

# EcoStruxure Manufacturing Compliance Advisor

## TERMS AND CONDITIONS OF SERVICES

These Terms and Conditions sets forth the terms and conditions which govern Customer's use of the "EcoStruxure Manufacturing Compliance Advisor" as defined hereunder.

### **1. Definitions**

**1.1.** Words with initial capital letters shall have, for the purpose of these Terms and Conditions, the meaning given to them below:

**"Affiliates"** means any company or other legal entity which is Controlled by or is under common Control with a Party.

**"Business Day"** means any day on which the banks are open for business in the country (on both federal and state level, when applicable) where Eurotherm (as defined hereunder) has its registered office or principal place of business, to the exception of Saturdays, Sundays and bank holidays.

**"Charges"** means the monthly, quarterly or annual service subscription fee and Pay-as-you-go credits as further defined in Section 7, against the payment of which the Services shall be provided to Customer by Eurotherm.

**"Control"** shall mean, with respect to the concerned company or other legal entity, that the relevant Party either directly or indirectly: (i) has the beneficial ownership of 50% or more of its issued share capital; or (ii) holds 50% or more of its voting rights; or (iii) holds the legal power to direct or cause the direction of its general management and policies, whether through the ownership of voting securities, by contract or otherwise.

**"Customer"** means any legal or individual person that shall act as service provider to its own customers on behalf of which Customer shall perform Customer Own services as defined hereinunder.

**"Customer Own services"** means calibration or other assets management services that Customer would provide under its own responsibility by acting as a service provider to its own end-user customers in relation with industrial or other type of equipments owned or operated by said end-users.

**"Customer Data"** means all information, content, and data, including all text, sound or files, that Customer (i) uploads in the Software Programs, and/or (ii) creates and/or modifies through its use of the Services.

**"End User"** means Customer's own customers on behalf of which Customer shall act as service provider by providing Customer Own services.

**"End User Data"** means all information, content, and data, including all text, sound or files such as but not limited to any calibration or compliance certificates to industrial standards, that End User or Customer may create and/or modify and upload in the Software Programs in connection with the provision by Customer to End User of Customer Own services.

**"Eurotherm"** means Eurotherm Limited or any of its Affiliates stated on the Services' portal website at <https://www.eurotherm.com/ecostruxure-manufacturing-compliance-advisor/tos/>, which provides the Services either directly or indirectly through Sale Agents (as defined hereunder).

**"Intellectual Property Rights"** means all rights in relation to intellectual property that may exist now or in the future, including but not limited to, design rights, registered designs, copyright, patents, trademarks (whether registered or unregistered), know-how and topography rights, any licences in respect of any such rights and all rights to apply for registration of any such rights.

**"Order"** means any Order for the Services issued by Customer to Eurotherm or Sale Agent(s). Each Order shall be deemed as expressing or confirming the acceptance by Customer of the Quotation and these Terms and Conditions and its related attachments including the Service Description.

**"Party"** shall mean either Eurotherm or Customer, and "Parties" shall mean both Eurotherm and Customer.

**"Quotation"** means a written quotation provided by Eurotherm or any Sale Agent(s) to Customer pursuant to clause 2.1 and detailing, amongst other things, the Services that Eurotherm or the Sale Agents propose to provide to Customer, the Charges therefore and any special terms which may apply to the same.

**"Sale Agents"** means any reseller, distributor or integrator of the Services which are appointed by Eurotherm to sell or otherwise distribute the Services in the country (on both federal and state level, when applicable) where Eurotherm has its registered office or principal place of business, and which are stated on the Services' portal website at <https://www.eurotherm.com/ecostruxure-manufacturing-compliance-advisor/tos/>.

**"Services"** also referred to as "EcoStruxure Manufacturing Compliance Advisor", means the provision by Eurotherm or Sale Agent(s) as a software as a service of an access to the Software Programs

hosted by Eurotherm or its contractors, with the right to use the Software Programs for the purpose defined in the Services Description and these Terms and Conditions. Services also include the support of the Software Programs and the access thereto subject to and in accordance with the Support Policy that is incorporated herein by reference. End User Capabilities of the Services as defined in Section 3.5 below are deemed to be a component of the Services.

**“Services Description”** means the functional description of the Services and is available on the Services’portal website at <https://www.eurotherm.co.uk/ecostruxure-manufacturing-compliance-advisor/ToS/>, as may be amended from time to time by Eurotherm. Service Description is incorporated herein by reference.

**“Services Period”** means a twelve (12) month period during which the Services are contracted by Customer and commencing on the date set out in the Order, during which Customer may access to and make use of the Services. An Order can be placed by Customer for multiple Services Periods and each Order shall specify the number of Service Periods for which the Order is placed.

**“Software Programs”** means the software products called ‘EcoStruxure Manufacturing Compliance Advisor’ and ‘EcoStruxure Manufacturing Compliance Advisor – Mobile’ as further defined in the Services Description, which are owned or licensed by Eurotherm and to which Eurotherm grants Customer access as part of the Services (including any program updates thereof provided by Eurotherm as part of the Services).

**1.2.** Where appropriate words denoting a singular number shall include the plural and vice versa.

**1.3.** Where applicable references to Eurotherm shall be construed as references to such employees, officers, sub-contractors and agents of Eurotherm as are engaged in the performance of the Services;

**1.4.** The headings in these terms and conditions are inserted only for convenience and shall not affect its construction.

**1.5.** Any reference to a statute, statutory provision, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory provision, statutory instrument, regulation or order as amended, re-enacted or extended from time to time.

**1.6.** Any reference to any Party in any Order includes its successors and permitted assigns.

## **2. Quotation and Order**

**2.1.** Should Customer express an interest that Eurotherm provide it with the Services, Customer shall provide such information as may be requested at any time by Eurotherm in order for Eurotherm to issue a Quotation to Customer.

**2.2.** A Quotation shall be capable of acceptance by Customer for thirty (30) days from the date thereof.

**2.3.** On acceptance by Customer of a Quotation, an Order shall be formed by Customer to Eurotherm or Sale Agents for for the Services Period(s) defined in said Order and these Terms and Conditions (as may be varied by said Order) shall apply. Once placed, Customer’s Order is non-cancelable unless otherwise expressly defined in these Terms and Conditions.

**2.4.** Any terms and conditions of Customer enclosed with, attached or referred to in Customer’s request for Services, Customer’s acceptance of the Quotation or otherwise, shall not be incorporated into the Order which shall be governed entirely by these Terms and Conditions.

**2.5.** Customer acknowledges and agrees that if it has not provided all the information that is required by Section 2.1 or as otherwise requested by Eurotherm, any Charges stated in the Order shall be deemed to be estimates only and the Charges may therefore vary.

## **3. Use of the Services.**

**3.1.** For the duration of the Services Period and subject to Customer’s payment of the Charges required in the applicable invoice and except as otherwise set forth in these Terms and Conditions, Customer shall have the non-exclusive and non-assignable right to access to and use the Services in accordance with these Terms and Conditions and the documents expressly incorporated herein and solely for the purposes permitted under these Terms and Conditions .

