

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY AND FOR SERVICES RENDERED

### AND MANUFACTURER'S LIMITED REPRESENTATIONS AND WARRANTIES

These Manufacturer's Limited Representations and Warranties, along with General Terms and Conditions of Sale and Delivery and for Services rendered (hereinafter collectively referred to as the "Terms & Conditions") are applicable to all customers (the "Customers" and each, individually, a "Customer") of Evatec NA, Inc., a New Hampshire corporation (the "Company"). Company and Customer are collectively, the "Parties."

#### 1. Terms and Conditions:

1.1. Company shall sell and deliver to Customer, and Customer shall purchase and accept from Company, the products and/or services (hereinafter, the "Products" or "Services") described on or in any confirmed order, agreement, or quotation, or any combination thereof (the "Order"), pursuant to the terms and conditions of the Order and those specified in these Terms & Conditions below, which taken together shall constitute the entire agreement between Company and Customer regarding the Products and/or Services (hereinafter, the "Agreement"). "Products" include but are not limited to machinery ("Equipment"), spare parts, consumables, or retrofits and upgrades thereof.

1.2. No other terms or conditions shall be of any effect unless otherwise specifically agreed to by Company in a separate written agreement duly signed by an officer of the Company. Customer will be deemed to have assented to these Terms & Conditions if any part of the Products or Services have been accepted by the Customer. If Customer finds any term not acceptable, Customer must so notify the Company at once and must reject the Products or Services delivered or rendered under this Agreement. Any additional or different terms or conditions contained in Customer's Order or response hereto shall be deemed objected to by Company and shall be of no effect. No general terms and conditions of a Customer shall at any time form a part of the content of any contract or agreement between the Customer and the Company, even if they are not further expressly rejected by the Company.

1.3. Unless otherwise agreed in writing or described/set forth in the Order form, all quotations for Products or Services are valid for a period of three (3) months from the date of issue. Subsequent modifications in quantity or quality, if such are requested by Customer, may cause a modification of the quoted price. Drawings and samples enclosed with any quotation remain the property of Company. All drawings and samples shall be treated confidentially by Customer and must be returned to Company after usage.

1.4. No Order is binding upon the Company until the earlier of acceptance of the Order in writing, the delivery of the Products or Services to the Customer, or the Services being rendered. Writing shall include transmission by telefax or electronic means. Notwithstanding any prior acceptance of an Order by Company, Company shall have no obligation if the Customer is in breach of any of its obligations hereunder, or any other agreement between the Customer and Company, at the time Company's performance was due.

1.5. All verbal agreements concerning the terms of any Order, including agreements made by telephone, shall have no force and effect unless and until acknowledged by the Company in writing.

1.6. Customer shall bear all costs associated with the cancellation (as set forth in Section 5.1.) or modification of the Order.

1.7. Unless stated otherwise on the Order Form, Services will be rendered based upon Company's then current man-day or hourly rates, which are available to Customer upon request.

#### 2. Technical Documentation

2.1. Sales brochures and catalogues are not binding unless expressly stated otherwise. Specifications in technical documents are only binding as far as they have been expressly guaranteed.

2.2. Company reserves all rights to any technical documentation supplied to Customer. Without prior written consent of Company, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to

Customer. Particularly, Customer is not entitled to reproduce or replicate components or parts thereof and Services specified therein.

#### 3. Confidentiality

3.1. Confidentiality clauses are set forth in a separate mutual confidentiality agreement.

#### 4. Prices:

4.1. Prices are FCA Truebbach, Switzerland per INCOTERMS® 2020, as amended from time to time, unless otherwise agreed in writing or described/set forth in the Order form, and do not include any local, state, municipal or federal taxes, or any required permits.

4.2. The price for the Products or Services shall be Company's current prices in effect from time to time. Prices in catalogues and brochures are not binding unless confirmed in writing by Company in order confirmation.

4.3. Company may, without notice to Customer, increase the price for the Products or Services by the amount of any new or increased tax or duty (excluding franchise, net income and excess profits taxes) which Company may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Products or Services or the materials required for their manufacture or which affects the cost of such materials.

