



## GENERAL TERMS & CONDITIONS FOR SUPPLY OF WORKS (2022 VERSION)

### 1. Scope and Application of these Terms and Conditions

- 1.1. The present terms and conditions ("Terms and Conditions") govern the contractual relationship between the Dabico entity mentioned in the quotation ("Dabico") on one hand, and the customer ("Customer" and together with Dabico the "Parties") on the other hand, in cases where Dabico provides products (including capital spare parts) and associated services such as installation and commissioning ("the Works"). "Affiliates" shall mean, with respect to any person, any other person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first person.
- 1.2. Individually negotiated contract terms shall prevail over the present Terms and Conditions provided they have been set out in writing (including email or telefax) and confirmed by Dabico.
- 1.3. All orders submitted by the Customer shall be subject to these Terms and Conditions, regardless of any provisions to the contrary set out in that Order. All other terms set out or referred to in any Order (including any standard terms of the Customer) are hereby expressly rejected and disappplied and shall have no force or effect.

### 2. Order Process

- 2.1. The specific products and/or services to be supplied by Dabico for the Works ("Products", "Services") are defined in specific purchase documents ("Orders"). Any additional technical specifications ("Specifications") shall be specified in details by the Customer in the relevant Order.
- 2.2. Orders by Customer shall only be binding on Dabico once and to the extent they have been confirmed by Dabico in writing including by email ("Order Confirmation"). The Order Confirmation shall include among others, scheduled service start and ending date.
- 2.3. Should Customer fail to reject the Order Confirmation within 72 hours from the date of its receipt (by any means including email), the Order Confirmation shall be deemed accepted and a binding

agreement between Dabico and the Customer shall come into force.

- 2.4. The Order Confirmation prevails and supersedes Customer's Order, in case of conflict the Order Confirmation shall prevail. The agreement between the Customer and Dabico shall comprise these Terms and Conditions and the terms of the Order Confirmation.

- 2.5. Information in Dabico's catalogues, brochures, price lists and other sales materials is preliminary and non-binding. Dabico shall be free to accept or reject orders by Customer, regardless of previous transactions.

### 3. Drawings and Technical Documents

- 3.1. If drawings are required, all drawings and technical documents relating to the Products submitted by one party to the other shall remain the property of the submitting party (including the applicable Dabico Affiliate).
- 3.2. Drawings, technical documents or other technical information received by one party (including the applicable Dabico Affiliate) shall not, without the written consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the written consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party (other than Dabico Affiliates).
- 3.3. Should Customer's approval of the drawings, technical specifications and/or other technical documents be required, it shall do within 5 days from their receipt ("Customer Documents"), otherwise Customer's Documents will be deemed accepted.

### 4. Acceptance Tests

- 4.1. Acceptance testing can only be requested to the extent provided in the quotation. Unless otherwise agreed, acceptance testing will be completed according to Dabico's process and success criteria. If Customer approvals are required, these shall not be unreasonably withheld. In the event of any acceptance test delays caused by the Customer, the original project delivery time agreed by the Parties shall be revised accordingly and in no event shall such Customer delays result in a penalty or other loss for Dabico. Customer's payment obligations shall remain the same regardless such delays. Customer shall be given a minimum of one (1) week notice prior to commencement of acceptance testing. Should Customer not be able to attend the acceptance test, the acceptance test report shall be sent to the Customer and shall be deemed to have been

accepted as accurate. If applicable, factory acceptance testing will take part at the Product's place of manufacture unless mutually agreed otherwise. If site acceptance testing is included in the quotation, the Products may not be used for commercial purposes until the acceptance certificate is signed.