Customer shall have the right to use the Services for the purpose of providing Customer Own services to End-Users; Customer shall have no obligation to declare to Eurotherm the identity of the End Users. Customer shall bear sole and full responsibility for Customer Own services it provides to any End User through the use of the Services.

**3.2.** In order to use all or part of the Services, Customer shall need to place an Order which, subject to acceptance by Eurotherm, shall be followed by Eurotherm sending to Customer an activation code with which Customer shall be enabled to create its own user account.

To create its user account, Customer shall provide Eurotherm with at least the name and email address of one individual person authorized by Customer to use the Services, it being understood that, depending upon the jurisdiction, information provided by Customer to create its user account may be considered as personal information and shall in such case be treated as such in compliance with these Terms and Conditions and any applicable laws and regulations.

Customer agrees that Eurotherm may need to use the information provided by Customer to create its user account for the purpose to provide Customer with the Services in accordance with these Terms and Conditions.

When creating its user account, Customer agrees to (a) create a unique password that Customer does not use with any other online product or service; (b) to provide accurate, truthful, current and complete information; (c) to maintain and promptly update upon any changes the information provided to create its user account; (d) maintain the security of its user account by protecting its password and restricting access to its user account; (e) promptly notify Eurotherm if Customer discovers or otherwise suspects any security breaches related to Customer's use of the Services; and (f) take responsibility for all activities that occur under Customer's user account and accept all risks of any authorized or unauthorized access thereto.

**3.3.** Customer may authorize its employees, agents and contractors acting under the authority or control and on Customer's behalf (collectively "Customer Representatives") to access to the Customer Data and to make use of the Services for the benefit of Customer and only for the purposes described in Section 3.1. above. Customer shall cause each and any of such authorized legal or individual persons being a Customer Representative to create its own individual user account under Customer's user account and Customer shall be responsible to ensure these Terms and Conditions of Services are made available in a legible manner to each Customer Representative before any of them can log in and access to the Services. Customer shall be fully responsible for the acts and omissions of the Customer Representatives including without limitation their compliance with these Terms and Conditions. Customer is responsible for identifying and authenticating any legal or individual person being a Customer Representative before such person uses Customer's user account and/or any individual user account created thereunder by Customer Representatives as defined hereinabove. It is Customer's responsibility to maintain the confidentiality of the information related to Customer's user account or any such individual user accounts created thereunder by Customer Representatives. Customer shall bear responsibility for all activities that are made through the use of Customer's user account or any such individual user accounts created thereunder by Customer Representatives, and for any resulting harm caused to Customer, End Users, Customer Representatives or any other third-party, the Services and/or Eurotherm, by any act or omission by Customer or Customer Representatives, including as a result of any unauthorized use of Customer's user account. Eurotherm will have the right to rely upon any information received from any legal or individual person accessing to and/or using Customer's user account and Eurotherm will incur no liability arising out of such reliance.

**3.4.** Activation of Customer user account will remain valid as long as the Order it placed is in force, the last applicable Services Period is not expired and Customer pays the annual service subscription fee for the Services in accordance with these Terms and Conditions.

Customer's user account shall be automatically and immediately de-activated upon earlier termination of any Order or expiration of the last applicable Service Periods specified in any outstanding Order in accordance with these Terms and Conditions, with the effect that Customer shall automatically cease to access to and use the Services.

**3.5.** At any time after Customer has created its Customer user account to the Services, Customer may prompt those of the End Users to which Customer provides Customer Own services, to create its own End User user account to the Services. End Users remain free to create or not an End User user account to the Services. To create an user account to the Services, End User must accept these Terms and Conditions by clicking the corresponding button on Services'portal website with reference to <https://www.eurotherm.com/ecostruxure-manufacturing-compliance-advisor/tos/>.

If created, End User user account to the Services shall only be accessible to the End User having created it and shall be autonomous from Customer user account to the Services; End User user account to the Services shall remain active as long as End User does not elect to de-activate it and irrespective whether Customer user account to the Services ceases to be active according to these Terms and Conditions.

Creation by any End User of an End User user account to the Services shall enable such End User (i) to get access to those End User Data uploaded in the Software Programs by said End User or by any Customer providing such End User with Customer Own services, and (ii) to visualize the Customer Data uploaded in the Software Programs by any Customer providing such End User with Customer Own services ; the access and visualization capabilities available as aforesaid to End Users having created their own user account to the Services shall hereinafter be referred to as "End User Capabilities of the Services".

Creation and use of its user account and End User Capabilities of the Services by any End User shall not create any obligation for said End User to pay any consideration therefor to Eurotherm until and as long as Eurotherm (or a Sale Agent) and said End User do not enter into a commercial arrangement under which Eurotherm would provide and said End User would use the Services (and not only End User Capabilities of the Services) in accordance with these Terms and Conditions.

**3.6.** Customer shall be solely responsible to obtain at Customer's sole expense any rights and consents from each End User with respect to End User Data, as well as from any other third parties with respect to said other third parties' proprietary information, that Customer would need to access to and/or use in connection with the use by Customer of the Services and/or that Eurotherm would need to access to and/or use in connection with the provision of the Services by Eurotherm to Customer, under these Terms and Conditions. Customer shall be solely responsible to define at its own expenses with any End User any rights and obligations between Customer and End User in relation to the access by Customer to End User Data and by End User to Customer Data through their respective user account to the Services. Customer shall keep Eurotherm, its Affiliates and subcontractors harmless against any liabilities, claim, demands or proceedings made by Customer or any End User against Eurotherm, its Affiliates and/or subcontractors in connection with any arrangement or relationship between Customer and End User.

**3.7.** The Services may enable Customer to link to, transmit Customer Data or End User Data to, indicate the web address of or otherwise access to, third parties' websites or third parties' content, products, services or information. Eurotherm does not control and is not responsible for such third parties' websites or any such third parties' content, products, services and information accessible from or provided through such websites. Customer bears all risks associated with access to and use of such third parties' websites and third parties' content, products, services and information.

**3.8.** Customer shall be solely responsible to use the Services in a manner consistent with any and all applicable local, state, national and international laws and regulations, including, but not limited to, United States export control laws. Customer shall be solely responsible for Customer's regulatory compliance in connection with Customer's use of the Services such as but not limited to regulatory requirements applicable to Customer Data and/or End User Data. Customer is responsible for ensuring that the Services meet any technical requirements that result from Customer's or End User's regulatory obligations before Customer uses the Services or provides any services to End Users through the use of the Services. Customer shall hold Eurotherm harmless from any consequence of any use of the Services by Customer if the laws applicable to Customer prohibit Customer from doing so, such as but not limited to the case when the information provided or used by Customer in connection with the Services, such as but not limited to End User Data, are under legal restriction as to their disclosure and/or use or if Customer is prohibited from participating in any activity pertaining to or otherwise required to be undertaken in relation with the access to and/or use of the Services.

**3.9.** Customer shall be solely responsible to obtain the full power and authority to enter into and perform under these Terms and Conditions, and if Customer uses the Services on behalf of any legal or individual person, Customer must be authorized to accept these Terms and Conditions on such person's behalf.

