

# QUALITY ALONG THE SUPPLY CHAIN

**GENERAL TERMS AND CONDITIONS**

**FOR CONTAINMENT SERVICES**

**V2021**

## GENERAL TERMS & CONDITIONS

### I. INTERPRETATION

#### 1. Definitions

In these General Terms and Conditions, the terms in bold type have the following meanings ascribed to them:

“**Affiliate**” means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by, or under common control with such person or entity; provided that TRIGO shall not be considered an Affiliate of the Customer. **TRIGO Affiliates** are subsidiaries belonging to TRIGO Group. For purposes of this definition, “**control**,” when used with respect to any person or entity, means the power to direct the management and policies of such person or entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms “**controlling**” and “**controlled**” have correlative meanings.

“**Applicable Law**” means any domestic or foreign, federal, state or local statute, law (including common law), regulation, regulatory guideline or policy, rule or other statement or pronouncement having the force of law, or any consent, exemption, approval or license of any governmental authority having jurisdiction, whether or not having the force of law.

“**Assignment**” means any and all related Services that may be performed for a Customer for any particular project as described in one or more Work Authorizations issued to said Customer.

“**Confidential Information**” all information regardless of the object (technical, industrial, financial, commercial, or other), nature (know-how, methods, processes, technical details and installation, or other), format or medium (written or printed, CD Rom, USB memory stick, samples, drawings, or other), mode of transmission (written, oral, including computer networks and/or electronic mail) and origin which will be communicated between the Parties during or in connection with the execution of the Service, which includes, among other things, information relating to products, clients, business accounts, financial and contractual agreements or other transactional or business agreements, reports, recommendations, notices or tests, program source codes or object codes, and development plans.

**“Contract”** means and includes any written agreement entered into by the Parties, provided it is signed by authorized representatives of both Parties and pertains to the Services; any Work Authorization(s) issued describing Services to be performed as part of an Assignment; any applicable quotation; and all documents and attachments referenced in any of the foregoing, together with these GTC. Upon Customer’s acceptance, as described in Section II.1, these documents become the Parties’ Contract. The Contract specifically excludes any purchase orders issued by Customer pertaining to the Services as well as any terms and conditions of Customer.

**“Customer”** means the person and/or entity for whom TRIGO is performing the Services.

**“Final Customer”** means the customer of the Customer, which is either a manufacturer (i.e., a car or an aeronautic manufacturer) or a supplier to a manufacturer.

**“Force Majeure Event”** means an event or occurrence which is beyond the affected Party’s reasonable control and occurs without its fault or negligence, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents or delays the performance by such affected Party of its obligations hereunder, including by way of example and not limitation an act of God or of the public enemy; civil war; insurrection or riot; act of war; act of government; act of terrorism; fire; flood; storm; explosion; earthquake; unusually severe weather; pandemic; epidemic or quarantine restriction; strike or organized labor trouble (causing cessation, slowdown or interruption of work); or failure in electrical power, heat, light, air conditioning or telecommunication equipment.

**“GDPR”** means the General Data Protection Regulation which is in force since 2018 May 25.

**“GTC”** means the General Terms & Conditions set out in this document.

**“Host”** means the person or entity that owns the facility (the Customer or a third party) where the Services are performed.

**“Party”** or **“Parties”** means individually and collectively TRIGO and/or the Customer.

**“Personal Data”** means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**“TRIGO”** means TRIGO Quality Solutions Canada or TRIGO Quality Solutions U.S. or any TRIGO Affiliates. For the avoidance of doubt, any

change to the corporate and/or legal names of said entities will not affect the validity or enforceability of any term or condition contained herein.

“**TRIGO Indemnified Parties**” has the meaning ascribed to it in Section VI.3.

“**Services**” means those sorting, inspection, rework, containment, and related engineering services provided to Customers as part of an Assignment, that are the subject of the Contract, and that are described in a Work Authorization. Services include, but are not limited to, the Services listed in Section 2.

“**Subject Defect**” means the imperfection or non-conformity in the parts that are the subject of the Services, and for which the Services have been requested. The Subject Defect is present prior to the commencement of the Services and is identified in the Contract and the Work Authorization. For clarity, this definition does not include, and TRIGO is not responsible for sorting or otherwise identifying, any other previously existing imperfection or non-conformity that may be present in the parts that are the subject of the Services but that is not identified in the Contract or Work Authorization.

