

GENERAL TERMS AND CONDITIONS FOR METRIS VIBE CONDITION MONITORING

ARTICLE 1. GENERAL

- 1.1 Validity. The Sale of certain equipment ("Equipment") and provision of certain services ("Services") provided by Seller or its affiliate(s) in the area of manufacturing plant condition monitoring are governed exclusively by these General Terms and Conditions for Metris Vibe Condition Monitoring ("Metris T&C") in the version, which is current at the date the contract is concluded.
- 1.2 Conclusion of Contract. A contract ("Contract") is generally concluded through the unreserved acceptance of Seller's offer ("Offer") by the Buyer. General terms and conditions of the Buyer or other pre-formulated provisions do not apply.
- 1.3 Order of precedence. Unless otherwise expressly specified, the following legal documents apply in the order presented below:
1. Offer, including the technical specifications;
 2. these Metris T&C, as well as
 3. Seller's General Conditions for Sale.

ARTICLE 2. SERVICES AND EQUIPMENT

- 2.1 Metris. The Equipment and the Services (sometimes hereinafter collectively as "Metris"), all as more fully described in the Offer, are for internal business use only at Buyer's facility ("Facility") set-forth in the Offer.
- 2.2 Purpose. Metris is designed to assist Buyer's maintenance personnel and does not relieve Buyer of its responsibility to conduct proper continuous monitoring and routine inspection, regardless of whether Metris sends an alarm. Metris is not intended to replace continuous monitoring, routine inspection and/or maintenance of Buyer's capital equipment, plants, and/or facilities by experienced and properly trained maintenance personnel. Buyer accepts the systems limitations of Metris as set-forth in the Offer and the possibility of occasional limitations, failures, and/or interruption of Metris for a variety of reasons and circumstances (e.g. sensor/transmission devices are damaged/obscured/disconnected, power failure, transmission errors, interference from/impairment by other systems).
- 2.3 Cloud Provider. Buyer acknowledges, that Seller may use the services of a third-party service provider ("Cloud Provider") with respect to the Services. Seller may in its sole discretion change the Cloud Provider without prior notice to or consultation with Buyer.
- 2.4 Registration, Establishment of Account, Authorized Users. Buyer shall install the Equipment and connect to Seller's Metris Vibes platform over the internet and register for a user account by providing all required information. Buyer will only permit the maximum number of its employees set forth in the Offer to utilize a username and password. Buyer shall ensure, that all such users comply with the terms of the Contract and this Metris T&C and Buyer shall be liable for all actions of such users related to their access and use of the Services. Buyer shall not share, distribute, or reveal Buyer's access credentials to the Service with any other party.
- 2.5 Buyer Security. Buyer is responsible for protecting the security of Buyer's account and all activities that occur under the account or in connection with the Service. Buyer shall promptly inform Seller of any possible misuse, loss, or disclosure of any user's account information or any other breaches of security by calling the phone number and e-mailing at the email address stated in the Offer or the Contract.
- 2.6 Availability, Service Level. Seller will use commercially reasonable efforts to ensure the Services are available 24 hours a day, seven days a week, except for unavailability caused by: i) maintenance or repair work by Seller and/or Cloud Provider; ii) planned down time; iii) unavailability caused by actions and or omissions of Buyer, Buyer's personnel, or third parties acting on behalf of Buyer; iv) other circumstances beyond Seller's control, including, but not limited to, events of Force Majeure as defined in Paragraph 11.1; v) failure of remote access technologies; interruptions of internet or mobile services; or vi) acts or omissions of the Cloud Provider (e.g. limitation or interruption of cloud services). Seller will inform Buyer in advance of any maintenance or repair work by Seller.

ARTICLE 3. CONTRACT PRICE AND TERMS OF PAYMENT

- 3.1 Contract Price. Buyer agrees to pay Seller for the Services ("Service Fee") and for the Equipment ("Equipment Price"), in the amounts set forth in the Offer (the total payment hereafter referred to as "Contract Price").
- 3.2 Payment Terms. The Service Fee is to be paid on a yearly basis in advance, commencing with the start of the provision of the Services. The Equipment Price is to be paid upon delivery of the Equipment. Payment shall be made by the Buyer to the Seller within 30 (thirty) days of receipt of Seller's invoice.
- 3.3 VAT. The Contract Price does not include value added tax (VAT) and Buyer shall pay such tax subject to receipt of a proper invoice.