### 5. Order Suspension, Cancellation or Modification

- 5.1. Customer may suspend the Order for convenience with 3 weeks prior written notice. Dabico shall receive compensation for all costs incurred and work performed up until the suspension date, including any other expenses incurred arising from the suspension. Should the Work be suspended for more than 1 month, Dabico reserves the right to terminate the Order.
- 5.2. Customer is entitled to terminate any confirmed Order by providing no less than 20 days' notice of termination in writing. Termination shall take effect on the expiry of such period. In such circumstances, Dabico shall be entitled to and the Customer shall pay (a) that pro rata proportion of the total Order price which reflects the percentage of completion of the Work (including the Products) as at the date of termination together with (b) any costs incurred or committed by Dabico as a result of or in connection with such termination (including, without limitation, Dabico's suppliers cancellation fees if applicable), in each case as documented by Dabico.
- 5.3. Modifications or changes of confirmed Orders (whether technical or commercial ) are only binding if they are accepted by Dabico in writing. Agreed modifications will be reflected in a change order ("Change Order"), to be signed by Dabico and specifying, among others among others revised price, increased costs (if any) and revised delivery date. For the avoidance of doubt, Dabico shall not be under any obligation to accept any modifications or changes of confirmed Orders.

### 6. Delivery / Inspection on Delivery / Transfer of Title

- 6.1. Delivery of Products purchased by Customer shall be made to the place of delivery indicated in Dabico's order confirmation. Unless otherwise agreed, deliveries shall be made EXW (Dabico premises ) in accordance with Incoterms® 2020. Risk of loss or damage to the Products shall pass to Customer at the time of delivery.
- 6.2. To the extent that installation and/or commissioning services are provided by Dabico in relation with the supply of Products, such Products shall be deemed to have been accepted by Customer when the installation or commissioning has been completed. Upon completion of the Works, Customer shall inspect the relevant



Works and notify Dabico within 7 days of any defects otherwise it will be deemed accepted after 7 days.

- 6.3. Upon receipt of the Products, customer shall examine the Products for any visible defects in quantity or quality and promptly notify Dabico thereof. Shall the customer fail to notify visible defects within 30 days from receipt, the Products will be deemed accepted.
- 6.4. Unless otherwise agreed in writing, time of delivery shall not be deemed to be of the essence. Except in the event of gross negligence or willful misconduct, Dabico shall not be held liable for any delay in supplying Products or executing the Work. The liability limitations pursuant to Clause 13 are fully reserved. In case of a Force Majeure event, Customer's default or any delay not attributable to Dabico, the time for performance shall be extended accordingly.
- 6.5. Title to Products shall only pass to Customer upon payment of the entire purchase price.
- 6.6. Should Customer not be able to take delivery of the Products on the delivery date, Dabico shall charge Customer a sum equal to 0.5% of the Order value per week of delay in addition to storage costs and any other costs Dabico may incur. Dabico shall not be liable in any manner whatsoever for any damages or loss of the Products in case Customer fails to take delivery of the goods on the delivery date.

#### **7. Customer's Support Obligations**

- 7.1. Customer is responsible for ensuring the accuracy of the terms of any Order (including but not limited to technical requirements and specification).
- 7.2. Dabico shall in no event be liable if Products or Services do not comply with technical or commercial requirements not confirmed in writing by Dabico, or if the Works are delayed due to Customer's failure to communicate such technical and commercial requirements in the Order. In such event the delivery date will be revised accordingly.
- 7.3. Customer shall be responsible for ensuring at its own expense that any preparatory measures required from its side for the performance of the Works. This includes but is not limited to: granting access to Customer's site ("Site") and site-preparedness, where Products and/or Services have to be completed on Site, as well as related approvals and regulatory permits.

- 7.4. Customer shall be responsible for prevention of accidents and diseases on Site, as well as for informing Dabico's personnel about relevant health and safety rules. It shall notify Dabico in writing of the name of the responsible safety officer. Dabico reserves the right to suspend the Works if health and safety conditions are not met or if its employees are not adequately informed. In the case of accident or injury to Dabico's employees, Customer shall grant Dabico free access to the accident site to ascertain the relevant cause(s).
- 7.5. Customer shall ensure that the Works can start and progress according to the Dabico Order Confirmation or, if applicable, the last signed Change Order. If Dabico is for reasons attributable to Customer prevented from carrying out the Works, any resulting costs shall be borne and fully indemnified by Customer on Dabico's request.