#### 5. Terms of Payment:

5.1. Unless otherwise stated/set forth in the Order form, forty percent (40%) of the amount invoiced shall be due and payable upon placing the purchase Order by Customer and receipt of the respective down-payment invoice from Company, fifty percent (50%) of the amount invoiced shall be due and payable before shipment of the Products from the manufacturing site, ten percent (10%) of the amount invoiced following receipt of the Products the Customer, but in any event not later than ten (10) days following Acceptance, as set forth in Section 8. Customer shall make payments by check or wire transfer to the account indicated on the invoice without a cash discount or offset and the Company shall not be required to incur any expense to receive timely payment in full as required by this Agreement.

5.2. If the Customer fails to make payment on or before the date required, Customer shall pay interest to the Company at the rate of two percent (2%) per month or such lesser amount permitted by law. The specification or charging of interest shall not be deemed an agreement to extend credit.

5.3. If Customer fails to observe these Terms & Conditions or the terms of any other agreements between Company and Customer, or if Customer becomes insolvent, all balances then due and owing to the Company shall become due immediately, notwithstanding any agreed upon payment periods. Any Orders that have been confirmed by the Company, but not yet filled, shall in such cases become cancelable at the sole discretion of Company.

5.4. Company shall have the right to invoice any Services rendered immediately thereafter and Customer shall pay for such Services within two (2) weeks upon receipt of an invoice.

5.5. Customer does not have any right to set-off.

#### 6. Delivery Terms:

6.1. Title to and risk of loss for the Products shall pass to Customer at FCA Truebbach, Switzerland, as per INCOTERMS® 2020, as amended from time to time, or – if different INCOTERMS® are agreed to in writing or described/set forth on the Order form – at such INCOTERMS® location.

6.2. Customer shall pay all taxes, including any applicable VAT, sales, personal property, *ad valorem*, and other taxes, duties, levies, or charges imposed by any governmental authority, irrespective of whether applicable law makes such items the responsibility of the buyer or seller, but excluding any taxes payable by Company with respect to its net income.

6.3. The Products shall be packaged as stated in Company's Order. Customer shall be exclusively responsible for, and shall provide Company with, any information necessary to comply with special labeling requirements applicable at Customer's place of business.

6.4. Company shall use its reasonable efforts to deliver the Products to Customer by the agreed upon date, however, time shall not be of the essence. Except in cases of Company's willful misconduct or gross negligence, Company shall not be liable to Customer for delays in delivery or damage to the Products while in transit, irrespective of whether Company or Customer determined the mode of transportation. 8.5.

6.5. In cases of deliveries of Products manufactured or Services to Customer's specification ("Special Orders") and unless otherwise agreed to in writing, all tools, models, plans, blueprints or other devices and/or documents used and/or developed by Company in order to fulfill any Order or Special Order are the property of the Company, even if the cost of development and/or manufacturing of such tools, models, plans, blueprints or other devices and/or documents was wholly or partially borne by the Customer.

## 7. Cancellation & Termination:

7.1. Company reserves the absolute right to refuse cancellation of Orders by Customer. However in the event that Company accepts Customer's request to cancel an Order, Company is entitled to cancellation fees as follows: cancellation before 50% of the agreed upon lead time has elapsed: 50% of the total Order price; cancellation after 50% of the agreed upon lead time but up to 75% of such period has elapsed: 80% of the total Order price; cancellation after 75% of the agreed upon lead time has elapsed until the date of shipment from Company location: 100% of the total Order price. Company will retain full ownership and title to all Products prior to cancellation. Any intellectual property that is being mutually developed by and between the Company and the Customer as part of an Order shall also solely belong to Company if Company accepts the Customers' Order cancellation prior to Product shipment.

7.2. Company shall have the right to terminate the Agreement, if Customer commits a material breach of the Order, by Customer's action or inaction, and if such Material Breach has not been cured within fourteen (14) days upon receipt of written notice thereof by Seller. "Material Breach" shall include – but not be limited to – default of Customer's payments obligations.

