
DATA PROCESSOR AGREEMENT

BE Group AB
as data controller

and

[Insert name of supplier]
as data processor

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This **DATA PROCESSOR AGREEMENT** (this “**Agreement**”) is made between:

- (1) **BE Group AB**, Reg. No. 556578-4724, a limited liability company incorporated under the laws of Sweden (“**BE Group**”); and
- (2) [**Please insert name of supplier**], Reg. No. [number], a limited liability company incorporated under the laws of [jurisdiction] (“**Supplier**”).

Other capitalised terms used in this Agreement shall have the meanings set out in Clause 1.

BACKGROUND

- A. BE Group is a global manufacturer and supplier of a broad range of steel, stainless steel and aluminium products.
- B. The Supplier is [insert description of Supplier].
- C. As part of this Project, further described in Schedule 1, BE Group has entered into an agreement with the Supplier [insert name, date and description of the original agreement], the “**Master Agreement**”).
- D. The services provided by the Supplier under the Master Agreement involves the processing of personal data as further described in Schedule 1. To ensure the secure, correct and lawful processing of the personal data the Parties have agreed on the terms and conditions as set forth in this Agreement.

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

“**Business Day**” means a day (other than a Saturday or Sunday or public holiday) on which commercial banks are open for general banking business in Sweden, other than for Internet banking services only;

“**Effective Date**” means the date of this Agreement;

“**EU Model Clause Agreement**” means an agreement made using the relevant EU Model Clauses as adopted by the EU Commission for the transfer of personal data to third countries;

“**EU Personal Data Legislation**” means (i) until 24 May 2018, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and any amendments made thereto, (ii) until 24 May 2018, local legislations where the Directive referred to in (i) is implemented and any amendments made thereto, and (iii) the GDPR;

“**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC (General Data Protection Regulation), and any amendments made thereto;

“**Master Agreement**” means as defined in item C of the background to this Agreement;

“**Party**”/“**Parties**” means BE Group and the Supplier separately, or jointly, as the case may be;

“**Project**” means as described in Schedule 1 (including all associated services provided by the Supplier, from time to time);

“**Purpose**” means as described in Schedule 1;

“**Regulatory Requirements**” means the privacy and personal data legislation applicable to the processing of personal data, including the EU Personal Data Legislation and such legislation as may replace the aforementioned legislation from time to time (and in case of discrepancies or contradictions between different rules or regulations, the one which provides the highest degree of privacy and/or information security shall apply);

“**Subcontractor Notice**” means as defined in Clause 3.5; and

“**Supervisory Authority**” means any court, regulatory agency or authority which, according to applicable laws and/or regulations (including the Regulatory Requirements), supervises privacy issues and/or the processing of personal data.

1.2 Construction

- 1.2.1 Non-capitalised terms and expressions used in this Agreement, e.g. 'data subject', 'controller', 'personal data', 'processing', 'processor', 'third country' etc., shall be construed in accordance with the meaning given to them in the EU Personal Data Legislation.
- 1.2.2 Unless otherwise stated herein, or clearly follows from the context in which it appears, the term "including" shall mean "including without limitation".
- 1.2.3 The term “approval” shall mean prior written approval.
- 1.2.4 English language terms used in or in connection with this Agreement shall be interpreted solely with reference to legal usage, traditions and the laws of Sweden and not with reference to the legal usage, traditions, or laws of any other country.

2. SPECIAL UNDERTAKINGS OF THE PARTIES

2.1 Roles, ownership of personal data, processing and purpose

- 2.1.1 BE Group shall be regarded as a controller of all personal data processed on behalf of BE Group and in accordance with its instructions. The Supplier shall be considered a processor of the personal data processed on behalf of BE Group.
- 2.1.2 The Supplier may only process BE Group's personal data for the Purpose and to the extent it is necessary for the fulfilment of the Supplier's obligations under this Agreement or the Master Agreement.
- 2.1.3 Without prejudice to processing of personal data that is carried out in accordance with this Agreement, in the event that the Supplier infringes the Regulatory Requirements by determining the purposes and means of processing (*e.g.* by processing the personal data in violation of the Purpose), the Supplier will be regarded as the controller in respect of that

processing. It should be noted that the Supplier, under the aforementioned circumstances, will be fully liable as the controller for such processing under the Regulatory Requirements including in relation to any sanctions under the said provisions.