#### **8. Prices and Payment Terms**

- 8.1. All prices quoted by Dabico are exclusive of taxes, levies, duties (including in particular VAT and customs duties), freight charges, insurance, costs related to health and safety aspects and Site preparation and travel expenses in relation to the Works. Unless otherwise agreed in writing, all such taxes, levies, duties, charges and costs shall be borne by Customer. Any third-party costs settled by Dabico on behalf of Customer shall be invoiced by Dabico together with the Products or Services to which they relate, subject to a handling fee of 15%, and shall be fully reimbursed by Customer.
- 8.2. The Order price is subject to the Works being carried out without any suspension or delay. Costs which are not foreseen in the Order (such as costs related to Change Orders, waiting time, etc.) shall be at Customer's expense.
- 8.3. Unless otherwise agreed in writing, an advance payment of 15% of the Order price shall be made by Customer within 30 calendar days after confirmation of the Order by Dabico. Dabico shall invoice Customer based on progress of Works and, unless otherwise agreed in writing, invoices shall be due and payable within 30 calendar days of the invoice date. Deductions from the invoice amount, whether by way of set-off, counterclaim, discount or otherwise, are not permissible.

#### **9. Payment Default**

- 9.1. Shall Customer fails to respect the agreed payment term, Customer shall automatically, i.e. without further notice, be deemed to be in default, and Dabico shall be entitled to interest on

all outstanding amounts at a rate of 5% per annum as of the due date.

- 9.2. Shall Customer (i) be in default with any due amounts owed to Dabico, or (ii) becomes bankrupt, enters into liquidation, receivership or any other composition scheme with creditors, Dabico shall have the right to cancel any open Orders and terminate any contracts with Customer, discontinue the Works, demand the return of any Products, for which payment has not yet been received in full, and demand additional damages and interest.

#### **10. Handling of the Products**

- 10.1. Customer shall ensure that the Products are used only for the purposes and in the manner for which they were designed and supplied by Dabico.
- 10.2. Customer shall take every measures to ensure that all persons likely to use or come into contact with the Products receive appropriate training and instructions, that any relevant safe working practices are adopted and complied with, that warning notices displayed on or provided with the Products are not removed or obscured, and that the Products are only used in accordance with Dabico's instructions and warnings.
- 10.3. In the event that any claims should be brought against Dabico by third parties due to Customer's non-compliance with this Clause 10, Customer shall fully indemnify and hold harmless Dabico against any such claims.

#### **11. Execution of the Order**

- 11.1. Dabico's employees shall be exclusively instructed by Dabico. Customer shall not require Dabico's personnel to supply products or services not specified in the Order, unless Dabico has given its consent, and a Change Order has been issued. Dabico shall not be bound by any representations made by its employees on Site unless such representations are confirmed in writing by an authorized representative of Dabico.
- 11.2. The Products and Services shall be supplied and/or installed in accordance with Dabico's Order Confirmation. Unless otherwise agreed in writing, time of completion shall not be deemed to be of the essence. The liability limitations pursuant to Clause 13 shall apply. In case of Force Majeure events, Customer's default or any delay not attributable to Dabico (including Customer's failure to approve technical documents), the time for performance shall be extended accordingly.



## 12. Dabico's Warranty

- 12.1. Dabico warrants that Products shall be manufactured and Services shall be performed with reasonable skill and care, and in accordance with the Specifications provided by or approved in writing by Dabico. Any other express or implied warranties or representations, including in particular any warranty or representation of merchantability, fit for purpose, or warranty regarding the interaction of Products or Services with equipment, software or systems of third parties, are expressly excluded, unless otherwise mutually agreed by the Parties.
- 12.2. Dabico's liability in respect of any Products or Services supplied in connection with the Works is limited to a warranty period ("**Warranty Period**") of either (i) twelve (12) months after the date of completed commissioning of the Products or (ii) eighteen (18) months after notification of completion of the factory acceptance test, whichever expires sooner. Any non-conformity discovered by Customer during the Warranty Period shall promptly be notified to Dabico in writing.
- 12.3. Any non-conformity discovered by Customer during the Warranty Period shall promptly be notified to Dabico in writing. Subject to such notice, Products which are not in conformity with the agreed specifications may be returned to Dabico at Customer's cost. In such case, Dabico shall examine the Product returned by the Customer within a reasonable period of time. If Dabico determines, in its sole discretion, that the relevant Product falls under the warranty pursuant to this Clause 12, Dabico shall, at its choice, replace or repair the Product, at no cost for Customer. In this case, Dabico shall also bear the costs for returning the Products to the Customer.
- 12.4. In case of Services, Dabico's liability during the Warranty Period shall be limited to the re-performance of those Services, subject to Dabico's assessment that the Services were not performed with professional skill and care. Customer shall have no other rights or remedies with respect to any defective Products or Services, whether under contract law, in tort or otherwise.
- 12.5. Customer's warranty rights are subject to Dabico's determination that (a) Dabico was promptly notified in writing of the defect within the Warranty Period, (b) Dabico's examination discloses to its reasonable satisfaction that Services were not performed with reasonable skill and care or (c) that Products are defective, that the defect was not caused by misuse, abuse, neglect, alteration, improper storage, transportation or handling, or an unforeseeable external factor, (d) for the entire Warranty Period, the Products