7.3. In addition to any other remedies that Company may have, Company may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (i) has not otherwise performed or complied with any terms under this Agreement, in whole or in part; (ii) becomes insolvent, (iii) calls a meeting of its creditors, or (iv) makes any assignment for the benefit of creditors, or if (v) a bankruptcy, insolvency, reorganization, receivership or reorganization proceeding shall be commenced by or against Customer.

7.4. Upon such termination, the Parties recognize and agree that Company has full title and ownership of the Products, and that Company shall have the right to retain all payments made by Customer for the Products or Services up to the effective date of termination.

## 8. Acceptance:

8.1. Products are considered accepted by Customer on receipt and for "Equipment" - after the installation of the Equipment by the Company or Company's authorized representatives if the installation is an integral part of the Order ("Acceptance").

8.2. Installation: Unless otherwise agreed upon the Equipment shall be installed by and at the risk and expense of Customer. In the event that Company is requested to perform such installation in the Order form, Company's responsibility shall be limited to exercising that degree of skill customary in the industry for installations of Equipment. Customer shall remain responsible for all other aspects of the work including preparing the site and facilities, rigging of the Equipment, and compliance with any federal, state, local laws, rules, and/or regulations.

8.3. Alternatively, for Equipment only, the parties may mutually agree to perform a final test run of the Equipment ("Acceptance Test") that will take place at Customer's site. In this case, the Acceptance of the Equipment, as defined below, shall take place within ten (10) days upon delivery and installation, or at another time to be mutually agreed upon. Acceptance under Section 8.2. is accomplished if the Equipment proves to be fully operational with regard to its main technical functions and specifications, as defined in the Order Form.

8.4. If the Acceptance Test of the Equipment has been successfully completed, Customer shall confirm Acceptance to Company in the form of an "Acceptance Certificate," which shall set forth – as a minimum – the serial number of the Equipment, date and time of the Acceptance Test, its duration and the technical personnel that had attended.

8.5. If the Equipment is being accepted with technical reservations, which shall be the case if the main technical functions and specifications of the Equipment, as specified in the Order, are at hand, but the Equipment has certain not critical deviations from the specification and scope as defined in the Order, such reservations shall be specified by Company and Customer in sufficient technical detail in a document to be entitled as "Punch List," and be attached to the Acceptance Certificate. Customer and Company shall thereupon mutually agree on a roadmap to resolve the reservations and periodically assess the progress of the Punch List.

8.6. All materials needed for the Acceptance Test shall be provided by Customer at no extra charge to Company. Both parties shall bear the costs for their own personnel involved in the Acceptance Test.

8.7. The Equipment shall be deemed Accepted in either of the following cases:

8.7.1. If Customer refuses Company to gain access to the Equipment for the purpose of resolving the issues set forth in the Punch List;

8.7.2. If Customer delays the shipment, installation or Acceptance of the Equipment for more than two (2) months for reasons solely attributable to Customer;

8.7.3. If Customer declines the Acceptance of the Equipment without any reasonable grounds;

8.7.4. If Customer uses the Equipment for the production of its Products, including but not limited to, trial or qualification runs, or if any Products thus produced are being offered for sale by Customer.

8.7.5. If Customer operates the Equipment without the Company's personnel being present at site.

## 9. Manufacturer's Limited Representations and Warranties:

9.1. All Products are manufactured by Company's affiliated companies and their subcontractors and are sold only with the limited manufacturer's warranties of the Products, as set forth below.

9.2. Subject to the manufacturer's warranties, Company warrants solely to the original purchaser of the Products that for the Warranty Period (as defined below), the Products will be free from defects in materials and workmanship under normal use and will conform to Company's published specifications of the Products. Notwithstanding the foregoing, Company retains its right to deviate from its published specifications due to the latest innovations and improvements in function, design, and materials of the Products. The foregoing warranty is subject to the proper transportation, installation and use of the Products do not include defects due to normal wear and tear or deterioration. The foregoing warranty shall not apply in the event that the Products have been modified, repaired and serviced by another party than Company.

