation for its own purposes (for example, for the purpose of further developing or improving the functions or algorithms).
- 11. Remuneration/billing/payment**
- 11.1. The agreed remuneration for the provision and use of the InSite Services must be paid monthly in advance, commencing upon provision of the InSite Services. The payment is due on the third business day of the respective calendar month.
- 11.2. The prices agreed at the time of the conclusion of contract apply in all cases. If the contract does not include any provision on remuneration, the remuneration shall be in accordance with the then-applicable VEMA price list. The value-added tax (VAT) applicable on the invoice date shall be added to all prices where the sale is subject to VAT.
- 11.3. If the remuneration is not paid, the customer is deemed to be in default no later than 30 days after the payment is due and an invoice or equivalent payment listing has been received. VEMA reserves the right to charge the statutory default interest in the event of default on the customer's part. The right to assert claims for further damages and/or losses is not excluded.
- 11.4. If the customer falls into default of a not inconsiderable portion of the remuneration, VEMA is entitled to block access to the InSite Services. In this case, the customer remains obligated to pay the remuneration.
- 11.5. In the event that additional costs are incurred, VEMA is entitled to increase the remuneration to be paid accordingly at its reasonable discretion. In the event of decreasing costs, the remuneration shall likewise be reduced at VEMA's reasonable discretion. The times at which the remuneration is changed shall be chosen in such a way that cost reductions can have at least the same effect on remuneration as cost increases.
- 11.6. VEMA shall notify the customer of any changes in remuneration in text form six weeks before the change takes effect, with a reference to the right of termination pursuant to this Sec. 11.6 sentence 2. In the event that the remuneration increases, the customer has the right to terminate the contract by way of extraordinary termination.
- 12. Remediation of defects by VEMA**
- 12.1. VEMA shall make every reasonable effort to remedy any defects in the InSite Services and/or Hardware arising at any time during the term of the contract.
- 12.2. A defect is deemed to exist if the InSite Services and Hardware provided do not have the contractually agreed functionalities when used as contractually agreed.
- 12.3. The customer must notify VEMA of any defects that arise without delay after the first time they arise or are discovered. The customer's notification regarding the defect must be made in as much detail as possible, with a description of the symptoms of the defect.
- 12.4. VEMA shall set up a support service (via Webapp or e-mail) for the reporting of disruptions or defects. VEMA shall also provide a point of contact to the customer for the reporting.
- 12.5. VEMA shall initiate measures to remedy the defect upon receipt of a proper report of a defect from the customer. VEMA shall provide the customer, as soon as possible, with an estimate of the time it expects to require for the remedy of the defect.
- 12.6. VEMA shall provide the services to remedy the defect or defects with the level of diligence customary within the industry. VEMA does not guarantee that it will remedy the defect at all or within a certain period. VEMA is always entitled to provide a workaround to remedy defects.
- 12.7. VEMA is permitted to utilise the services of qualified subcontractors to remedy defects. VEMA is also permitted to remedy defects by providing instructions to the customer by phone, in writing or electronically.
- 12.8. Remediation of defects in the Hardware shall typically be carried out by way of rectification, i.e.