and/or underlying systems have been operated and maintained in accordance with Dabico operation and maintenance manual; and (e) Customer has not attempted to repair the Product itself or to have it repaired by any third party.

- 12.6 Dabico's warranty is also conditional on the equipment being connected to and regularly sharing data with Dabico's Industrial IoT platform Dabico Connect. Furthermore, any on-site intervention by Dabico staff to solve issues that could have been diagnosed and resolved remotely, will be charged at normal services rates and are expressly excluded from this warranty.

## 13. Limitation of Liability

- 13.1. Unless otherwise required under mandatory provisions of Swiss law, under these Terms and Conditions, tort (including negligence), or strict liability, Dabico's total liability with respect to any Products or Works including for tort, strict liability or otherwise shall be limited in the aggregate to the total price paid by the Customer.
- 13.2. Under no circumstances shall Dabico be liable for any consequential or indirect damages, including but not limited to loss of profits, loss of opportunity, loss of anticipated savings, loss of data, reputational harm, and costs of any regulatory fines or penalties.

## 14. Intellectual Property Rights / Data

- 14.1. Customer acknowledges that all intellectual property rights relating to Products and Services, in particular all Know-How (as defined below), patents, rights in inventions (whether patentable or not), rights in Confidential Information, rights in designs, copyrights and related rights, trademark rights (including passing-off and unfair competition rights, and including trademark rights in trade names, logos, trade dress and domain names) and database rights, in each case whether or not registered and including applications (and rights to apply) for registration, and all rights and forms of protection of a similar nature or having equivalent effect subsisting from time to time in any jurisdiction worldwide, relating to Products or Work and/or the underlying technology and processes for the development, manufacturing or provision of Products and Work (collectively "**Intellectual Property Rights**"), shall at all times remain the property of Dabico and/or, as the case may be, of Dabico's Affiliates, and that Customer does not acquire any right, title or interest in such rights by virtue of purchasing Products or Services from Dabico. Know-How shall mean all know-how, knowledge, expertise, works of

authorship, prototypes, technology, information, patterns, plans, designs, research, research data, trade secrets, drawings, unpatented blue prints, flow sheets, equipment or parts lists, descriptions, instructions, manuals, data, records, procedures, materials or tools relating to the Products or any and all improvements or to the design, development, manufacture, use or commercial application of the Products.

- 14.2. Dabico's Intellectual Property Rights extend to data generated in connection with the use of Products, which are made available to Dabico ("**Data**"). Customer acknowledges and agrees that Dabico will collect, process, analyze and use such Data for internal purposes, in particular for further developing and improving Dabico's Products and Services. Limitations to this principle, or specific arrangements concerning Data generated by Customer may from time to time be agreed in the Order.
- 14.3. In the event that Customer should become aware that Dabico's Intellectual Property Rights may have been infringed by third parties, or that an infringement is imminent, it shall inform Dabico thereof as quickly as possible and shall assist Dabico in taking appropriate measures.
- 14.4. Customer shall notify Dabico promptly if it should receive notice of any demand, claim, suit or proceeding alleging that Products or Services of Dabico infringe any intellectual property rights of a third party.