9.3. Upon delivery, Customer shall immediately inspect the Products for conformity and visible defects. Customer shall give Company immediate written notice of any non-conformities or visible defects regarding the Products and contact Company in writing concerning return or exchange, as the case may be.

9.4. Customer shall notify Company in writing of any defects of the Products. Company's sole obligation under the foregoing warranty is, at Company's discretion, to replace or repair the Product or to refund the purchase price. Any replaced or exchanged Products shall be subject to the warranty set forth in Section 9.1., following the replacement or exchange. If Company has received notification from Customer, and no defects of the Product could be discovered, Customer shall bear the costs that Company incurred as a result of the notice.

9.5. With respect to orders made to custom, any defects of the Products caused by Customer's specifications are excluded from the warranty set forth in Section 9.1.

9.6. Unless otherwise stated in the Order form, the "Warranty Period" starts with passing of the title of ownership, as set forth in Section 6.1., and (a) for Equipment continues to be in effect for twelve (12) months after Acceptance, but in any event not longer than fifteen (15) months from the date of shipment from Company's overseas manufacturing facilities, (b) for spare parts for six (6) months after shipment from Company's and/or Company's affiliates locations. Wear and tear parts are not included in the Warranty.

9.7. Company does not authorize any person or party to assume or create for it any other obligation or liability in connection with the Products except as set forth herein.

9.8. Unless otherwise stated/set forth in the Order form, the Products have been manufactured in accordance with the applicable European regulations (CE), and under consideration of certain North American industry standards. Customer is responsible for compliance with any local rules and regulations at the site at which the Product is being operated.

9.9. All requests and notices under this Warranty shall be directed to Company.

9.10. Company represents and warrants to Customer that it shall perform the Services using personnel of required skill, adequately trained, experience and qualifications and in a professional and workmanlike manner in accordance with current recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

9.11. Company shall not be liable for a breach of the warranty set forth in Section 9.10. unless Customer gives written notice of the defective Services, reasonably described, to Company within seven (7) days of the time when Customer discovers or ought to have discovered that the Services were defective.

9.12. Subject to Section 9.11, Company shall, in its sole discretion, either: repair or re-perform such Services (or the defective part); or credit or refund the price of such Services at the pro rata contract rate.

9.13. THE WARRANTY SET FORTH IN SECTION 9.1 AND SECTION 9.10. IS MADE IN LIEU OF ALL OTHER WARRANTIES (WHETHER EXPRESS OR IMPLIED), RIGHTS OR CONDITIONS, AND CUSTOMER ACKNOWLEDGES THAT EXCEPT FOR SUCH LIMITED WARRANTY, THE SERVICES AND THE PRODUCTS ARE PROVIDED "AS IS." COMPANY SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE, OR OTHERWISE.

#### **10. Security Interest:**

10.1. As security for the timely payment and performance of all Customer's indebtedness to Company, and upon request of Company, Customer hereby agrees to grant to the Company a first priority security interest in the Products before delivery thereof to Customer ("Security Interest") pursuant to the terms and conditions set forth in the Uniform Commercial Code (UCC). Such Security Interest shall remain in force until payment in full of the entire purchase price for the Products has been received by Company.

10.2. Customer hereby expressly authorizes Company to file a UCC Financing Statement to reflect Company's Security Interest in the Products. Customer shall cooperate in the respective filings and registrations which are required according to applicable local laws for an effective protection of Company's claim for payment of the Products, including, without limitation, any required documentation duly filed under the UCC in all jurisdictions as may be necessary to perfect Company's security interest and lien in the Products or Services.

10.3. As security for the timely payment and performance of all Customer's obligations to Company, Customer hereby further agrees that it will transfer and assign all rights, title, and interest it has against the insurance of any carrier selected by Customer for the delivery of the Products, in the event the Products are damaged in whole or in part during transit.