- support in remedying the defect or repair in the location of use. VEMA is permitted to choose whether to attempt to remedy the error by phone or through remote maintenance as the first step. If the remedy or repair fails in the location of use, for example by replacing individual components of the Hardware in question, VEMA is permitted to transport the Leased Item to its service centre for the purpose of supplementary performance. VEMA is also permitted to replace the equipment in case of defects in the Hardware.
- 12.9. The customer shall support VEMA free of charge in remedying the defects and, in particular, shall provide all necessary documents, data etc. that VEMA requires in order to analyse and remedy the defects.
- 12.10. If it turns out, after a defect report is reviewed, that the defect did not occur within VEMA's sphere of responsibilities, VEMA is permitted to charge the customer for the costs of reviewing the defect report at the then-applicable prices. This does not apply if the customer was unable to determine, even when exercising due care, that the disruption did not arise within VEMA's sphere of responsibility and influence.
- 12.11. Warranty rights for only insignificant reductions in the suitability of the InSite Services are excluded. Strict liability pursuant to Sec. 536a (1) BGB for defects which already existed at the time of the conclusion of the contract is excluded.
- 13. Other rights of the customer in case of defects and poor performance**
- 13.1. In the case of defects of the InSite Services and Hardware provided, termination by the customer pursuant to Sec. 543 (2) sentence 1 No. 1 BGB due to non-provision of the agreed use is not permissible unless and until VEMA has been given sufficient opportunity to remedy the defect (at least two weeks) and these efforts have failed. Such efforts are not deemed to have failed unless it is impossible to remedy the defects, VEMA refuses to remedy the defect or unreasonably delays efforts to do so, or if it is unreasonable for the customer on other grounds.
- 13.2. If a service is not provided as agreed, the customer is entitled to demand that VEMA performs the service as agreed within a reasonable time limit at no additional cost to the customer. This does not apply if VEMA is not responsible for the violation of the obligation. Nothing herein shall affect the customer's other rights, particularly claims for damages or compensation for expenditures (*Aufwendungen*), or the customer's right of termination for good cause pursuant to Sec. 5.3.
- 14. Liability**
- 14.1. VEMA shall be liable, irrespective of the legal grounds, conclusively as follows:
- 14.2. VEMA's liability for damages is excluded, irrespective of the legal grounds, unless otherwise provided in Sec. 14.3 through 14.6 below.
- 14.3. VEMA is liable without limitation within the scope of the statutory provisions for damages arising from injury to life, limb or health caused by intent or negligence of VEMA or any of its legal representatives or vicarious agents.
- 14.4. VEMA's liability for other damages within the scope of the statutory provisions is limited to the following:
- VEMA is liable without limitation for damages caused by intent or gross negligence on the part of VEMA or any of its legal representatives or vicarious agents and for damages falling within the scope of protection of a warranty or representation made by VEMA.
 - VEMA is liable for damages based on a slightly negligent breach by VEMA or any of its legal representatives or vicarious agents, with such liability being limited per damaging event to the amount of the remuneration paid to VEMA by the customer in a period of twelve (12) months prior to the event that triggered the damages.
 - Liability for loss of profit is excluded.
- 14.5. The foregoing provisions also apply accordingly to VEMA's liability with regard to compensation for fruitless expenditures (*vergebliche Aufwendungen*) within the meaning of Sec. 284 BGB.
- 14.6. Nothing herein shall affect VEMA's liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).
- 14.7. VEMA is not liable if and insofar as the damage is or are caused by the customer:
- using the InSite Services and Hardware in a manner that is not compliant with the then-applicable installation instructions and instructions for use and other information provided to the customer by VEMA;
 - making changes to the device or materials used or to the Hardware after the contract is concluded and without VEMA's prior consent;
 - determining, stipulating or entering incorrect or incomplete values, data or other information;
 - not having notified VEMA without delay of problems or malfunctions of the InSite Services or Hardware although it was or could have been aware thereof; or
 - not having evaluated or analysed the data or analysis results correctly.
- 15. Data protection and privacy**
- 15.1. Each of the parties to the contract shall comply with the data protection and privacy provisions that apply to it.
- 15.2. If and insofar as VEMA has access to personal data of the customer within the scope of provision of the services, the parties shall enter into a



corresponding data processing agreement prior to the start of processing thereof. In this case, VEMA shall process the relevant personal data exclusively in accordance with the provisions set forth therein and according to customer's instructions. In such a case, the customer shall permit VEMA to anonymise personal data in order to be able to process them further without limitation for its own purposes in accordance with Sec. 10.3.

16. Confidentiality

- 16.1. Each of the parties shall refrain from exploiting business or trade secrets of the other party that have been entrusted to the first party or have become known to that party as such on the occasion of the parties' cooperation during the term of the contract and after termination thereof and shall not disclose such secrets to third parties except with the other party's prior written consent. "Third parties" does not include companies affiliated with VEMA pursuant to Sec. 15 et seqq. of the German Stock Corporation Act (*Aktiengesetz*).
- 16.2. The parties shall use other confidential information, particularly technical information, intentions, experiences, findings or constructions, which become accessible to them within the scope of their contractual cooperation or which they receive from each other, in any form whatsoever, exclusively within the scope of their cooperation and shall continue to keep this information confidential for a period of five (5) years after the end of the term of this contract and shall not make it accessible to any third party without the disclosing party's prior written consent. This obligation of confidentiality does not apply to information which can be proven to have been
- known to the receiving party prior to the parties' cooperation on the occasion of this contract and is not subject to a different obligation of confidentiality;
 - received by the receiving party legitimately from third parties;
 - public knowledge at the time of conclusion of this contract or becomes public knowledge after the conclusion without any violation of the obligations contained in this contract;
 - developed by the receiving party within the scope of its own development activities without recourse to or use of confidential information; or
 - subject to a statutory, governmental or judicial order and the receiving party is obligated to disclose the information; in this case, the receiving party shall notify the disclosing party before disclosure and shall limit the disclosure as far as possible.
- 16.3. The parties shall impose an obligation in accordance with this confidentiality provision on