## 15. Personal Data Collection and Data Processing

- 15.1. Dabico shall collect and process personal data only and to the extent required under these Terms and Conditions, and/or agreements made further to them.
- 15.2. Dabico shall ensure that the collection and processing of personal data occurs in compliance with all applicable data protection standards.

## 16. Confidentiality

- 16.1. Confidential information of Dabico regarding Products and Services and/or the underlying technologies and software, or regarding Dabico's terms of collaboration with Customer, or regarding operational, financial, Intellectual Property Rights or other business information relating to Dabico and/or its affiliates ("**Confidential Information**") shall be kept confidential by Customer, and shall not be disclosed to any third parties without Dabico's prior written agreement, unless specifically required by a



final judgment or order by a competent governmental authority, court, tribunal, or regulatory body.

16.2. Customer shall refrain from reverse engineering the Confidential Information (or have it reverse engineered by any third-party) by any means, including but not limited to disassembly and mapping, and shall not use the information got from reverse engineering itself or disclose to any third party for use.

16.3. The obligations pursuant to this Clause 16 shall not apply to any Confidential Information which (i) has entered the public domain other than as a result of Customer's breach of its confidentiality obligations, (ii) has been lawfully received by Customer from a third party on an unrestricted basis, (iii) was known to Customer prior to disclosure by Dabico, or (iv) was independently developed by Customer.

#### 17. Suspension by Dabico

17.1. Shall Customer fail to make any payment on the due date or fail to perform on time any of its other obligations under the Order or any Change Orders (including but not limited to site-preparedness), Dabico shall be entitled to suspend the Works until the failure is remedied. The time for completion of the Works shall be extended accordingly.

17.2. Any costs incurred by Dabico (including demobilization and mobilization costs) due to Customer's failure shall be reimbursed by Customer. If performance of the Order is suspended under this Clause 17 for more than two months, Dabico shall be entitled, at any time thereafter during the continued suspension, to terminate the Order by written notice.

#### 18. Force Majeure

18.1. Dabico shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, pandemic disease, quarantine measures, government orders, strikes, lock-outs, accidents, riots, war or civil war, whether declared or not, fire, breakdown of plant or machinery, shortage or unavailability of materials or labour force from suppliers or embargo measures or trade sanctions ("Force Majeure Event").

18.2. The Party affected by a potential Force Majeure Event shall notify the other Party no later than five (5) calendar days after information about the potential Force Majeure Event has become available and liaise in order to determine adequate mitigation

measures. Under all circumstances, Customer shall pay to Dabico all expenses incurred by Dabico until the date of Force Majeure Event.

#### 19. Permits and Licenses / Compliance with Laws

19.1. Any supply under these Terms and Conditions shall be subject to any laws and other restrictions on the export, re-export or import of any technology licensed under these Terms and Conditions as may be imposed from time to time by the European Economic Area ("EEA"), Switzerland, the United States and / or other country governments or their agencies ("Authorities"). The Customer and its Affiliates shall not export, re-export or import, directly or indirectly, any such technology licensed from or provided by Dabico and its Affiliates to any country / territory / sector / entity or individual for which the Authorities require an export or import licence or other governmental authorization at the time of such export or import, without first obtaining such applicable and valid licence or authorization. The Customer shall require that all third parties receiving such technology from the it or its Affiliates comply with this requirement.

19.2. The performance by either of the Parties of an obligation under these Terms and Conditions, which requires an export or import licence or other government authorization, and any other obligation affected shall, to the extent it is necessary, automatically be suspended until such licence or authorization is given. If such licence or authorization is not granted within a reasonable time or is revoked by the competent Authorities, Dabico shall be entitled to terminate the Order, and the Customer shall indemnify, defend and hold harmless the Dabico Group on demand for any loss or damage which Dabico and its Affiliates may suffer or incur as a result of such termination.

19.3. Unless agreed in writing by Dabico, the Products are provided on strict condition that they shall not be supplied to any country / territory / sector / entity or individual, whether directly or indirectly, for any application where such supply or application is prohibited by any law or regulation binding or effective in that country, in the EEA, Switzerland, the United States and / or the country of manufacture (the "**Affected Products & Technology**"). The Affected Products and Technologies may only be supplied when there is a valid licence or authorization issued by competent authorities for such purposes and a prior written authorization issued by Dabico.