“**Work Authorization**” means the Contract document which describes the Services, the place of the supply of the Services, the price of the Services, the address to which invoices should be sent, and related information. TRIGO may issue one or more Work Authorizations as part of an Assignment.

## II. CONTRACT ACCEPTANCE AND APPLICATION

### 1. Acceptance

Customer accepts the GTC and Work Authorization by doing any of the following (a) signing the Work Authorization or quotation (if any); (b) otherwise accepting or acknowledging the Work Authorization or quotation (if any) in writing, including by email communication; (c) performing under the Work Authorization; (d) requesting, asking, or otherwise authorizing TRIGO in writing to commence the Services described in the Work Authorization or quotation (if any), including by email communication; or (e) any other conduct that recognizes the existence of a contract with respect to the Services. Upon acceptance, the GTC, Work Authorization, quotation (if any), any documents referenced in any of the foregoing, as well as any additional written agreements signed by authorized representatives of both Parties and pertaining to the Services, becomes the “Contract.” The Contract is limited to the Customer’s acceptance of these GTC exclusively.

### 2. Application

These GTC shall apply to all Services performed by TRIGO and shall control over any terms purportedly imposed by the Customer or the Customer's documents, which are specifically and expressly rejected by TRIGO. Any variation to these GTC shall be inapplicable unless agreed in a signed writing by both Parties.

In the event of any ambiguity, inconsistency or contradiction between the Contract documents, the order of precedence between them shall be as follows:

- i. Any written agreement pertaining to the Services and signed by authorized representatives of both Parties;
- ii. The Work Authorization;
- iii. The quotation (if any);
- iv. The GTC; and
- v. The Technical and Commercial Proposal (if any).

### **III. PERFORMANCE**

#### **1. Commencement of Services**

TRIGO shall commence the Services upon Customer's signature on a Work Authorization or quotation, or when Customer otherwise accepts the Contract in any manner described in Section II.1.

Customer acknowledges that once TRIGO has started Services, TRIGO shall continue the sorting at Customer's expense until the Customer presents the Final Customer's written approval to stop the Services. The Parties expressly acknowledge that the root cause of any issue that necessitated the Services is not relevant to the Contract between the Parties. Therefore, if Customer holds a third party liable for said root cause, this does not affect Customer's obligation to compensate TRIGO for the Services performed.

#### **2. Services and Service Standards**

The Services to be provided by TRIGO are documented on the Work Authorization and/or quotation, subject to variation by written agreement signed by authorized representatives of the Parties from time to time. Those Services may include (i) assisting the Customer in sorting and containment of parts, (ii) assisting the Customer in developing, monitoring, through reports and audits, and continuously improving levels of quality, (iii) assisting the Customer in mitigating and resolving non-conformities (to a customary commercial standard applicable in comparable situations) for which TRIGO has been engaged and documented in the Work Authorization or quotation, (iv) such other services as are related or incidental to the foregoing. Additional duties not included in the Services shall not be performed without prior written consent of TRIGO Operations Management.

TRIGO commitments and service level and standards are based in particular on, among other things, the number and nature of Subject Defects as well as the Services identified in the Contract. Therefore, should the quantity/nature of Subject Defects and/or the number of parts subject to the Services change, the Parties will negotiate an amendment to the Contract as described in Section III.9.

Both Parties recognize that despite high quality Services provided by TRIGO, one or more Subject Defects may not be identified and treated, in particular when a visual inspection is requested, due to human factor. The liability of TRIGO cannot be incurred in case of Subject Defects not detected as long as TRIGO meets its obligations unless a special agreed defect level is covered in the Contract. The Customer is aware that such an agreement may have an effect on total cost.

### **3. TRIGO's Personnel Standards and Covenants**

TRIGO shall provide or arrange for qualified, licensed or permitted individuals to perform the Services, as determined necessary in TRIGO's sole discretion. The number of individuals necessary to timely perform the Services on any given day will be determined by TRIGO in its sole discretion. TRIGO shall adhere to and cause its sub-contractors to adhere to all Applicable Laws.