the employees and vicarious agents working for them.

17. Force majeure

- 17.1. If VEMA is impeded in fulfilling its contractual obligations, particularly delivery obligations, as a result of force majeure, such as mobilisation, war, terrorism, riot, natural disaster, fire, water, epidemic or pandemic or other unforeseeable circumstances beyond VEMA's control, such as strike or lawful lockout, disruption in operations or transportation or the effects of such events ("**Force Majeure**"), the period for performing the contractual service shall be extended in each case by the term for which the impediment persists.
- 17.2. The parties are permitted to terminate this contract if the Force Majeure lasts longer than two months and it is not possible to reach an amicable adjustment of the contract.

18. Applicable law

- 18.1. All legal relations between VEMA and the customer are governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

19. Place of jurisdiction and place of jurisdiction

- 19.1. The exclusive place of jurisdiction for all disputes arising out of or in connection with the contractual relationships is the Regional Court of Memmingen. However, VEMA is also entitled to bring a legal action at the customer's statutory place of jurisdiction.
- 19.2. The place of performance (*Erfüllungsort*) is Weissenhorn unless otherwise provided.

20. Miscellaneous provisions

- 20.1. The customer is not permitted to offset claims of its own against claims of VEMA or to exercise a right of retention unless the customer's counterclaim is undisputed or a legally enforceable title has been issued or the counterclaim is based on the same contractual relationship.
- 20.2. VEMA is entitled to assign any and all claims against the customer to third parties without the customer's prior consent. The customer is not permitted to assign to third parties in whole or in part the rights to which it is entitled and/or the obligations incumbent upon it in connection with deliveries and/or services without VEMA's prior written consent.
- 20.3. VEMA is not obligated to provide warranties or guarantees of performance of contract and/or contract performance bonds.
- 20.4. Oral side agreements are not valid. Terms and conditions that deviate herefrom or supplement these Terms, including this written form clause,

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- 20.5. apply only if they are confirmed in writing by both parties.
Should individual provisions of these Terms be or become invalid, this shall not affect the validity of the remaining provisions. The parties are obligated, within reason and in good faith, to replace the invalid provision with a valid provision that most closely approximates the objective of the contract, taking the economic interests of both sides into account.

B. Specific Terms and Conditions for the Sale of Hardware

1. Definitions

Unless otherwise indicated, the customer is referred to as the **"Buyer,"** VEMA as the **"Seller"** and the Hardware owed under the purchase agreement as the **"Purchased Item."**

2. Dates and time limits

- 2.1. Delivery time limits and dates are binding only if they are expressly designated as "binding" in the individual contract. Subsequent contractual amendments may lead to an extension of the agreed delivery time limits and postponement of the delivery dates.
- 2.2. In the event of non-binding delivery time limits or delivery dates that have been extended or postponed pursuant to the foregoing provisions, VEMA shall not be deemed to be in default unless and until a reasonable time limit for delivery set by the Buyer in writing has elapsed without delivery occurring.

3. Delivery; devolution of risk

- 3.1. VEMA shall deliver FCA Incoterms 2020 the designated warehouse of VEMA.
- 3.2. Partial deliveries by VEMA are permissible provided that accepting them is not unreasonable for the Buyer. Any partial delivery may be billed separately.
- 3.3. Where it is agreed in the individual case that VEMA will assume the shipment of the Purchased Item, VEMA shall bear the risk associated with transportation until the Purchased Item is handed over to the person or entity effecting the transportation.
- 3.4. The costs of transportation must be borne by the Buyer.

4. Handover

- 4.1. A delivery ticket shall be issued regarding the Purchased Item, stating, among other things, the type and number of the delivered parts of the Purchased Item.