ARTICLE 4. WARRANTY

- 4.1 Acceptance. Services and Equipment are deemed accepted ten (10) days after performance/delivery, unless Buyer notifies Seller in writing within such period specifying how the Services/Equipment fails to materially comply with the specifications set-forth in the Offer.
- 4.2 Warranty.
- a) Quality defects : Seller warrants to Buyer exclusively that the Services and the Equipment will materially conform to the specifications set-forth in the Offer. Except as set-forth in the preceding sentence, the Services and Equipment are provided "as is". Seller does not warrant the accuracy of, or performance results of, any conclusions or recommendations provided, nor that any desired objective will result from the Services provided.
 - b) Legal defects : Seller warrants to Buyer exclusively that the Equipment is free of any encumbrances upon delivery and the use of the Services by Buyer in accordance with the Contract and this Metris T&C does not violate any unchallenged patent of any unaffiliated third party granted by the competent patent office in the country where the Facility is situated prior to the effective date of the Offer.



4.3 Warranty Period. The warranty period shall commence i) for the Services rendered during each month upon the expiry of such month and ii) for the Equipment upon delivery and shall expire 12 (twelve) months thereafter ("Warranty Period"). The statute of limitation for warranty claims expires three months after the expiry of the Warranty Period.

4.4 Warranty Remedies.

a) Warranty remedies regarding quality defects: If, during the Warranty Period, Buyer discovers that the Services or the Equipment do not conform to the specifications (Paragraph 4.2 above) and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, use commercially reasonable efforts i) to correct the non-conforming Service functionality or ii) deliver to Buyer according to FCA INCOTERMS 2020 (Seller's place) a replacement part or repair the defect in place. Any replacement or repair part furnished pursuant to this warranty is warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension.

b) Warranty remedies regarding legal defects: If, during the Warranty Period, Buyer becomes aware of any matter which constitutes a breach of Paragraph 4.2 subpara a) above) and gives Seller written notice thereof within 10 days of such discovery, Seller is entitled in its sole discretion, but not obligated, to defend against claims made in a suit or proceeding brought against Buyer. Upon request by Seller, Buyer shall give the necessary authority, provide all information, full cooperation and assistance for the defense of such claims. If a judgment enjoins Buyer from using the Services and/or the Equipment due to a legal defect as per Paragraph 4.2 subpara b), then Seller will, at its option: (i) obtain for Buyer the right to continue using such Services/Equipment; (ii) eliminate the infringement by replacing or modifying the Services/Equipment; or (iii) take back such Equipment or relevant part thereof and refund to Buyer the purchase price for the Equipment or the Services.

4.5 Exclusions. Seller will have no warranty obligations for the Services and the Equipment and no liability obligations : (i) if the Service and/or Equipment has not been stored, installed, operated and maintained in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Service or Equipment non-conformance has been caused by use or combination with hardware (e.g. sensors) and/or software not provided by Seller; (iii) if the Service or Equipment non-conformance has been caused by misuse of Metris; (iv) if the Equipment is used in connection with any mixture or substance or operating condition other than that for which it was designed; (v) if Buyer fails to give Seller the required written 10 day notice; (vi) if the Service and/or Equipment is repaired by someone other than Seller or has been intentionally or accidentally damaged; (vii) for corrosion, erosion, ordinary wear and tear or in respect of any Equipment which by its nature is exposed to severe wear and tear or is considered expendable; (viii) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement; or (ix) if the non-conformance of the Service and/or Equipment is caused by Buyer's negligence or willful misconduct.

4.5 Waiver. The express warranties Seller makes in this Article 4 are the only warranties it will make. There are no other warranties, whether statutory, oral, express or implied. In particular, there are no implied warranties of merchantability or fitness for a particular purpose or usually presumed properties

4.6 Exclusive Remedy. The remedies provided in Paragraphs 4.1 and 4.2 are Buyer's exclusive remedy for breach of warranty. In particular, but not limited, the right to reduce the price is expressly excluded.