### **4. Personnel Control and Resources**

TRIGO has the full discretion to and is responsible for selecting the resources that it will utilize for the performance of the Services. Further, TRIGO has the full discretion to determine the composition of the team of personnel necessary to perform the Services and otherwise meet its obligations under the Contract. TRIGO maintains at all times responsibility for and disciplinary authority over its personnel. The Services shall be executed under the direction and control of TRIGO, and the Customer shall have no supervisory or other authority over the personnel, employees, representatives or providers of TRIGO. TRIGO shall also provide the administrative, accounting and social management of its personnel even when the Services are performed at the premises of the Customer or the Host, as the case may be. TRIGO shall use its own software tools to perform the Services.

### **5. Operating Covenants of TRIGO**

TRIGO covenants and agrees that it will:

- i. Provide the Services and exercise any authority delegated to it under the Contract in a commercially reasonable manner, efficiently, in compliance with Applicable Laws, and consistent with operating procedures imposed by the Customer or the Host.
- ii. Use its commercially reasonable best efforts to manage the performance of the Services in a professional and workmanlike manner that protects the business and reputation of the Customer.

- iii. Notify the Customer of defects in any parts of which TRIGO becomes aware during the performance of the Services.

## **6. Operating Covenants of the Customer and the Host**

The Customer covenants and agrees it will:

- i. Ensure that sufficient information, instructions, documents and access necessary to perform the Services are provided to TRIGO at least 24 hours prior to the commencement of the Services.
- ii. Procure for TRIGO all necessary access to the premises where the Services shall be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the Services.
- iii. Ensure that the parts which have to be subject to the Services to be supplied by TRIGO, are available in due time, in order to ensure continuity of Services.
- iv. Supply, if required, any special means, including specific equipment and contact persons necessary for the performance of the Services.
- v. Inform TRIGO in advance of any known hazards or dangers, actual or potential, associated with the Services, in whole or in part, or which TRIGO personnel may come into contact with in performance of the Services, including without limitation, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons; to this extent, the Customer shall be liable for all and any damage arising out of these hazards or dangers.
- vi. Obtain an exhaustive description and/or validation from the Final Customer of the working instructions for TRIGO, whose obligations shall remain strictly limited to the performance of the Services following said validated instructions. Working instructions given by the Customer without written validation by Final Customer therefore do not result in any obligation to TRIGO personnel. Sorting speed and/or quantity estimates provided prior to the performance of the Services – whether provided by the Customer or TRIGO itself – are considered to be strictly indicative and thus without any guarantees and/or liabilities whatsoever.
- vii. Ensure that all changes in the Work Authorization are requested through an agreed-upon communication channel between properly appointed persons, according to an agreed-upon contact matrix.

- viii. Provide or cause to be provided to TRIGO the right to inspect any allegedly defective part(s) that is alleged to have been overlooked by TRIGO in its performance of the Services.
- ix. Purchase insurance to cover all parts, dunnage, tools, measuring and operational equipment owned by the Customer.
- x. Fully comply with all Applicable Laws associated with the workplace including, but not limited to, all applicable health, safety, equal employment opportunity and anti-harassment laws.
- xi. Exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

If the Customer is not the Host, the Customer will, at TRIGO's behest

- i. Obtain from the Host authorization and procurement of all necessary access for TRIGO's personnel, auditors and external auditors (especially for the purpose of certification) to the premises where the Services are performed in order to conduct audits, subject to a prior notice from TRIGO in writing no later than five (5) calendar days prior to the audit.
- ii. Secure for TRIGO access to the Host's premises to inspect any allegedly defective part(s).
- iii. Ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of Services and will not rely, in this respect, on TRIGO's advice whether required or not.
- iv. Inform and alert the Host that TRIGO will intervene on the site.

## **7. Code of Conduct and Parties and Host's Compliance with Applicable Laws**

The Parties agree to comply with all terms and obligations stated in TRIGO Code of Conduct attached hereto. The Customer shall and shall cause all of its affiliated companies, officers, employees, representatives, subcontractors, and agents (the "**Customer's Representatives**") to comply with said Code of Conduct.

The Parties shall ensure their compliance and the compliance of each Assignment with all Applicable Laws, including those dealing with health, safety, labor and environment. In particular, the Customer shall comply and shall cause all Customer's Representatives to comply with Applicable Law in the area of preventing corruption. The Customer and the Customer's Representatives shall not, in particular, directly or indirectly promise, offer, or grant any public official or any other person any undue advantage so that such person shall, in violation of their duties, do or abstain from doing something.



The Customer warrants that it keeps accurate accounts in accordance with its country's generally accepted accounting principles and in which all financial flows generated by this agreement are recorded.