#### **11. Limitation of Liability:**

11.1. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL, OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2. NOTWITHSTANDING THE TERMS AND CONDITIONS SET FORTH IN SECTION 11.1., COMPANY'S LIABILITY – WHETHER BASED UPON CONTRACT, TORT, EQUITY, NEGLIGENCE OR ANY OTHER LEGAL CONCEPT – SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF CUSTOMER'S ORDER, AS DESCRIBED ON THE ORDER FORM, FOR THE PRODUCTS SOLD OR THE SERVICES RENDERED. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND CUSTOMER, THAT COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

11.3. IN JURISDICTIONS THAT LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY, OR OTHER JURISDICTION.

#### **12. Software Rights:**

12.1. Software programs will fully remain the property of Company, and may not be disclosed, copied, or otherwise duplicated apart from a single back-up copy for customer's internal safety purposes.

12.2. Customer is granted a non-exclusive, non-assignable right to use the software, including any related documentation and updates, for any other purpose than that of operating the Product, for which such software is intended. Typically, no source programs or codes are provided.

#### **13. Export/Import Compliance:**

13.1. Customer acknowledges that Company is required to comply with applicable export/import laws and regulations relating to the sale, export, import, transfer, assignment, disposal, and use of the Products and/or Services, including any export/import license requirements. Customer agrees that Products and/or Services will not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned, or otherwise disposed of in a manner which will result in non-compliance with any export/import laws and regulations. Company continuing performance hereunder is conditioned on compliance with such export/import laws and regulations at all times. Customer shall indemnify and hold Company harmless for any breach or omission of this Section 13.

#### **14. Intellectual Property:**

14.1. Customer acknowledges Company and its parent company are the owners of the brands, trademarks, designs, patents, copyrights, and other intellectual property relating to Company's Products, and that no right or license is conveyed by Company to Customer to manufacture, have manufactured, modify, import or copy such products. Customer agrees that it will reference brands of Company or its parent company only in connection with the use or sale of Products delivered to Customer hereunder, and not in connection with the sale of any other product, except as separately authorized by Company in writing.

#### **15. Force Majeure:**

15.1. Neither Party shall be liable to the other Party for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake,

explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.

15.2. When the event operating to excuse performance by either Party shall cease, this Agreement shall continue in full force until all deliveries have been completed.

**16. Indemnity:**

16.1. Customer agrees to defend, indemnify and hold Company (and its agents, representatives, employees, officers, related companies, successors and assigns, and its customers) harmless from all claims, demands, actions, damages, and liabilities (including attorney's fees and consequential and incidental damages) arising out of any injury (including death) to any person or damage to any property in any way connected with any act or omission of Customer, its agents, employees, or subcontractors.

**17. Miscellaneous Terms:**

17.1. All disputes arising out of or related to this Agreement, including tort claims, shall be governed by and construed in accordance with the laws of the state of New York, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than New York. The application of the Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

17.2. Any controversy or claim arising out of this Agreement, or the negotiation or breach thereof, shall be exclusively settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA"). The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in New York, New York, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than two hundred fifty thousand dollars (\$250,000), before a single arbitrator mutually agreeable to Company and Customer, or if no agreement can be reached, then selected by the AAA, or (ii) if the amount in dispute is two hundred fifty thousand dollars (\$250,000) or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate.

17.3. If any provision contained in this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one Party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the Parties' respective rights and obligations hereunder.

17.4. In the event of a violation or threatened violation of Company's proprietary rights, Company shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement to temporary or permanent injunctive relief enjoining such act or threatened act. The Parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Company would suffer irreparable harm.

17.5. The Parties hereto are independent contractors and nothing in this Agreement will be construed as creating a joint venture, employment, or agency relationship between the Parties.

17.6. This Agreement shall apply to all sales of the Products or Services rendered to Customer.

17.7. This Agreement including any Order attached hereto, contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements between them, whether oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement is binding upon the Parties hereto, their successors and permitted assigns.

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