ARTICLE 5. [intentionally left blank]

ARTICLE 6. DELIVERY

Delivery or performance dates are good faith estimates and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery or performance. Delivery of the Equipment hereunder will be made on the terms agreed to by the Parties as set forth in the Offer, according to INCOTERMS 2020. Upon and after delivery, risk of loss or damage to the Equipment shall be Buyer's.

ARTICLE 7. TITLE

Ownership title to the Equipment shall pass from Seller to Buyer upon unconditional credit entry of the pertinent purchase price upon Seller's designated bank account.

ARTICLE 8. INTELLECTUAL PROPERTY RIGHTS AND DATA

8.1 Intellectual Property. Seller shall own all Intellectual Property Rights: (i) created in the course of the performance of the Contract in whole or in part by Seller, or (ii) owned or developed by Seller prior to the date of the Offer. "Intellectual Property Rights" means any and all rights with respect to intellectual and industrial property and confidential or proprietary information throughout the world, including all: (i) patents, patent applications, and other patent rights (including all reissues, divisions, continuations, continuations-in-part); (ii) copyrights and copyright registrations; (iii) trade secrets and other rights with respect to confidential or proprietary information; (iii) other rights with respect to inventions, discoveries, improvements, know-how, formulae, algorithms, processes, technical information, and other technology; (iv) other intellectual and industrial property rights, whether or not subject to statutory registration or protection; (v) all benefits, privileges, causes of action, and remedies relating to any of the foregoing, whether previously or hereafter accrued (including the exclusive rights: (1) to apply for and maintain all such registrations, renewals, and extensions; (2) to sue for all past, present, and future infringements or other violations of any rights relating thereto; and (3) to settle and retain proceeds from any such actions); and (vi) all rights under any license or other arrangement with respect to the foregoing; but, unless otherwise expressly provided herein, excluding any trademark, trade name, or similar rights with respect to identification of source or origin where such trademark or trade name does not designate Seller as the source of goods or services.

8.2 Impermissible Use. Buyer agrees not to, and not to permit any third party to, analyze, measure the properties of, or otherwise reverse engineer the Equipment, fabricate the Equipment or any parts thereof from Seller's drawings or to use the drawings other than in connection with the Contract.

8.3 Equipment Generated Content. Buyer ensures that only content generated by the Equipment (e.g. operating times, vibration, temperature) ("Equipment Generated Content") will be submitted to the Service for being able to carry out the condition monitoring or to use other functionalities of the Service.

8.4 Machine Data. Notwithstanding anything herein to the contrary, Buyer hereby grants to Seller and Seller's affiliates a non-exclusive, transferable, assignable, sub-licensable, perpetual, paid-up license to Process (as defined below) the Machine Data (as defined below), in particular, but not limited, in order to provide, adapt, maintain, correct, protect, improve and/or develop Seller's and Seller's affiliates products and services. Seller may transfer the Machine Data to and Process it in third countries, in particular to/in countries in which Seller or Seller's affiliates operate. Buyer agrees to secure and maintain all rights required to provide such license and permit.



"Process" means any operation or set of operations which is performed on the Machine Data or on sets of such data in electronic format, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

"Machine Data" means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording relating to the Products or related services, in particular but not limited to condition parameters (e.g. temperature, vibration), generated by the use, during maintenance, repair or non-use of the Product or by another device (e.g. sensor, meter whether embedded in the Products, external or remote).

Seller is entitled to keep copies of such Machine Data, files created by automatic computer back-up and archiving procedures and to Process the Machine Data even after expiry/termination of the Agreement.

Buyer confirms that the compensation for the license and permit as per this Paragraph has already been taken into account when setting the prices for the Products and the Services.

8.5 Personal Data. Buyer will not provide and will not engage Seller to process personal data (as defined in Article 4 GDPR or any U.S. Federal or State privacy acts), under the Contract.

8.6 Software. Buyer acknowledges, that no software is transferred to Buyer in connection with the Contract. Seller hereby grants to Buyer a non-exclusive, non-transferable, non-sub-licensable license during the term of the Contract to use Seller's software hosted by the Cloud Provider only in connection with the Services under the Contract.