If TRIGO has reason to believe that the Customer is not complying with the obligations contained in these clauses, TRIGO may suspend performance of the Services until the Customer provides reasonable proof that it has not committed or is not on the verge of committing a breach. TRIGO shall not under any circumstances be liable for any damage or loss caused to the Customer by said suspension.

If the Customer or the Customer's Representatives do not comply with the provisions of this article, TRIGO shall be entitled to terminate the Contract with immediate effect as set forth in Section V.4.

## **8. Prevention of Performance**

TRIGO shall not be responsible nor liable for a failure to achieve a level of quality target defined in the Contract to the extent that such failure is attributable in whole or in part to an act or failure to act by the Customer or the Host. Notwithstanding the foregoing TRIGO shall promptly notify the Customer in writing if TRIGO is being prevented from achieving any of its level of quality commitments as a result of the Customer's or Host's action or failure to act.

## **9. Change in Services**

The Customer may request changes to the Services covered by the Contract. Likewise, the nature of the Subject Defect or quantity of parts subject to the Services may change after commencement. In the event such changes would, if implemented, impact the performance, cost, timing or manner of providing the Services, the Parties hereby agree to negotiate an amendment to the Contract in good faith and memorialize it in writing, which writing shall be required before TRIGO is required to implement any such changes. Such changes, as mutually agreed to by the Parties, shall take effect on the next invoicing cycle from the date any amendment is fully agreed to by the Parties.

## **10. TRIGO's Right to Subcontract**

TRIGO shall have the right from time to time and at any time to subcontract performance of the Services, in whole or in part, provided that any subcontractor engaged by TRIGO possesses the necessary skill, qualification and expertise to provide the Services so delegated in accordance with the Contract. To the extent that TRIGO does subcontract the performance of the Services, (i) TRIGO shall not be relieved of any of its obligations under the Contract as a result of such subcontracting arrangement, (ii) the terms of the subcontract agreement must provide for indemnification in favor of the Customer for any damage or loss resulting from the Services provided by the subcontractor, and (iii) if the proposed subcontract provides for the delegation of a substantial portion of the Services, the subcontractor

must execute an acknowledgement in favor of the Customer that, upon a default by TRIGO under the Contract, the Customer shall be entitled to assume and enforce the terms of such subcontract without having to make whole any outstanding obligations of TRIGO.

#### **11. Cooperation**

Each Party undertakes to cooperate and deliver to the other Party all documents necessary in order to perform the Services.

#### **12. TRIGO Property**

All working papers, notes, memoranda, reports, data in machine-readable format or otherwise, and documentation which have been made or prepared by TRIGO in connection with the Contract shall remain the property of TRIGO. TRIGO shall be allowed to use the knowledge and know-how it acquires in connection with the Contract, as well as any report, documentation, plans, drawings, software and other information that it develops with any other parties. However, any report or other material provided to the Customer by TRIGO in connection with the Contract is for the Customer's internal use only and the Customer cannot show or provide that report or material to a third party, or refer to it in communications with a third party, without the prior written consent of TRIGO.

#### **13. Excusable Non-Performance**

If a Force Majeure Event renders either Party wholly or partially unable to perform its obligations under the Contract (other than payment obligations), the affected Party shall be excused from its performance but only to the extent that such performance is impaired by the Force Majeure Event and provided only that the affected Party (i) promptly gives notice to the unaffected Party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The excusal of performance shall be of no greater scope than the nature of the Force Majeure Event requires and for only so long as the Force Majeure Event continues. No obligations of either Party which arose before the occurrence of the Force Majeure Event and which could and should have been fully performed before the Force Majeure Event shall be excused under this Section as a result of it. The burden of proof shall be on the Party asserting excusal from performance due to a Force Majeure Event.

### **IV. PAYMENT**

#### **1. Price**

The price for the Services under the Contract, including any discount to

the price, will be set forth in the Work Authorization. Hourly based contracts will be calculated based on actual time rounded to the next 15 minute increment. Except as described in Section IV.3 with respect to late payments and in Section III.9 with respect to Changes in Services, the price in the Work Authorization is not subject to change for any reason, unless the Parties agree otherwise in a writing signed by authorized representatives of each.

TRIGO is entitled to full compensation for any waiting time (e.g. in the event the parts to be sorted are not timely present at the location of performance of the Services) and/or excess quantity sorted (e.g. parts to be sorted exceed the anticipated number).