- 4.2. When the Purchased Item is handed over, the delivery ticket issued in accordance with Sec. 4.1 must be signed in duplicate by the Buyer and VEMA. VEMA and the Buyer shall each receive one duplicate of the delivery ticket.

5. Default of acceptance

- 5.1. The Buyer is deemed to be in default of acceptance if it does not pick up the Purchased Item on the contractually agreed delivery date or, if a formal acceptance procedure has been contractually agreed, does not accept it even though the item is ready for acceptance.
- 5.2. In the event of non-binding delivery dates or delivery time limits, VEMA is permitted to give the Buyer two weeks' notice that the Purchased Item is ready for pick-up and/or, if a formal acceptance procedure has been contractually agreed, is ready for acceptance; if the Buyer does not pick up and/or accept the Hardware by the end of this notice period, the Buyer is deemed to be in default of acceptance.

6. Prices

- 6.1. The price of the Purchased Item is as stated in the relevant individual contract. If the Purchased Item consists of multiple individual parts, the total purchase price and the price to be used for billing purposes are the result of multiplying the number of pieces and the purchase price of the Purchased Item.
- 6.2. If any change in VEMA's costs occurs between the time at which the contract is concluded and delivery, particularly due to changes in the prices of materials or raw materials, conclusion of collective agreements or other price changes imposed by suppliers or fluctuations in currency exchange rates for which VEMA is not responsible and that were not foreseeable with sufficient certainty, VEMA is entitled to adjust the agreed prices accordingly. Any adjustment of the prices must be notified to the Buyer. At the Buyer's request, VEMA must demonstrate to the Buyer the factors contributing to the price increase and the scope thereof. The Buyer is permitted to rescind the contract if there is an increase of more than 10% in the total price, provided that it declares the rescission to VEMA in writing within two weeks after receiving the notice of the price increase.
- 6.3. All prices apply plus value-added tax (VAT).

7. Payment terms

- 7.1. Unless payment in advance or another method is agreed, the purchase price must be paid 30 calendar days after delivery and after the Buyer receives the invoice. Unless otherwise agreed, payments must be remitted in EURO.
- 7.2. Instalment payments are excluded unless they have been expressly agreed in writing.



8. Default of payment; Buyer's inability to perform

- 8.1. If the remuneration is not paid, the provisions of Part A. Sec. 11.3 apply by way of analogy.
- 8.2. If it turns out after the contract is concluded with the Buyer that due to the Buyer's financial situation, there is a risk to the fulfilment of its contractual obligations, VEMA is entitled to withhold delivery of the Purchased Item and/or refuse to perform other services, at its discretion, until the price has been paid in advance or adequate security has been provided by the Buyer.

9. Retention of title; transfer of title

- 9.1. The Purchased Item remains the property of VEMA until the purchase price has been paid in full. In the case of ongoing billing, VEMA shall use the reserved goods as security for the balance of VEMA's bills. If the Buyer acts in breach of contract, particularly where the Buyer has fallen into default of payment of a monetary claim, VEMA has the right to rescind the contract after setting a reasonable time limit for the Buyer to perform. If VEMA takes back the reserved goods, this already constitutes rescission of the contract. The Buyer shall bear the transportation costs arising for such retrieval of goods. It is also deemed to constitute rescission of the contract if VEMA seizes the reserved goods. VEMA is permitted to sell reserved goods that it has taken back. The proceeds thereof shall be offset against the amount owed by the Buyer to VEMA after VEMA has deducted a reasonable sum for the costs of the sale.
- 9.2. The Buyer must treat the reserved goods with care. The Buyer is required to insure them adequately at its own expense, at replacement value, against damage and/or losses due to fire, water and theft. Where maintenance and inspection work becomes necessary, the Buyer must perform such work in a timely fashion at its own expense.
- 9.3. If the reserved goods are seized by third parties, or in the event of any other intervention by third parties, the Buyer must indicate that VEMA is the owner and must notify VEMA in writing without delay so VEMA can enforce its ownership rights. Where the third party is unable to reimburse VEMA for court or out-of-court costs incurred by it in this context, the Buyer is liable therefor.
- 9.4. If the Buyer so requests, VEMA is obligated to release the items of security to which VEMA is entitled where the realisable value thereof exceeds the value of VEMA's outstanding claims against the Buyer by more than 10%. However, VEMA is permitted to select the items of security to be released.