19.4. Whenever Dabico so requests in writing, the Customer shall provide Dabico with an end-use /end user / final destination certificate, which shall be on such terms and in such form as Dabico requires and signed by the end-user confirming that it shall comply with Clause 19.3. Until such time Dabico has

received such end-user/end user / final destination certificate, Dabico shall be entitled to suspend the performance under these Terms and Conditions. The payment obligations to Dabico shall remain the same regardless of such delays.

19.5. The end use /end user / final destination certificate shall form part of these Terms and Conditions. Customer agrees and accepts that it shall be liable for any acts or omissions in relation to the end use, end user and final destination of the Products (including (without limit) the acts or omissions of the Customer, its Affiliates and/or any third party in breach of any of the provisions set out in Clause 19.3 and further agrees that such a breach shall be deemed a fundamental breach of these Terms and Conditions by the Customer, and shall entitle Dabico, among other available legal remedies, to terminate the Order by giving written notice to the Customer.

19.6. Dabico may at its reasonable discretion, without breaching these Terms and Conditions, delay, withhold or refuse the provision of Products in any territory or upon any site deemed by Dabico to be unsafe or unfit for Dabico's personnel, upon written notice of which the Parties may agree to reschedule or remove said portion of the Products from the performance of the Order.

19.7. Customer undertakes to at all times fully comply with all applicable laws and regulations including, but not limited to customs regulations, anti-bribery laws, trade sanctions, environmental laws, transport regulations, health and safety regulations and insurance requirements.

#### 20. Termination for Cause

20.1. Each party shall be entitled to terminate the Order or any Change Orders at any time in the event that the other party fails to perform any of its obligations and/or does not take the satisfactory steps to remedy its failure within fifteen days following the receipt of a notice in writing from the non-defaulting party to the defaulting party requiring the remedy of the breach.

20.2. Within thirty calendar days of the issuance by either party of a notice of termination, Customer shall pay to Dabico shall be entitled to receive (a) that pro rata proportion of the total Order price which reflects the percentage of completion of the Work (including the Products) as at the date of termination together with (b) any costs incurred or committed by Dabico as a result of or in connection with such termination (including, without limitation, Dabico's suppliers cancellation fees if applicable), in each case as documented by Dabico.



- 20.3 In the event of a termination of the Order, for whatever reasons, the provisions of this Clause 20 as well as of Clauses 13, 14, 15, 16, 19, 21, 22, 23 and 25 shall continue to remain in force.
- 21. Currency Fluctuation**
- Should there be a currency fluctuation between the date of this purchase order and the delivery date of more than 2% the Customer and the Supplier shall agree on a price adjustment based on the exchange conversion rate quoted by Reuters on the delivery date
- 22. Purchase Price Adjustment**
- Dabico reserves its right to revise the price quoted in case of any rise in the cost of raw materials or components used (provided that such increase will be properly documented).
- 23. Marketing**
- Customer acknowledges and agrees that Dabico may disclose Customer's name or logo in presentation or marketing materials which Dabico uses as part of its ordinary course of business.
- 24. Severability**
- Each of the provisions of these Terms and Conditions is severable. If any term or provision of these Terms and Conditions is held to be invalid or unenforceable in any respect but would be valid and enforceable if deleted in part or reduced in application, such provision shall apply with such deletion or modification as may be necessary to make it valid and enforceable. Without prejudice to the foregoing, if any provision is held to be invalid or unenforceable, such provision shall to that extent be deemed not to form part of these Terms and Conditions, but the validity or enforceability of the remaining terms and provisions hereof shall not be in any way affected or impaired.
- 25. Applicable Law and Jurisdiction**
- 25.1 This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with English law.
- 25.2 In the event of a dispute arising out of or relating to this agreement, including any question regarding its existence, validity or termination, the parties shall first seek settlement of that dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.
- 25.3 If the dispute is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.
- 25.4 The language to be used in the mediation and in the arbitration shall be English. The governing law of the contract shall be the substantive law of England and Wales. In any arbitration commenced pursuant to this clause, (i) the number of arbitrators shall be three; and (ii) the seat, or legal place, of arbitration shall be London, England.