The prices of the Services are exclusive of local taxes (and any other tax on the supply of goods or services), which shall be paid in addition by Customer at the rate and in the manner required by Applicable Law. Invoices are payable within thirty (30) calendar days from the date of invoice. The Customer agrees that payment will be rendered in the currency of the country where TRIGO performed the Services. TRIGO will not be responsible for wire transfer charges necessary for the Customer to pay any invoice.

The Customer agrees that payment will be rendered in the currency of the country where TRIGO performed the service unless otherwise noted on the invoice. TRIGO will not be responsible for wire transfer charges necessary for the Customer to pay the invoice.

## 1. **Work Summaries**

TRIGO will make electronically available to its Customer summaries of hours worked by TRIGO (the “**Work Summary**”). The frequency to which such summaries are communicated will be determined by TRIGO and the Customer during contract acceptance. The Customer agrees to review the Work Summary upon issuance, and to provide TRIGO with any objections to a given Work Summary, or any information contained therein, twenty-four (24) hours after it is made available to the Customer. Such objections must be made in writing. The Customer waives any objection to a Work Summary, or the information contained therein, that is not provided to TRIGO in accordance with this Section. All hours worked and Services provided that are not objected to in accordance with this Section will appear on TRIGO’s invoices and are considered due and owing as described in Section IV.3.

## 2. **Payment Terms**

TRIGO shall invoice the Customer weekly, or within one week of the end of the assignment, or at month-end, whichever is earlier, with payment due thirty (30) calendar days after receipt of any invoice, unless TRIGO and the Customer agree in writing, including by email communication, to a different invoicing frequency and payments terms. Payments shall be made exclusively by electronic transfer, unless otherwise agreed in writing with TRIGO. If the Customer fails to timely pay the invoice in whole or in part as required by this Section IV.3, and if said Customer is receiving discounted pricing for Services, TRIGO

may opt to raise the price of the Services from the discounted pricing to full price for the remainder of the Contract. Interest shall be payable on any late payments calculated at 1.5% per month.

If Customer requires a purchase order number on its invoice, Customer will provide this no later than five (5) business days after receipt of its first Work Summary. If Customer does not provide a purchase order number, then TRIGO is entitled to invoice Customer without a purchase order number. Customer acknowledges that TRIGO's use of a purchase order number does not imply acceptance of any terms and conditions on said purchase order which are deemed to be null and void in any case.

Nothing in this Section IV.3 shall limit TRIGO's right to suspend or terminate the Contract for non-payment as set forth in Section V.

### **3. No Setoff**

The Customer understands and agrees that it is not entitled to make any setoff or recoupment against payment due and owing to TRIGO, as reflected in TRIGO's invoices, or withhold any payment to TRIGO because of a claimed setoff. Any attempt to setoff, or failure to pay to TRIGO the entire amount reflected in an invoice, will be considered a Customer non-payment for which TRIGO may charge and collect interest, suspend performance, or terminate the Contract, as described herein, in addition to any other rights and remedies TRIGO may have under the Contract, in equity and at law.

### **4. Minimum Hours per person per shift**

If, during a regularly scheduled shift, it is deemed by TRIGO, at TRIGO's sole discretion, that TRIGO personnel performing the Services are not required to stay until the end of the shift, the Customer will be invoiced for a minimum of four (4) hours, or the actual number of hours worked, whichever is more.

### **5. Minimum Invoice Amount**

The minimum amount charged per invoice is set at \$195 dollars.

### **6. Paid Rest Breaks**

The Parties understand and agree that TRIGO's employment policies require paid rest breaks, including for TRIGO personnel performing the Services at the Customer's or the Host's location.

## **V. TERMINATION**

### **1. Term**

The Contract term begins when the Customer accepts the Contract in any manner described in Section II.1 and ends when the Services

described in the Work Authorization have been completed or the Contract is terminated as described in this Section V.

## **2. Suspension**

TRIGO may suspend performance of the Services, in whole or in part, without any liability to the Customer and without prior notice in the event the Customer fails to pay any invoice, in whole or in part. TRIGO will resume performance once the Customer has paid TRIGO all amounts due and owing as of the date of suspension, as reflected on TRIGO's invoice(s).