**3.10.** Eurotherm may audit Customer's use of the Services (e.g. through use of software tools or otherwise) to assess whether Customer's use of the Services is in accordance with these Terms and Conditions. Customer shall cooperate with Eurotherm's audit and provide reasonable assistance and access to information without charge to Eurotherm. Any such audit shall not unreasonably interfere with Customer's normal business operations

**3.11.** Until and as long as any End User has an arrangement or relationship with Customer in relation with the provision by Customer to such End User of Customer own services, those End User Data that the Customer will upload or generate through its use of the Services shall be visible only by the Customer and shall not be visible to Eurotherm. In case the arrangement or relationship between Customer and any End User terminates for any reason and in any manner, such End User shall have the possibility, through its End User user account, to click on the relevant identified menu or button on the Services' portal website at <https://www.eurotherm.com/ecostruxure-manufacturing-compliance-advisor/tos/> so as to notify to Eurotherm that its End User Data are no longer managed on the Services by the Customer and can now be visualized by Eurotherm in the Services.

Within ninety (90) calendar days from the date of the aforesaid notification by said End User to Eurotherm, said End User Data shall be available to said End User for the latter to download them out of the Services; any such download shall be made by said End User under its sole responsibility and at its own costs without Eurotherm charging fees or other amounts to said End User in connection with such download unless such download causes Eurotherm, the Services or the Software Programs to suffer any loss or damage.

In case said End User has not downloaded its End User Data from the Services within the aforesaid ninety (90) calendar days, said End User may within the following ten (10) calendar days send a written instruction to Eurotherm to archive or delete or return to it said End User Data, which archival, deletion or return shall be performed by Eurotherm as a separate service subject to reaching agreement with said End User on the terms and conditions for the performance thereof by Eurotherm. Absent any such written instruction from said End User within the aforesaid ten (10) calendar days from expiry of the above defined period of ninety (90) calendar days, Eurotherm shall no longer have any obligation to hold or return said End User Data and Eurotherm shall be fully and automatically entitled to delete or otherwise render inaccessible any of said End User Data that remains in the

Services, and Eurotherm shall have no liability whatsoever for doing so pursuant to these Terms and Conditions.

#### **4. Restrictions on Use**

**4.1.** Customer's use of the Services, as well as End Users' use of End User Capabilities of the Services, may be subject to certain restrictions set forth in these Terms and Conditions, the Services Description and the Acceptable Use Policy referred to under Section 4.8 hereunder, which may include without limitation certain limitations on the scope of use, capacity, types and quantities of system resources, and/or duration of the Services. Customer's use of the Services in a manner inconsistent with such restrictions may adversely impact the performance of the Services, may result in additional Charges to Customer, and/or may result in suspension of the Services or termination of the corresponding Order under the terms of these Terms and Conditions. End User's use of End User Capabilities of the Services in a manner inconsistent with such restrictions may cause suspension of End User Capabilities of the Services and/or de-activation of End User user account to the Services under the terms of these Terms and Conditions.

**4.2.** These Terms and Conditions only give Customer some rights to access to and use the Services as defined in Section 3 above, and only provide for the conditions under which End Users may use the End User Capabilities of the Services as defined in Section 3.5 above. Eurotherm or its licensors own and reserve all right, title and interest in and to the Software Programs and the Services and all hardware, software and other items used to provide the Services. No title to or ownership of any intellectual property rights or other proprietary rights related to the Software Programs and the Services is transferred to Customer, Customer Representatives or any End User pursuant to these Terms and Conditions, any Order or other transaction contemplated by these Terms and Conditions or any use of the Services or any component thereof. All rights not explicitly granted to Customer, Customer Representatives or any End User are reserved by Eurotherm. In the event that Customer makes suggestions, improvements or modifications to Eurotherm regarding any features, functionality or performance of the Software Programs, the Services or any other products or services of Eurotherm that Eurotherm would adopt for the Software Programs, the Services or any such of its other products or services, such features, functionality or performance shall be deemed to be automatically assigned to Eurotherm under these Terms and Conditions and shall become the sole and exclusive property of Eurotherm.

**4.3.** Customer agrees that it will comply with any technical limitations of the Services and that it will not, nor will Customer cause or permit End Users or any third party to:

- (i) reverse engineer, decompile, disassemble, modify, adapt or translate any part of the Software Programs or the Services, or create derivative works based on any part of the Software Programs or the Services, except and only to the extent that applicable law expressly permits, despite this limitation or except and only to the extent that Eurotherm gives it prior written consent;
- (ii) remove, obliterate, destroy, minimize, block or modify any logos, trademarks, copyright or other proprietary notices of Eurotherm or its licensors;
- (iii) work around any technical limitations in the Software Programs or the Services or access or use the Software Programs or the Services in order to build or support, and/or assist a third party in building or supporting products or Services competitive to Eurotherm;
- (iv) publish or otherwise make available any of the programs or materials pertaining to or otherwise consisting in the Services; for avoidance of doubt, the Company Data and End User Data such as for instance the calibration certificates that Customer may issue to End Users as result of Customer's provision to End User of Customer Own services, shall not be considered as programs or materials pertaining to or otherwise consisting in the Services;
- (v) perform or disclose any benchmark or performance tests of the Software Programs or the Services without Eurotherm's prior written consent;
- (vi) perform or disclose any security testing of the Services or associated infrastructure without Eurotherm's prior written consent, such as but not limited to network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- (vii) transfer, license, sublicense, rent, lease, sell, lend, distribute, host, outsource, disclose, permit timesharing or service bureau use, assign, or otherwise commercially exploit or make available the Services or any part thereof including without limitation any materials or programs (including the Software Programs) pertaining to or otherwise consisting in the Services, to any third party without the prior written consent of Eurotherm and such consent may be withheld in the sole discretion of Eurotherm; for avoidance of doubt, the foregoing restrictions under this section 4.3(vii) shall not apply to Customer Own services that Customer may provide with or without charge to End User through the use of the Services, neither shall it apply to the Customer Data and End User Data generated or otherwise made available to End Users within the provision by



Customer of Customer Own services to End Users and/or End Users' use of End User Capabilities of the Services.

**4.4.** Each End User agrees that it will comply with any technical limitations of End User Capabilities of the Services and that it will not cause or permit any third party to make any action referred to under the foregoing (i) to (vii) of Section 4.3 in connection with End Users' use of End User Capabilities of the Services.

**4.5.** The Services and the Software Programs the use of which is permitted as part of the Services, are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. Unless Eurotherm gives its prior written consent, Customer must not use the Services and End Users must not use End User Capabilities of the Services in connection with any application or situation where the failure of the Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). High Risk Use does not include utilization of the Services or End User Capabilities of the Services for administrative purposes, to store configuration data, engineering and/or configuration tools, or other applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. Customer agrees to indemnify and hold harmless Eurotherm from any third-party claim arising out of Customer's use of the Services in connection with any High Risk Use, and each End User agrees to indemnify and hold harmless Eurotherm from any third-party claim arising out of its use of End User Capabilities of the Services.

**4.6.** Eurotherm may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, and patterns of system use. Furthermore, Eurotherm may (at its discretion) change, discontinue, add, modify, re-price or remove features or functionality from the Services from time to time. The Services Description is also subject to change at Eurotherm's discretion.