ARTICLE 9. LIMITATION OF LIABILITY

Notwithstanding any other provision in this Metris T&C, the following limitations of liability shall apply:

9.1 In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products or Software, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature resulting from, arising out of or connected with Metris or this Metris T&C or from the performance or breach hereof.

9.2 The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with Metris or this Metris T&C or from the performance or breach hereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed the lesser of (a) twelve (12) times the Monthly Fee or (b) the total amounts paid by Buyer to Seller under the Contract in the twelve months prior to the claim arising.

9.3 The limitations and exclusions of liability set forth in this Article 9 shall take precedence over any other provision of this Metris T&C and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise.

9.4 The remedies specified herein shall be Buyer's sole and exclusive remedies for any breach or liability under the Contract or otherwise relating to the subject matter of the Contract and the transactions contemplated hereby.

9.5 Notwithstanding anything herein to the contrary, Seller will not be liable for any unauthorized third party access to Seller's Metris Vibes platform or the data center of the Cloud Provider.

9.6 The limitations and exclusions of liability set forth in this Paragraphs 9.1 and 9.2 shall not apply in case Seller acts intentionally or Seller's management or key personnel act gross negligently, in case of injury to life, body or health or any other claims that cannot be excluded by law (e.g. claims based on the Product Liability Act; in such cases Seller is liable according to the statutory law as set-forth in Paragraph 15.1.).

ARTICLE 10. WAIVER

The failure of either Party to insist in one or more instances upon strict performance of the covenants of the Contract or this Metris T&C, or to exercise any option, right or privilege herein contained, shall not be construed as a waiver of relinquishment for the future of such covenant or option, but the same shall remain and continue in full force and effect.

ARTICLE 11. FORCE MAJEURE; CHANGES

11.1 For the purpose of this Metris T&C "Force Majeure" will mean all events, whether or not foreseeable, beyond the reasonable control of either Party which affect the performance of the Contract, including, without limitation, acts of God, acts or advisories of governmental or quasi-governmental authorities, laws or regulations, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, insurrections, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, lightning, earthquakes, fires, storms, severe weather, floods, sabotage, delays in transportation, lack of available shipping by land, sea or air, inability to obtain labor or materials from usual sources, serious accidents involving the work of suppliers or sub-suppliers, thefts and explosions.

11.2 If either Buyer or Seller is unable to carry out its obligations under the Contract due to an event of Force Majeure, other than the obligation to make payments due hereunder, and the Party affected promptly notifies the other Party of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

11.3 If the period of suspension or reduction of operations will extend for more than four (4) consecutive months, or periods of suspension or reduction total more than 6 months in any 12 month period, then either Buyer or Seller may terminate the Contract. In the event of termination by Buyer in accordance with this Paragraph 11.03 neither Buyer nor Seller shall have any further obligation or liability to the other arising from or related to such termination other than the obligation of Buyer to provide payment for Services performed and Equipment delivered prior to such termination.

Seller will not make changes in the Equipment or Services unless Buyer and Seller have executed a written change order for such change. Any such change order will include an appropriate adjustment to the Contract Price and delivery schedule. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the change order will include appropriate modifications to the Contract. Seller shall be entitled to a change order adjusting the Contract Price, delivery schedule and/or any affected obligations of Seller if after the date of the Offer (i) a change in applicable law, tariffs, levies, duties, taxes, regulations, or ordinances or (ii) any act or omission of Buyer or any other party for whom Buyer, is responsible, or any



error or change in Buyer-provided information should require a change in the Equipment or Services or cause an increase in the cost or change in the schedule to supply the Equipment or Services.

ARTICLE 12. CONFIDENTIALITY

12.1 The Parties agree to keep confidential and not disclose to any third parties any information given to or received from the other Party, directly or indirectly, in writing, visually, or verbally, as a result of performance under the Contract.

12.2 The foregoing obligation of confidentiality does not apply to information that is: (i) already known to the receiving Party, as evidenced by written documents or records; (ii) publicly available or that becomes publicly available without a breach of this Metris T&C; (iii) rightfully received from a third party who has no duty or obligation of nondisclosure; (iv) is independently developed by the receiving Party without access to the disclosing Party's information, as evidenced by written documents or records; or (v) disclosed without an obligation of confidence under operation of law, governmental regulation, or court order, provided the receiving Party first gives the disclosing Party notice (if so entitled by operation of law).