## **3. Customer Termination for Breach**

The Customer may terminate the Contract, in whole or in part, if TRIGO repudiates, breaches, threatens to breach or otherwise fails to perform the Services in accordance with the Contract, provided that notice of such alleged breach or failure is provided in writing to TRIGO ("**Notice of Need to Cure**") and TRIGO fails to rectify the breach or failure within twenty-five (25) calendar days of receipt of the Notice of Need to Cure (the "**Cure Period**"). The Notice of Need to Cure must specify in reasonable detail the alleged breach or failure of TRIGO. After the expiration of the Cure Period, the Customer may terminate the Contract, in whole or in part, by providing TRIGO with a written termination notice. If the Customer terminates the Contract under this Section, TRIGO shall be compensated for the Services completed up until the date of termination, as set forth in the termination notice.

## **4. TRIGO Termination for Non-Payment or Insolvency**

TRIGO may terminate the Contract, in whole or in part, immediately and without notice or liability to the Customer in the event the Customer fails to pay any invoice, in whole or in part, or it otherwise becomes clear to TRIGO, in its sole discretion, that the Customer will not pay an invoice in whole or in part. Likewise, TRIGO may terminate the Contract, in whole or in part, immediately and without any liability to the Customer, in the event of (a) Customer's insolvency or financial difficulty; (b) the filing of voluntary or involuntary petition in bankruptcy by or against Customer; (c) the appointment of a receiver or trustee for Customer; (d) the execution of an assignment for the benefit of creditors by Customer; or (e) Customer's need for accommodations from TRIGO, financial or otherwise, to meet its obligations under the Contract. If TRIGO terminates the Contract under this Section, TRIGO shall be compensated for the Services completed up until the date of termination, in addition to any damages permitted by law.

## **5. TRIGO Termination for All Other Customer Breaches**

TRIGO may terminate the Contract, in whole or in part, without any liability to the Customer, in the event that Customer repudiates, breaches, threatens to breach, or otherwise fails to perform its obligations under the Contract, provided such repudiation, breach,

threat or failure relates to a Customer obligation that is unrelated to timely payment. In the event of termination under this Section V.5, TRIGO must provide Customer with ten (10) calendar days' written notice of termination. If TRIGO terminates the Contract under this Section, TRIGO shall be compensated for the Services completed up until the date of termination, as set forth in the termination notice, in addition to any damages permitted by law.

## **6. Survival**

The entirety of these GTC shall survive termination of Contract or completion of the Services.

# **VI. INDEMNIFICATION AND LIMITATIONS ON LIABILITY**

## **1. Disclaimer of Warranties**

Customer acknowledges and agrees that TRIGO is neither the manufacturer nor supplier of parts, supplies or equipment that are the subject of the Contract or that TRIGO may come into contact with in its performance under the Contract (collectively, the "**Parts**"). Accordingly, TRIGO DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE PARTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. TRIGO will not be liable to the Customer, Final Customer, or the Parts' end-user(s) for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Parts including, without limitation, any lost profits, indirect, special or consequential damages and/or personal injury or death.

In addition, because delivery schedules, sort criteria, and Subject Defect rates change frequently, TRIGO gives no warranty as to the number of Parts handled per hour or per day under the Contract. Further, TRIGO gives no warranty that it will detect or correct all defects that exist with respect to the Parts that are the subject of the Contract. The Customer is responsible for promptly notifying TRIGO of any suspected detection failure in TRIGO's performance of the Contract, and agrees to provide TRIGO with a sample of the defective Part and all information necessary to allow tracing of the Subject Defect including, but not limited to, Part, serial, lot numbers, and manufacturing date.

## **2. Limitations of Liability**

In no event will TRIGO be liable for anticipated profits, interest, penalties or incidental, consequential, punitive or exemplary damages or liabilities in connection with the Contract, whether for its alleged breach, property damage, personal injury or death. To the extent permitted by Applicable Law, TRIGO's liability arising under the Contract is limited to the amount the Customer actually paid for the

Services giving rise to any alleged liability. This cap on damages applies regardless of whether the liability is based on an alleged breach of the Contract or otherwise.

In the event that the Contract includes multiple engagements, the Parties expressly understand and agree that TRIGO's liability shall be limited to the amount actually paid to TRIGO for the particular engagement with respect to which any liability is alleged and not for the total amount the Customer is required to pay to TRIGO for the multiple engagements encompassed by the Contract.