**4.7.** Customer understands and agrees that Eurotherm, its Affiliates, and its subcontractors may perform certain aspects of the Services, such as (but not limited to) service administration, hosting, support, and/or disaster recovery, from data centers and other facilities located throughout the world. As such, Customer recognizes and agrees that the provision by Eurotherm and the use by Customer of the Services may result in the Customer Data being collected, transferred, processed, and/or used in any area of the world, and Customer shall be responsible to obtain at Customer's own expenses from each End User for which it acts as a service provider that such End User recognizes and agrees that the provision of the Services by Eurotherm and the use of the Services by Customer as service provider to such End User may result in the End User Data being collected, transferred, processed, and/or used in any area of the world.

**4.8.** Eurotherm reserves the right to contract with third party subcontractors to provide all or part of the Services on behalf of Eurotherm and Eurotherm may change or replace such subcontractors at any time in its sole discretion.

**4.9.** In addition to the foregoing restrictions, Customer agrees not to use or permit use of the Services, and End User agrees not to use End User Capabilities of the Services, in a manner that violates the Eurotherm Acceptable Use Policy which is available at the Services' portal website at <https://www.eurotherm.com/ecostruxure-manufacturing-compliance-advisor/tos/>, and is incorporated herein by this reference.

## **5. Customer Data and End User Data.**

**5.1.** Customer retains all right, title, and interest in the Customer Data, unless otherwise agreed under their own responsibility between Customer and the End User to which Customer provides Customer Own Services.

Customer grants Eurotherm a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, paid-up, transferable, sub-licensable license and approval to use, import, distribute, modify and distribute modifications of, perform, create and distribute derivative works of, copy, and display the Customer Data for the purpose of and in conjunction only with providing the Services to Customer. The license granted in this Section 5.1. includes the right of Eurotherm to sublicense its Affiliates and any third party subcontractors providing all or part of the Services on behalf of Eurotherm to perform the foregoing. Customer represents that Customer has and will keep in effect during Customer's use of the Services, all licenses and approvals necessary to grant these rights, at no charge, to Eurotherm, its Affiliates and subcontractors. Customer is responsible for complying with the terms of any such license agreements including entitlements and permitted uses. Customer represents that by adding, creating, installing, uploading, or transferring the Customer Data for use in conjunction with the Services, Customer is not exceeding any specified entitlement or permitted use or violating applicable license agreements or applicable laws. Customer agrees to indemnify and hold harmless Eurotherm from any third-party claims and any costs and other amounts that Eurotherm may incur or otherwise be subject to because of Customer's breach of this Section 5.1.

**5.2.** Eurotherm shall host Customer Data under the Services for as long as Customer's user account is active as defined in Section 3.

**5.3.** Further expiration of any Services period or termination of any order, Customer Data shall be downloaded by Customer, or otherwise returned, archived or deleted by Eurotherm, in accordance with Section 12.7.

**5.4.** Customer is responsible for any personal information that is included in the Customer Data and End User Data which Customer has created and/or modified and uploaded in the Software Programs in connection with the provision by Customer to End User of Customer Own services. The laws and regulations of some jurisdictions may require the consent of the individuals to which the personal information pertain prior to including their personal information in the Customer Data and the aforesaid End User Data created or modified and uploaded by Customer, and require that such personal information be treated in compliance with such laws and regulations. Customer agrees and undertakes to comply with all applicable laws and regulations, to obtain all necessary consents and make all necessary disclosures before including personal information in the Customer Data and the aforesaid End User Data created or modified and uploaded by Customer and before using such personal information in connection with the Services, including those consents and disclosures related to the collection, use, processing, transfer and disclosure of any personal information.

**5.5.** Customer acknowledges that Customer has reviewed the security features of the Services described in the Services Description and has determined that they meet Customer's security needs including any specific requirement of security applicable in the field of activity of Customer or the End Users for which Customer is acting as service provider. Customer is solely responsible for determining the appropriate procedures and controls regarding security of Customer Data and End User Data of said End Users and for the implementation of any such procedures and controls. If the current security procedures and/or controls offered by Eurotherm with respect to the Services do not meet security requirements of Customer and/or said End users, then Customer should not use the Services. Eurotherm accepts no liability for any corruption, loss or theft of data caused by security breaches resulting from internet connectivity and/or the environment or systems used by Customer or End Users to access and use the Services, including without limitation security breaches resulting from hackers, unlawful entry or unauthorized access, and/or theft.

**5.6.** In performing the Services, Eurotherm will comply with Schneider Electric Privacy Policy which is available at <http://www2.schneider-electric.com/sites/corporate/en/general/legal-information/data-privacy.page> and that is incorporated herein by reference. The aforesaid Privacy Policy is subject to change at Schneider Electric's discretion.

**5.7.** Each End User is responsible for any personal information that is included in the End User Data which it has created and/or modified and uploaded in the Software Programs in connection with the provision by Customer to End User of Customer Own services and/or the use by such End User of End User Capabilities of the Services.

Unless otherwise agreed between Customer and End User under their own responsibility, End User Data shall be owned by the End User to which such End User Data relates irrespective such End User Data are created and/or modified and uploaded in the Software Programs by such End User or by Customer acting as service provider to such End User.

## **6. Limited Warranty; Disclaimer of Warranties.**

**6.1.** EUROTHERM AGREES TO PROVIDE THE SERVICES TO CUSTOMER USING A COMMERCIALY REASONABLE LEVEL OF SKILL AND CARE, AND IN ACCORDANCE WITH THE THEN-CURRENT APPLICABLE SERVICES DESCRIPTION, THE TERMS OF THE CONCERNED ORDER AND ALL RELEVANT APPLICABLE LAWS AND REGULATIONS.

**6.2.** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND EUROTHERM'S ENTIRE LIABILITY FOR A BREACH OF THIS WARRANTY SHALL BE FOR EUROTHERM TO USE COMMERCIALY REASONABLE EFFORTS TO MODIFY THE SERVICES TO SUBSTANTIALLY ACHIEVE THE FUNCTIONALITY DESCRIBED IN THE THEN-CURRENT APPLICABLE SERVICES DESCRIPTION AND IF EUROTHERM IS UNABLE TO RESTORE SUCH FUNCTIONALITY, CUSTOMER SHALL BE ENTITLED TO TERMINATE THE APPLICABLE ORDER AND RECEIVE A PRO-RATED REFUND OF THE FEES PAID IN ADVANCE, IF ANY, TO EUROTHERM UNDER THE APPLICABLE INVOICE FOR THE CORRESPONDING REMAINING PORTION OF THE SERVICES PERIOD.

NOTWITHSTANDING THE FOREGOING, EUROTHERM DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS, OR THAT ALL FAILURE OF THE SERVICES WILL BE CORRECTED.