10. Quality of the Purchased Item; specifications and application; warranties

- 10.1. The specific quality of the Purchased Item shall be deemed exclusively to be the specifications that are subject of the individual contract. The customer is responsible for reviewing whether the Purchased Item is suitable for the customer's desired purposes.
- 10.2. Information provided by VEMA regarding the suitability and use of the Purchased Item is provided to the best of VEMA's knowledge, but is deemed to constitute non-binding information only and does not exempt the Buyer from responsibility to perform its own check of the Purchased Item supplied by VEMA to determine its suitability for the intended purposes.
- 10.3. Warranties, particularly warranties of a specific quality (*Beschaffheitsgarantien*), are not binding on VEMA except to the extent to which they (i) are included in a quote or order confirmation, (ii) are expressly designated as "warranty" or "warranty of specific quality" and (iii) expressly stipulate the obligations arising for VEMA from such a warranty.

11. Rights concerning defects

- 11.1. The customer's rights concerning defects presuppose that the customer complies with its obligation to inspect the goods and complain of any defects present therein in accordance with Sec. 377 of the German Commercial Code (*Handelsgesetzbuch*).
- 11.2. Complaints must be made in writing, with a specific indication of the defect involved. Complaints regarding incomplete delivery and other apparent defects must be communicated to VEMA in writing without delay, and in any event within 14 days after delivery; complaints regarding hidden defects must be communicated to VEMA in writing without delay, and in any event within 14 days after discovery thereof. The customer is not permitted to refuse acceptance and/or approval of the Hardware due to insignificant defects. Claims regarding defects communicated late are excluded.
- 11.3. If the Purchased Item is defective, VEMA must deliver a new Purchased Item or repair the defective Purchased Item, at its discretion.
- 11.4. In the event of a replacement delivery, the Buyer must return the defective Purchased Item to VEMA in accordance with the statutory provisions.
- 11.5. Claims of the Buyer concerning the expenditures necessary (*erforderliche Aufwendungen*) for the purpose of supplementary performance (*Nacherfüllung*), particularly transportation, travel, labour and material costs, are excluded to the extent that the expenditures increase as a result of the Purchased Item being taken to a location other than the agreed delivery location; VEMA is entitled to charge the Buyer for any such additional expenses.

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- 11.6. If the supplementary performance (*Nacherfüllung*) fails, the Buyer is permitted to reduce the purchase price or rescind the contract at its discretion in accordance with the statutory prerequisites.
- 11.7. Any claims for compensation for expenditures or claims for damages by the customer are limited in accordance with Part A Sec. 14.
- 11.8. If there is no defect, VEMA is entitled to demand compensation from the Buyer for the costs arising from the unjustified demand for remediation of defects (particularly costs of review and transportation) if the Buyer was aware or could have been aware that there was no defect.
- 11.9. The limitation period for rights concerning defects is one year from delivery. However, this limitation does not apply if (i) a defect has been fraudulently concealed or (ii) a warranty for the specific quality (*Beschaffheitsgarantie*) of the Hardware has been provided.
- 12. Miscellaneous provisions**
In all other respects, the provisions of the General Terms and Conditions in accordance with Sec. A apply.

C. Specific VEMA Terms and Conditions for Leasing of Hardware

1. Definitions

Unless otherwise indicated the customer is referred to as the "**Lessee**" and VEMA as the "**Lessor**."

2. Quality of the Leased Item

- 2.1. The Leased Item is typically used Hardware.
- 2.2. The Lessee has no claim to receive new goods.
- 2.3. The Leased Item is delivered in clean, functional condition.
- 2.4. Any requirements that apply to the Leased Item beyond that must be agreed in text form between VEMA and the Lessee in advance. The Lessee is responsible for checking whether the Leased Item is suitable for a particular purpose.

3. Delivery of the Leased Item; checking the Leased Item

- 3.1. VEMA shall deliver FCA Incoterms 2020 ex works Weissenhorn or from the designated warehouse of VEMA.
- 3.2. Partial deliveries by VEMA are permissible provided that accepting them is not unreasonable for the Lessee. Any partial delivery may be billed separately.
- 3.3. Where it is agreed in the individual case that VEMA will assume the shipment of the Leased Item, VEMA shall bear the risk associated with

- 3.4. transportation until the Leased Item is handed over to the person or entity effecting the transportation. The costs of transportation must be borne by the Lessee.