### **3. Indemnification by the Customer**

The Customer shall indemnify, defend and hold harmless TRIGO, its officers, directors, employees, agents, Affiliates and representatives (the "**TRIGO Indemnified Parties**") from and against any and all costs, fees, penalties, expenses, damages, attorneys' fees and all other liabilities whatsoever ("**Losses**") caused by Customer's breach of the Contract. The Customer likewise agrees to indemnify, defend and hold harmless any one of the TRIGO Indemnified Parties for all Losses arising out of any third party claim or allegation which arises from or relates to the performance of the Contract or that are in any way connected with any negligence, fraud, acts or omissions, or willful misconduct of the Customer or anyone acting on the Customer's behalf or under the Customer's instructions (other than TRIGO and its suppliers, subcontractors, vendors, and their subcontractors and vendors and any employee or agent of the foregoing).

## **VII. WORKPLACE SAFETY AND ACCESS**

### **1. Workplace Safety**

The Customer and Host shall solely be responsibility to replace and repair the premises, all equipment on the premises, and any associated access or egress routes on the premises used by TRIGO's personnel, agents, suppliers, or invitees and otherwise maintain the same in a safe condition at all times and in a manner to ensure compliance with all health, sanitary, safety and other Applicable Laws having jurisdiction over the Customer or the Host. Furthermore, if TRIGO's operating costs relating to compliance with Applicable Laws, including those relating to workers' compensation and workplace safety, increase as a result of any act or omission of the Customer, Host, or any person acting on their behalf, the Customer shall reimburse TRIGO for such increase for the term of the Contract.

### **2. Access to Premises**

The Customer shall allow TRIGO all such access to the Customer or Host's premises as is reasonably required to perform the Services or to inspect the parts. Authorization and security procedures on the premises shall be in accordance with the policies of the Customer

and/or the Host, as the case may be. TRIGO shall use such rights of access only for the purpose of providing the Services or otherwise inspecting the parts.

## **VIII. CONFIDENTIALITY, DATA SHARING AND NON-SOLICITATION**

### **1. Confidentiality**

- i. During the term of the Contract, the Parties may obtain **Confidential Information** relating to the other Party, including by way of example and not limitation, information relating to products, clients, business accounts, financial and contractual agreements or other transactional or business agreements, reports, recommendations, notices or tests, program source codes or object codes, and development plans.
- ii. Neither Party will disclose any Confidential Information except to its employees (or, in the case of TRIGO, its sub-contractors, if any) who need to know such information in order to provide the Services. Further, neither Party will disclose any Confidential Information to a third party without obtaining the prior written consent of the Party to whom the Confidential Information belongs.
- iii. Confidential Information does not include information that: (i) was known to the public at the time of its disclosure; (ii) was published or had become part of the public domain following its disclosure to the recipient Party, without the recipient Party having made the public disclosure; (iii) was already known to the recipient Party before disclosure and the information had not been the subject of a non-disclosure agreement; (iv) had been disclosed after it had been obtained from a third party who was authorized to make the disclosure; (v) had been developed independently by the recipient Party without using the Confidential Information of the disclosing Party.
- iv. The recipient Party may disclose Confidential Information if it is legally obligated to do so pursuant to any request, order or requirement of a court, administrative agency or other governmental agency, provided, however that it promptly informs the disclosing Party in writing of such a request, order or requirement so that the disclosing Party can draw up an objection or obtain an injunction to prevent or restrict the disclosure.

In addition to any other legal rights or remedies available on account of a breach of these confidentiality obligations, the non-breaching Party shall have the right to obtain an injunction, specific performance or other equitable relief to prevent any



actual or threatened breach of these confidentiality obligations.

## 2. Data Sharing

The Parties agree and acknowledge that TRIGO is entitled to collect, analyze and archive data acquired in connection with the performance of the Contract for the purpose of performing the Services (i.e., number of defects identified, sorted, etc. communicated via the reports to be sent to the Customer). Such data may belong to the Customer, Host, or the Final Customer. TRIGO is entitled to give access this data to a third party, provided the owner of the data provides express written permission (e.g. via emails) to do so. Said data may be also subject to statistics and analyses.