CUSTOMER UNDERSTANDS THAT THE SERVICES MAY BE INTERRUPTED OR COMPLETELY UNAVAILABLE FOR PERIODS OF TIME DUE TO CERTAIN CAUSES WHICH MAY INCLUDE, WITHOUT LIMITATION, SCHEDULED OR UNSCHEDULED MAINTENANCE WORK. ONLY SCHEDULED MAINTENANCE WORKS WILL GIVE RISE TO PRIOR NOTIFICATION BY

EUROTHERM. UNLESS OTHERWISE AGREED TO IN WRITING BETWEEN EUROTHERM AND CUSTOMER, ANY INTERRUPTION OR UNAVAILABILITY OF THE SERVICES SHALL NOT GIVE RISE TO A REFUND OR CREDIT OF ANY FEES PAID BY CUSTOMER NOR WILL EUROTHERM BE LIABLE FOR ANY CONSEQUENCES DUE TO THE ANY INTERRUPTION OR UNAVAILABILITY OF THE SERVICES DUE TO MAINTENANCE WORKS.

CUSTOMER ACKNOWLEDGES THAT THE DELIVERY OF THE SERVICES UNDER THESE TERMS AND CONDITIONS MAY BE SUBJECT TO LIMITATIONS, DELAYS AND POTENTIAL FAILURE INHERENT IN INTERNET CONNECTIVITY OR OTHER COMMUNICATION NETWORKS AND FACILITIES. EUROTHERM SHALL NOT BE RESPONSIBLE FOR ANY DELAY OR FAILURE IN THE SERVICES OR ANY LOSS OR DAMAGE RESULTING FROM THE AFORESAID LIMITATIONS, DELAYS AND POTENTIAL FAILURE.

**6.3.** EUROTHERM AGREES TO AVAIL END USER CAPABILITIES OF THE SERVICES TO THE END USERS HAVING CREATED THEIR OWN USER ACCOUNT TO THE SERVICES UNDER THE CONDITIONS AND SUBJECT TO THE RESTRICTIONS SET FORTH IN SECTIONS 3 AND 4, AND EUROTHERM DISCLAIMS WITH RESPECT THERETO ANY WARRANTY OR LIABILITY OTHER THAN THOSE EXPRESSLY DEFINED IN THESE TERMS AND CONDITIONS.

**6.4.** TO THE FULLEST EXTENT PERMITTED BY LAW AND WITHOUT PREJUDICE TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW OR OTHERWISE, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

## **7. Charges - Payment Obligations.**

**7.1.** The Services shall be provided to Customer against payment to Eurotherm of either the [monthly/quarterly/annual] service subscription fee or the pay-as-you-go credits as further defined in this Section 7.

**7.2.** The amount of the service subscription fee and the price of pay-as-you-go credits will be made available by Eurotherm to Customer upon submission of any Quotation and shall be set out or otherwise referred to in the corresponding Order of Services.

**7.3.** The service subscription fee remunerates the right for Customer to access to and use the Services. It is charged upon the first subscription by Customer to the Services and thereafter upon the anniversary date of said first subscription. The service subscription fee is not refundable unless otherwise expressly defined in these Terms and Conditions.

**7.4.** Upon payment of the service subscription fee or Customer agreement to make payment for consumed pay-as-you-go credits, Customers will acquire the right to upload and record in the Software Programs the programs and materials obtained by Customer from the use of the Services, such as but not limited to the calibration certificates. Customers who are not charged for the subscription fee will be required to purchase the number of consumed pay-as-you-go credits in arrears and will therefore acquire right to access and use the Services in advance of any payment. Customer who chose to pay for consumed pay-as-you-go credits, will not be required to pay the service subscription fee. Consumed pay-as-you-go credits will be invoiced on a quarterly basis, but only if the minimum number of consumed pay-as-you-go credits is equal to or greater than the minimum billable threshold, as set out in the Quotation. Consumed Pay-as-you-go credits are not refundable unless otherwise expressly defined in these Terms and Conditions.

**7.5.** Should Customer not have accrued sufficient pay-as-you-go credits during the quarterly invoice period to pass the minimum billable threshold, the accrued pay-as-you-go credits will be rolled over into the next quarterly invoice period. Customer will not be able to purchase pay-as-you-go credits in advance, and will only therefore be invoiced for consumed pay-as-you-go credits in arrears.

**7.6.** The service subscription fee may be revised on a yearly basis when Eurotherm shall charge to Customer the service subscription fee upon the annual anniversary date of Customer's first subscription to the Services. The minimum billable threshold and price of the pay-as-you-go credits will be revised once a year but the revision of the pay-as-you-go credits' price may occur on a different date than the date of revision, if any, of the service subscription fee. Eurotherm shall inform Customer in writing and reasonably in advance of any revision of all or part of the Charges. Any price revision of all or part of the Charges shall be applied to (i) Services provided to Customer under any Order placed to Eurotherm or Sale Agents prior to the date of validity of such revision, and (ii) any new Orders placed to Eurotherm or Sale Agents after the date when Customer has been informed of such revision by Eurotherm.

**7.7.** Customer agrees to pay all amounts of Charges set forth on the applicable invoices. All Charges payable to Eurotherm are due within thirty (30) calendar days from the invoice date unless a different payment term is imposed by applicable law or is agreed upon between the Parties.



**7.8.** Payment shall be deemed to have been made when received in cleared funds by Eurotherm on the bank account which details shall be provided by Eurotherm in its invoice. If any sum payable to Eurotherm under any Order is not received by the due date, Eurotherm reserves the right to (i) suspend the provision of the Services and/or (ii) charge interests to the Customer on the amount unpaid at the legal interest rate then in force in Customer's jurisdiction until Eurotherm receives payment of the sum due in full in cleared funds.

**7.9.** All Charges are exclusive of, and Customer shall be responsible for, the collection, remittance and payment of, any and all sales, value-added or other similar taxes, charges, levies, assessments and other fees of any kind imposed by tax, governmental or other authority in respect of the purchase, importation, receipt or use of the Services (Taxes), except for taxes based on the income of Eurotherm or the Sale Agents that shall remain respectively Eurotherm's and Sale Agents' responsibility.

## **8. Limitation of liability.**

**8.1.** IN NO EVENT SHALL EUROTHERM BE LIABLE TO CUSTOMER OR END USER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LIABILITIES, OR ANY LOSS OF REVENUE, PROFITS, GOODWILL, REPUTATION, SAVINGS, DATA, OR DATA USE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE SERVICES OR ANY COMPONENT THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, WARRANTY, INDEMNITY, OR OTHERWISE AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES.

**8.2.** EXCEPT IN CASE OF WILFULL MISCONDUCT OR FRAUDULENT MISREPRESENTATION WHERE NO LIMITATION OF LIABILITY SHALL APPLY, EUROTHERM'S TOTAL LIABILITY TO BOTH CUSTOMER AND END USER ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE SERVICES OR ANY COMPONENT THEREOF, SUCH AS BUT NOT LIMITED TO INABILITY TO USE THE SERVICES OR ANY COMPONENT THEREOF, UNAUTHORIZED ACCESS TO, ALTERATION OF, OR DELETION, DAMAGE, DESTRUCTION OR LOSS OF ANY CONTENT OR DATA, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY, INDEMNITY, OR OTHERWISE, SHALL BE LIMITED TO AND SHALL IN NO EVENT EXCEED THE TOTAL AMOUNTS ACTUALLY PAID TO EUROTHERM BY CUSTOMER FOR THE SERVICES UNDER THE APPLICABLE ORDER WITH RESPECT TO WHICH LIABILITY IS CLAIMED.