4. Devolution of risk; shipping and packaging; costs of shipping and packaging

- 4.1. If the Lessee itself or a freight forwarder or shipping company commissioned by the Lessee assumes the transportation of the Leased Item, the Lessee shall bear the risk associated with transportation starting at the point in time at which the Leased Item is handed over to the shipping company, freight forwarder or the Lessee itself.
- 4.2. Where VEMA assumes the transportation of the Leased Item, VEMA shall bear the risk associated with transportation until the time of handover to the Lessee.
- 4.3. The shipping costs shall be borne by the Lessee.

5. Use of the Leased Item

- 5.1. The Lessee is required to observe the provisions of the installation instructions and instructions for use when using the Leased Item. The installation instructions and instructions for use shall be provided to the Lessee free of charge together with the Leased Item.
- 5.2. The Lessee undertakes to treat the Leased Item with care and properly and to take the necessary measures to ensure that the suitability of the Leased Item for use is not reduced. This includes workmanlike storage and cleaning in accordance with the installation instructions and instructions for use.
- 5.3. The obligation of maintenance and repair during the term of the lease rests with the Lessee to the extent that relevant damages are attributable to the rental use or the Lessee's sphere of risk.

6. Obligations of monitoring and safeguarding

- 6.1. The Lessee is obligated to monitor the Leased Item in the place of use on an ongoing basis and to separate out any damaged parts, particularly parts that no longer meet the requirements of the installation instructions and instructions for use.
- 6.2. The Lessee must safeguard and protect the Leased Item carefully against theft. If the Leased Item is stolen, this must be reported in writing without delay to VEMA and the competent law enforcement authorities. A copy of the police report must be transmitted to VEMA without delay after the report is made.

7. Remediation of defects by VEMA

- 7.1. The Lessee must notify VEMA of any defects in the Leased Item without delay.
- 7.2. In all other respects, the provisions of Part A Sec. 12 apply.



8. Subleasing, lending and relocation of the Leased Item

- 8.1. The Lessee is not permitted to sublease or lend the Leased Item or any parts thereof to third parties or to otherwise transfer possession of the Leased Item or any parts thereof to third parties ("**Transfer of Possession of the Leased Item**") without the Lessor's prior written consent.
- 8.2. The Lessee shall notify VEMA without delay if the Leased Item or any parts thereof has been seized or otherwise adversely affected. The Lessee must also notify VEMA without delay of any applications for foreclosure, compulsory auction, or receivership with regard to the property on which the Leased Item is located or attached buildings or other facilities.
- 8.3. The Lessee is not permitted to move or relocate the Leased Item or any parts thereof to a location other than that designated in the lease agreement unless VEMA has consented thereto in writing beforehand.

9. Return of the Leased Item

- 9.1. The Lessee is obligated to return the Leased Item that has been provided to it, along with accessories provided, after the end of the term of the agreement. The Lessee is responsible for returning the Leased Item in the place of performance (*Erfüllungsort*) in accordance with Part A Sec. 19.2.
- 9.2. The Leased Item must be shipped in standard system cases ("Systainers"). The devices must be cleaned, dry and turned off or packaged in "shipping mode," as the case may be (see installation instructions and instructions for use). In the case of airfreight, the charge status of the batteries must be checked and the items must be labelled as hazardous goods.
- 9.3. The parties must prepare documentation of condition in each case before the Leased Item is returned, recording any damage, excessive wear or other particularities concerning the item. The documentation must include an image of the Leased Item.
- 9.4. If the condition cannot be documented immediately upon the return of the Leased Item, whether for time reasons or other reasons, VEMA is entitled to check the condition of the Leased Item at a different point in time and prepare documentation of its condition then and provide this documentation to the Lessee.

10. Lessee's liability

- 10.1. The Lessee is liable to VEMA for damages in accordance with the statutory provisions.
- 10.2. Where the Lessee is obligated to pay damages to VEMA, the damages shall be calculated on the basis of the replacement value of the Leased Item according to the VEMA leasing price list then valid

at the time of the conclusion of the contract, less a reasonable deduction for depreciation.

11. Miscellaneous provisions

In all other respects, the provisions of the General Terms and Conditions in accordance with Part A apply.