For the performance of the contract, TRIGO may collect and use from Customer's employees, directors, managers, agents, subcontractor, information considered as "**Personal Data**" as defined and in accordance with the GDPR and any related Applicable Laws. TRIGO may use said Personal Data to inform Customer about performance of the Services, as also to send reports and satisfaction survey to the Customer. TRIGO may also use said Personal Data for marketing purpose, and thus sending quarterly customer newsletters, ad-hoc newsletter campaigns, to promote services and events informing the Customer about new TRIGO products and/or services available provided however that the Customer opts, or has previously opted to receive it, *inter alia* via TRIGO Customer Portal or website). TRIGO shall not share the Customer Personnel's Personal Data to any third parties without the Customer's express prior authorization. Should any concerned person wish to i) to receive a copy of Personal Data concerning him or her held by TRIGO, in a structured, commonly used and machine-readable format ii) to access to his or her Personal Data, iii) to make any change on Personal Data if justified, iv) to ask for prompt deletion, and v) to refuse any treatment on Personal Data. Requests under these rights must be made in writing to TRIGO at **privacy@trigo-group.com**. Personal Data collected may be retained for the same duration as the contract and then would be archived or deleted.

## 3. Non-Solicitation

The Customer shall not be entitled to hire either indirectly or directly any of TRIGO's personnel who was or is engaged in the provision of the Services, during the Contract term and for a period of one (1) year after the end of the Contract term. In the event that the Customer employs or enters into a relationship of any kind with any of TRIGO's personnel who was or is engaged in the provision of the Services in breach of this Section, the Customer shall pay TRIGO as liquidated damages a sum equal to six hundred (600) hours at the rate of the recruited employees' compensation. The Customer confirms that all restrictions contained in this Section are reasonable.

## IX. GENERAL

**1. Amendment**

The Contract, including the Work Authorization and these GTC, may not be added to, changed, amended, or modified, except by instrument in writing signed by an authorized representative of the Parties hereto or their respective successors or assigns, or otherwise as expressly provided herein.

**2. Entire Agreement**

This Contract represents the entire agreement of the Parties with respect to the Services and supersedes all prior oral or written representations and agreements. This Contract may only be modified as described in these GTC.

**3. Severability**

If any provision of this Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order, or other rule of law, such provision will be deemed reformed or deleted, only to the extent necessary to comply with the statute, regulation, ordinance, order or other rule of law, and the remaining provisions of the Contract will remain in full force and effect.

**4. Assignment**

These GTC shall be binding upon the Customer and TRIGO and their respective successors and assigns. Aside from the rights described in Section III.9, neither Party may transfer or assign any or all of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**5. No Implied Waiver**

The failure of either Party at any time to require performance by the other Party of any provision of this Contract will not affect the right to require such performance at a later time, nor will the waiver of either Party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.

**6. Relationship of the Parties**

TRIGO and the Customer intend their relationship to be that of independent contractors. Nothing in these GTC shall be construed to make either TRIGO or the Customer partners, joint ventures, principals, agents or employees of the other. Neither TRIGO nor the Customer shall have any right, power or authority to make binding commitments or to enter into agreements on behalf of the other.

## **7. Attorneys' Fees and Costs**

The Customer will reimburse TRIGO for any attorneys' fees, other professional fees, all court costs and all costs associated with collection that are incurred by TRIGO in connection with any breach of the Contract by Customer or any action by TRIGO to enforce its rights under the Contract.

## **8. Governing Law and Jurisdiction**

The Contract is to be construed according to the laws of the United States of America and the State of Michigan, excluding any conflict of laws principles or rules to the extent such would require or permit the application of the Applicable Laws of another jurisdiction. Further, with respect to any action, litigation or proceeding of any kind whatsoever arising out of, or in connection with this Contract, each Party irrevocably submits to the exclusive jurisdiction of and venue in the United States District Court for the Eastern District of Michigan or in any state court of Michigan sitting in Macomb County, Michigan, and specifically waives any and all objections to such jurisdiction and venue.

If and only if a Customer is incorporated in or is organized under the laws of a country that is not the United States or Canada, then notwithstanding anything in this Section VIII.8 to the contrary, the Parties agree that any dispute arising out of the Contract shall exclusively be brought in the Commercial Court of Brussels, Belgium, in accordance with article 25 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, and that Belgian law will apply to the Contract, in accordance with Article 3.1 Regulation No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations. The Parties irrevocably submit to the exclusive jurisdiction and venue of said Commercial Court and waive any and all objections to such jurisdiction and venue including any defense of inconvenient forum.