**8.3.** EUROTHERM SHALL NOT BE DEEMED TO BE IN BREACH OF ITS DUTIES OR OBLIGATIONS UNDER ANY ORDER AND SHALL NOT BE LIABLE FOR ANY LOSSES, CLAIMS, DAMAGES, EXPENSES PENALTIES, SURCHARGES, INTEREST OR ADDITIONAL MONETARY LIABILITIES ARISING FROM (I) THE SUPPLY BY CUSTOMER, END USER OR ANY OTHER THIRD PARTY OF INCORRECT OR INCOMPLETE INFORMATION, (II) THE FAILURE BY CUSTOMER, END USER OR ANY OTHER THIRD PARTY TO SUPPLY ANY REQUISITE INFORMATION, (III) CUSTOMER'S OR END USER'S FAILURE TO ACT ON EUROTHERM'S ADVICE, (IV) ANY ACT, OMISSION, NON-PERFORMANCE OR DELAY ATTRIBUTABLE TO OR CAUSED BY THE CUSTOMER, ITS AGENTS, SUBCONTRACTORS OR EMPLOYEES, OR END USER, OR (V) ANY OTHER MATTER OUTSIDE THE DIRECT CONTROL OF EUROTHERM.

## **9. Insurance.**

EACH PARTY WILL AT ALL TIMES DURING ANY ORDER, MAINTAIN AT ITS OWN EXPENSE SUFFICIENT INSURANCE FROM REPUTABLE AND SOLVENT INSURANCE COMPANY(IES) TO PROVIDE COVER FOR THE LIABILITIES IT MAY INCUR UNDER THESE TERMS AND CONDITIONS AND IN CONNECTION WITH THE SERVICES.

## **10. Intellectual Property**

Any and all Intellectual Property Rights in the Services and each and every component part thereof shall remain the property of Eurotherm, and save as expressly set out in an Order, no assignment of or licence to any Intellectual Property Rights in the Services or any component part thereof is granted hereunder to Customer, End User or any other third-party.

## **11. Confidentiality.**

**11.1.** Each Party may be given access to confidential information from the other Party in order to perform its obligations under any Order in accordance with these Terms and Conditions. Each of Eurotherm and End User entitled to use End User Capabilities of the Services under these Terms and Conditions may be given access to confidential information from one another in connection with the

creation by End User of its End User user account to the Services and/or its use of End User Capabilities of the Services.

For the purposes of these Terms and Conditions, confidential information" includes but is not limited to any information relating to the business or activities of each of Customer and Eurotherm, its Affiliates or subcontractors, or End Users entitled to use End User Capabilities of the Services, whether such information is disclosed orally or disclosed or accessed in written, electronic or other form of media, and whether or not such information is marked, designated, or otherwise identified as "confidential" or "proprietary".

Customer and End Users entitled to use End User Capabilities of the Services acknowledge that the details of the Services, and the results of any performance of the Services, belong to Eurotherm's confidential information. Eurotherm acknowledges that Customer Data belong to Customer's confidential information, and that End User Data belong to the pertaining End User's confidential information.

Both Parties acknowledge that the terms of any Quotation and any Order as well as any information obtained as a result of any Order, also constitute confidential information of the Party to which such information relates.

**11.2.** Each Party shall hold the other Party's confidential information in confidence during the Services Period and each Party shall not disclose or otherwise make the other Party 's confidential information available to any third party, except that confidential information of the other Party may only be transmitted by the Party receiving it to its own directors, officers and employees and those of its Affiliates who have a need to know such information for the purpose of performing such Party's obligations under any Order in accordance with the seTerms and Conditions and who are bound by or has executed a confidentiality undertaking on terms not less stringent than those of this Section 11.

The receiving Party's obligation to hold in confidence the other Party's confidential information shall be limited to the use of the same degree of care as the receiving Party uses in safeguarding its own confidential information, but in no event with less than a reasonable degree of diligence and care.

Each Party shall neither use the other Party's confidential information for any purpose other than to perform its obligations under any Order in accordance with these Terms and Conditions.

**11.3.** Confidential information shall not include information that, as established by written records or other documentary evidence of the Party receiving it, with the effect that the provisions of this Section 11 shall not apply in respect of any information that:

(i) was in the lawful possession of the Party receiving it prior to its first receipt from the Party disclosing such confidential information as evidenced by written records; or

(ii) is, after its receipt by the receiving Party from the disclosing Party, independently received by the receiving Party in good faith from a third party having the right to disclose the same who did not receive it directly or indirectly from the Party disclosing with restriction on its use as evidenced by written records; or

(iii) is or becomes (through no act or failure to act of the receiving Party) public knowledge as evidenced by printed publication or otherwise; or

(iv) is independently conceived or developed by an employee of the receiving Party without the benefit of access to the confidential information; or

(v) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

**11.4.** Each Party undertakes that, in any case where information needs or is required to be disclosed to the other Party under an Order may lawfully be disclosed only with the prior consent of the third party to whom the information relates, it will expedite obtaining the express prior consent of such third party so as to enable such other Party to perform its obligations under any Order in accordance with these Terms and Conditions.

**11.5.** Neither Party shall make any announcement in relation to or otherwise publicise the content of any Quotation or any Order without the prior written consent of the other Party, save as expressly set out therein. Notwithstanding the foregoing, Customer agrees that Eurotherm can publicise the existence of the contractual relationship created by an Order with Customer, including by mentioning the name of Customer, and prepare a study case or success story upon completion of the Services to Customer and that this study case or success story can be published on the internet and in any printed format and used for marketing purposes; Customer shall provide reasonable co-operation to Eurotherm including the approval by Customer of appropriate copy of any such publication, study case or success story prepared by Eurotherm.

**11.6.** In the event of a breach of its obligations under this Section 11, either Party may be entitled to seek injunctive relief against the other Party as a remedy for such breach.

**11.7.** The obligations in this Section 11 will continue for a period of five (5) years following expiration of any Services Period or termination of any Order, whichever occurs the later.

**11.8.** Upon expiration of any Services Period or termination of any Order, or at any time upon express request from the Party disclosing confidential information, the Party receiving it shall immediately return such confidential information to the disclosing Party, and retain no copy, extract, note or portion

thereof. Eurotherm will however not be liable to return Customer Data to Customer or destroy it, and Customer shall be solely responsible to download from the Services any Customer Data at its discretion as promptly as possible within a commercially reasonable period of time from the date of expiration of the Services Period or termination of the relevant Order.

**11.9.** The provisions of Sections 11.1 to 11.8 above shall apply *mutatis mutandis* to any End User entitled to use End User Capabilities of the Services, except that any reference to Service Periods shall be replaced, as between Eurotherm and End Users, by a reference to the time period during which End User Data shall remain in the Software Program(s) pursuant to Section 3.11.

## **12. Suspension and termination.**

**12.1.** Services shall be provided by Eurotherm for the Services Period, unless earlier suspended or terminated in accordance with these Terms and Conditions. Upon expiration of the Services Period or termination of any Order, Customer will no longer be allowed to access or use the Services.