ARTICLE 13. SEVERABILITY

If any provision of this Metris T&C, or the application hereof to any person or circumstance, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Metris T&C, and the application of such provision to persons or circumstance other than those as to which it is specifically held invalid or unenforceable, shall not be affected thereby, and each and every remaining provision of this Metris T&C shall be valid and binding to the fullest extent permitted by law.

ARTICLE 14. TERM AND TERMINATION

14.1 Term of Agreement. The Term of the Contract will be for the duration set forth in the Offer, unless earlier terminated in accordance with the terms of this Metris T&C.

14.2 Termination. This Contract may be terminated by either Party for material default of the other Party if, after receiving written notice of such default, the defaulting Party fails to cure the default within thirty (30) days, or where cure is not commercially feasible an acceptable cure is not commenced within (30) thirty days of such notice and thereafter diligently pursued.

In the event of termination by Buyer in accordance with this Paragraph 14.2, neither Buyer nor Seller shall have any further obligation or liability to the other arising from or related to such termination other than the obligation of Buyer to provide payment for Services performed and Equipment delivered prior to such termination.

In the event of termination by Seller in accordance with this Paragraph 14.2, neither Buyer nor Seller shall have any further obligation or liability to the other arising from or related to such termination other than the obligation of Buyer to provide payment for Services performed and Equipment delivered prior to such termination, plus an amount equal to fifty percent (50%) of the Contract Price for the remaining Term of the Contract.

14.3 In the event of termination of the Contract for any reason: (i) Seller shall cease all Services under the Contract; and (ii) all licenses granted under this Metris T&C will terminate.

ARTICLE 15. GOVERNING LAW; DISPUTE RESOLUTION

15.1 This Agreement shall be governed and construed in accordance with the laws of Switzerland. The Parties agree that the United Nations Convention for the International Sale of Goods and international private law shall not apply to the Contract and this Metris T&C.

15.2 All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The arbitration shall be conducted in Zurich (Switzerland). All arbitrators must be persons who are not employees, agents, or former employees or agents of either Party. The language to be used in the arbitral proceedings is English.

ARTICLE 16. MISCELLANEOUS

16.1 This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of the Contract or any of the rights or obligations hereunder, by either Party without the written consent of the other Party shall be void.

16.2 Any notice given pursuant to the Contract or this Metris T&C shall be given in writing and delivered in person, by overnight courier, or by registered or certified mail, postpaid, return receipt requested. Such notices shall be deemed given at the time of delivery.

16.3 All terms of the Contract or this Metris T&C which by their nature should apply after the cancellation, completion, or termination of the Contract shall survive and remain fully enforceable after any cancellation, completion, or termination hereof.

16.4 The Contract and this Metris T&C may be modified, supplemented, or amended only by a writing signed by authorized representatives of both Seller and Buyer. Waiver of a breach of any provision of the Contract or this Metris T&C shall not constitute a waiver of any other breach of the same provision or of any other provision hereof.

16.5 This Agreement, together with any software license agreement for the Software, contains the entire and only agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. Further, any boiler-plate or standard pre-printed terms and conditions that may be printed on the back of or attached to any of Seller's or Buyer forms, including proposals, purchase orders, order acknowledgments, invoices, etc. shall be void and of no effect.





GLOBAL SUPPLIER – LOCAL PRESENCE

With sales, service, engineering, manufacturing and production sites located all around the world, ANDRITZ Feed and Biofuel is truly a global organization with a local presence. ANDRITZ is vital to ensuring a reliable global supply of aqua feed, animal feed, pet food, and biofuel. With full process lines accounting for half the world's production of aqua feed and biomass alone, we continuously support leading producers in achieving the highest levels in safety, quality, and control from feedstock to final product.

How can we help grow your business?

ANDRITZ Feed and Biofuel A/S

Glentevej 5–7
6705 Esbjerg, Denmark
p: +45 72 160 300
andritz-fb.dk@andritz.com

ANDRITZ.COM/FT



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