**12.2.** Without prejudice to any other rights and remedies it may have under these Terms and Conditions, at law or otherwise, Eurotherm reserves the right to suspend the Services (in whole or in part) at any time with immediate effect by written notice to the Customer if :

1. in Eurotherm's reasonable judgment, the Services or any component thereof are about to suffer a threat to security or functionality; or
2. Eurotherm has requested but has not received information from the Customer and/or any third party that is required to enable Eurotherm to perform the Services; or
3. if any sum payable by Customer to Eurotherm under any Order is in arrears for more than thirty (30) days after the due date, other than where the corresponding invoice is the subject of a bona fide dispute between the Customer and Eurotherm; or
4. the Customer violates the terms of these Terms and Conditions and/or any documents expressly incorporated herein; or
5. the Customer has otherwise failed to comply with any of its obligations under any Order for a period of not less than thirty (30) calendar days from the date of receipt of a written notice from Eurotherm detailing such failure.

In any such event of suspension of the Services, the Customer shall remain liable to pay the Charges and any resumption of the Services shall be conditional upon the cause giving rise to the suspension of the Services is being remedied and the Customer complies with such requirements as Eurotherm may reasonably specify in its suspension notice to Customer.

Further, if the Customer shall fail to cure the cause giving rise to the suspension or to effect the remedial action required by Eurotherm within such period of time as Eurotherm shall specify in its suspension notice, Eurotherm may by further notice in writing terminate the Order in accordance with

**12.3.** Either Eurotherm or Customer may by notice in writing immediately terminate an Order at any time, to the extent permitted under applicable law, if the other Party shall:

1. be in material breach of any of the terms of the Order which, in the case of a breach capable of remedy, is not remedied within thirty (30) calendar days from the date of receipt of a written notice from the other Party specifying the breach and requiring its remedy; or
2. be unable to pay its debts or shall enter into liquidation or, as the case may be, shall be declared bankrupt or shall suffer the appointment of any receiver, administrative receiver or like officer, or shall otherwise cease or threaten to cease to carry on business.

**12.4.** Unless otherwise agreed the termination of an Order for any reason shall not operate so as to relieve Eurotherm or Customer from their respective obligations for the provision and use of the Services under any other Order which shall remain in full force and effect.

**12.5.** Upon termination of any Order by either Party, Eurotherm shall cease to provide the Services ordered under said Order and the Customer shall pay to Eurotherm all Charges which, at the date of termination, are due and payable or accrued under the terminated Order according to these Terms and Conditions.

**12.6.** Expiration of any Services Period or termination of any Order shall not prejudice or affect the rights or liabilities of the parties accrued before effective date of such expiration or termination. Provisions of these Terms and Conditions that survive expiration of any Services Period or termination of any Order are those relating to limitation of liability, disclaimers, intellectual property, confidentiality, governing law and settlement of disputes, payment and others which, by their nature, are intended to survive.

Section 12.3 and without liability or refund to Customer of any kind.

**12.7.** Within ninety (90) calendar days from the effective date of expiration of any Services Period or termination of any Order, Customer Data shall be available to the Customer for the latter to download them out of the Services; any such download shall be made by Customer under its sole responsibility and at its own costs without Eurotherm charging fees or other amounts to Customer in connection with such download unless such download causes Eurotherm, the Services or the Software Programs to suffer any loss or damage.

In case the Customer has not downloaded Customer Data from the Services within the aforesaid ninety (90) calendar days, Customer shall within the following ten (10) calendar days send a written instruction to Eurotherm to archive or delete or return the Customer Data, which archival, deletion or return shall be performed by Eurotherm as a separate service subject to reaching agreement with Customer on the terms and conditions for the performance thereof by Eurotherm.

Absent any such written instruction from the Customer within the aforesaid ten (10) calendar days from expiry of the above defined period of ninety (90) calendar days, Eurotherm shall no longer have any obligation to hold or return Customer Data and Eurotherm shall be fully and automatically entitled to delete or otherwise render inaccessible any of the Customer Data that remains in the Services, and Eurotherm shall have no liability whatsoever for doing so pursuant to these Terms and Conditions.

### **13. Indemnification.**

**13.1.** Customer shall defend, indemnify, and hold harmless Eurotherm, its Affiliates and, as the case may be required under applicable law, their respective officers, directors and employees, from and against any and all claims, actions, suits, demands, proceedings, judgments, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising from or related to (i) a claim that any information, design, specification, instruction, software, service, data, hardware, or material furnished by Customer or otherwise used by Customer in connection with the Services infringes or misappropriates any patent, copyright, trade secret and/or any other intellectual property right of any third party; (ii) any violation of these Terms and Conditions by Customer or any Customer Representative, and/or (iii) any failure by Customer to comply with any applicable law and/or regulation, including without limitation any failure of Customer to obtain all necessary consents to upload and/or otherwise use the Customer Data or End User Data in connection with the Services.

**13.2.** Eurotherm will defend Customer, its Affiliates and, as the case may be required under applicable law, their respective officers, directors and employees, against any third party claim that the Software Program(s) and/or the Services infringe a registered patent, registered trademark, or copyright of a third party, or misappropriate a trade secret (to the extent that such misappropriation is not the result of Customer's actions) ("IP Claim"), and will indemnify Customer, its Affiliates and, as the case may be required under applicable law, their respective officers, directors and employees, for any direct losses, damages, expenses, costs and amounts (including without limitation court costs and reasonable legal fees) incurred by or awarded against any of them as a result of such IP Claim by any final decision of a court of competent jurisdiction or agreed to by Eurotherm in settlement. These obligations are given upon the condition that Customer (i) promptly notifies Eurotherm of the IP Claim in writing immediately upon Customer's notification of such IP Claim; (ii) Customer giving Eurotherm sole authority and control of the defense of such IP Claim; and (iii) Customer providing all information and assistance requested by Eurotherm to handle the defense and settlement of such IP Claim. In the event of an IP Claim pursuant to this Section 13.2., Eurotherm may, at its option and own expense, either (i) obtain for Customer and as the case may be applicable its Affiliates the right to continue using the Services; (ii) replace or modify the Software Program(s) and/or the Services to make it non-infringing; or (iii) if subsections (i) and (ii) are not commercially reasonable (as determined by Eurotherm in its sole discretion), terminate the right for Customer to access to and use the Services and refund Customer on a pro-rated basis with any fees pre-paid to Eurotherm for the corresponding unused period of the Services. This Section 13.2. states Customer's sole and exclusive remedy against, and Eurotherm's sole liability to, the Customer for any claim of infringement/misappropriation.

**13.3.** To the extent permitted by law, Eurotherm will have no liability to Customer under Section 13.2. for any IP Claim that arises out of: (a) Customer's use of the Software Program(s) and/or the Services in a manner contrary to the Services Description or any other instruction given to Customer by Eurotherm; (b) any unauthorized use, reproduction, or distribution of the Software Program(s) and/or the Services by Customer; (c) use of the Services in combination with any software or equipment not supplied, specified or otherwise approved by Eurotherm; (d) any modification or alteration of the Software Program(s) and/or the Services by anyone other than Eurotherm without the written approval of Eurotherm; or (e) Customer's use of the Services after notice by Eurotherm or any appropriate authority to Customer of the alleged or actual infringement.

### **14. Export Control.**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Customer agrees to comply fully with all applicable international and national export laws and regulations, including without limitation the U.S. Export Administration Regulations and the Office of Foreign Asset Control as well as end-use and destination restrictions issued by the U.S. and foreign governments, to assure that neither the Services nor any direct product thereof are (i) exported, directly or indirectly, in violation of export laws; or (ii) are intended to be used

for any purposes prohibited by the export laws. Customer agrees that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation.

#### **15. Governing Law - Dispute Resolution – Legal effect.**

**15.1.** These Terms and Conditions, as well as each and every Order of Services, shall be governed by and construed in accordance with the laws of the country (on both federal and state level, when applicable) where Eurotherm has its registered office or principal place of business, to the exclusion of its conflict of laws principles and the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**15.2.** Any dispute arising out of or in connection with these Terms and Conditions or any Order of Services or their performance, validity or enforceability, that are not resolved by good faith attempt of Eurotherm and Customer (or as applicable, Eurotherm and any End User) to reach amicable resolution thereof, shall be submitted to final and exclusive jurisdiction of the courts of the country (on both federal and state level, when applicable) where Eurotherm has its registered office or principal place of business.

**15.3.** Notwithstanding Section 15.2., nothing in these terms and Conditions shall prevent Eurotherm, Customer or End Users from seeking injunctive relief in relation to the protection of its confidential information or Intellectual Property Rights or, as between Eurotherm and Customer, from seeking to recover sums due under an Order of Services.

**15.4.** In some countries as stated on the Services' portal website at <https://www.eurotherm.com/ecostruxure-manufacturing-compliance-advisor/tos/>, different regulations may impose different terms to apply between Eurotherm and Customer and/or End User in relation with the provision and/or the use of the Services or any component thereof. All the terms of these Terms and Conditions that are not amended by the terms defined in such jurisdictions shall apply between Eurotherm and Customer or, as applicable, between Eurotherm and End User, in such countries.

#### **16. Assignment.**

Neither Customer nor End Users may not assign the benefit of these Terms and Conditions or otherwise transfer or sub-contract its rights and/or obligations under an Order without the prior written consent of Eurotherm. Eurotherm may sub-contract all or part of the Services, but at all times shall remain liable to the Customer (or, as applicable, to End Users) under these Terms and Conditions, and to the Customer under the corresponding Orders. Subject to the foregoing, these Terms and Conditions will bind and inure to the benefit of the permitted successors and assigns of Eurotherm, Customer or End Users.

#### **17. Force Majeure.**

**17.1.** Neither Eurotherm nor Customer shall be liable for any delay in performing or failure to perform its obligations under an Order and/or these Terms and Conditions due to any cause beyond its reasonable control which does not relate to that Party's fault or negligence such as but not limited to sabotage, act of vandalism, fire, storm, accumulation of snow or ice, explosion, fault or failure of equipment ("Force Majeure"). Such delay or failure shall not constitute a breach of an Order and/or these Terms and Conditions and the time for performance of the affected obligation will be extended by such period as is reasonable provided that (i) the affected Party has notified the other Party; and (ii) the affected Party promptly takes reasonable steps to overcome and mitigate the effects of the Force Majeure; and (iii) the suspension of the performance is of no greater scope and of no longer duration than is required by the Force Majeure.

**17.2.** In no circumstances shall lack of funds be interpreted as Force Majeure.

**17.3.** Either Party shall be entitled to terminate an Order, or the provision of Services in case the Party affected by Force Majeure would be Eurotherm, in the event the circumstance of Force Majeure continues for a period of 60 calendar days or more.

#### **18. Miscellaneous.**

**18.1.** Eurotherm is an independent contractor. Eurotherm and each of Customer and End Users agree that no partnership, joint venture, or agency relationship exists between Eurotherm and Customer or between Eurotherm and any End User. Eurotherm and each of Customer and End Users will be responsible for paying its own employees, including employment related taxes and insurance. Neither Party is granted any right or authority to assume or create any obligation or responsibility, express or



implied, on behalf of or in the name of the other Party, or to bind the other Party in any matter or thing whatsoever, and the same shall apply *mutatis mutandis* between Eurotherm and End Users.

**18.2.** If a court of competent jurisdiction finds any provision of these Terms and Conditions invalid or unenforceable, that provision of these Terms and Conditions will be amended to achieve as nearly as possible the intent of Eurotherm, and the remainder of these Terms and Conditions will remain in full force and effect. The waiver by either Eurotherm or Customer (or, as applicable, any End User) of a breach of any provision of these Terms and Conditions in one instance shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of these Terms and Conditions.

**18.3.** All notices required to be sent hereunder will be in writing. Any notices to Eurotherm shall be sent to the Eurotherm address shown on the relevant invoice. Eurotherm may give notices applicable to the general customer base for the Services by means of a general notice on the Services' portal website at <https://www.eurotherm.co.uk/ecostruxure-manufacturing-compliance-advisor/ToS/>, and notices specific to Customer by electronic mail to Customer's e-mail address on record in the Eurotherm's account information or by written communication sent by first class mail or pre-paid post to Customer's address on record in Eurotherm's account information.

**18.4.** No third party beneficiary relationships are created by these Terms and Conditions.

**18.5.** These Terms and Conditions constitute the entire agreement between Eurotherm and Customer, and as applicable between Eurotherm and End Users, concerning the subject matter of these Terms and Conditions and supersede all prior or contemporaneous agreements, written or oral, with respect to the same subject matter. These Terms and Conditions may not be modified or amended except through a writing signed by an authorized representative of Eurotherm or as otherwise provided below. Customer and End Users acknowledge and agree that the terms of these Terms and Conditions may be modified or amended by Eurotherm from time to time and that Customer's continued use of the Services or End Users' continued use of End User Capabilities of the Services after a modification or amendment of these Terms and Conditions shall constitute acceptance and agreement to the modified terms.

Any changes or modifications made to these Terms and Conditions by Eurotherm will be posted on the Services' portal website at <https://www.eurotherm.co.uk/ecostruxure-manufacturing-compliance-advisor/ToS/>. Customer should check this link prior to each use of the Services, and End Users should do the same prior to any use of End User Capabilities of the Services, to determine whether changes to these Terms and Conditions have been made by Eurotherm. In the event Eurotherm revises these Terms and Conditions in any material respect and Customer or any End User does not agree with such changes, Customer shall have the right with respect to Customer to terminate any current Order of Services for convenience within ten (10) days after the effective date of such changes, and with respect to such End User to de-activate such End User user account. Upon such termination, Eurotherm shall pay to Customer a prorated refund of any prepaid fees paid by Customer for the Services for the unused portion of the then current term.

**18.6.** It is expressly agreed that the terms of these Terms and Conditions will supersede the terms in any purchasing or other type of document submitted or issued by Customer or any End User, and the terms of any such Customer's or End User's document(s) are expressly rejected.