2.1.4 The Supplier acknowledges that, between the Parties, all rights, title and interest in the personal data processed as a result of this Agreement is vested solely in BE Group, irrespective if the Supplier is considered to be a controller of personal data.

2.2 Special undertakings of BE Group

BE Group undertakes to:

- (a) Ensure that there is a legal ground for processing the personal data covered by this Agreement;
- (b) Inform the Supplier of any erroneous, rectified, updated or deleted personal data subject to the Supplier's processing;
- (c) Provide the Supplier with BE Group's applicable policies and guidelines for processing personal data; and
- (d) Provide the Supplier with documented instructions regarding the Supplier's processing of personal data.

2.3 Special undertakings of the Supplier

2.3.1 The Supplier undertakes to:

- (a) Only process personal data in accordance with Regulatory Requirements and on documented instructions from BE Group, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Regulatory Requirements; in such a case, the Supplier shall inform BE Group of that legal requirement before processing the personal data, unless such information is prohibited by the Regulatory Requirements on important grounds of public interest;
- (b) Ensure that only such employees (of the Supplier or its subcontractors) which must have access to the personal data in order to meet the Supplier's obligations under this Agreement shall have access to the personal data processed on behalf of BE Group, and that such employees have received appropriate training and instructions regarding processing of personal data as well as committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) Taking into account the nature of the processing, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk in accordance with GDPR Article 32 (and as a minimum the security measures further described in Schedule 1), and assist BE Group by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of BE Group's obligation to respond to requests for exercising the data subject's rights laid down in the EU Personal Data Legislation;
- (d) Assist BE Group in ensuring compliance with the obligations pursuant to GDPR, Articles 32 to 36 (*e.g.* assisting BE Group in case of data breach, when conducting

a data protection impact assessment and prior consultations) taking into account the nature of the processing and the information available to the Supplier;

- (e) Make available to BE Group the information necessary to demonstrate compliance with the Supplier's obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by BE Group or another third party mandated by it, in accordance with Clause 4; and
 - (f) Otherwise comply with the Regulatory Requirements in its daily business.
- 2.3.2 The Supplier shall immediately inform BE Group if, in its opinion, a BE Group instruction infringes the Regulatory Requirements.

3. SUBCONTRACTORS

- 3.1 The Supplier shall, subject to Clause 4, be entitled to engage subcontractors acting as sub-processors under the condition that such subcontractors are bound by a written contract which states that it must adhere to the same data protection, privacy and audit obligations as the Supplier under this Agreement. Upon request, BE Group shall be entitled to a copy of the contract between the Supplier and the subcontractor.
- 3.2 Notwithstanding the aforesaid, BE Group shall always be entitled to enter into a data processor agreement directly with the subcontractor. Upon request, the Supplier shall coordinate the contacts with the subcontractor and be responsible for procuring that such subcontractor enters into the data processor agreement with BE Group, as the case may be.
- 3.3 BE Group may decide that a subcontractor shall no longer be involved in the processing of personal data on behalf of BE Group if (i) BE Group can give reasonable grounds as to why it considers the subcontractor's performance to be materially deficient, or (ii) BE Group reasonably determines that the subcontractor is, or will be, unable to effectively perform its responsibilities in accordance with this Agreement. If BE Group makes such a decision, the Supplier shall remove such subcontractor as promptly as is reasonably possible.
- 3.4 The Supplier shall remain responsible for all obligations performed and any omission to perform or comply with the provisions under this Agreement by subcontractors to the same extent as if such obligations were performed or omitted by the Supplier. The Supplier shall also remain BE Group's sole point of contact.
- 3.5 Should the Supplier wish to engage a subcontractor, it shall notify BE Group in advance using the form set out in Schedule 2 (the "**Subcontractor Notice**"). BE Group may always, within ten (10) Business Days from receipt of a Subcontractor Notice, object to the Supplier engaging that specific subcontractor.

4. AUDIT RIGHTS AND LOCATIONS

- 4.1 BE Group shall have the right to perform audits of the Supplier's processing of BE Group's personal data (including such processing as may be carried out by the Supplier's subcontractors, if any) in order to verify the Supplier's, and any subcontractor's, compliance with this Agreement.

- 4.2 The Supplier will, during normal business hours and upon reasonable notice (whereby a notice period of five (5) Business Days shall always be deemed reasonable), provide to BE Group personnel or its hired consultants, its internal or external auditors, inspectors, and regulators reasonable access to the parts of facilities where the Supplier is carrying out processing activities, to personnel, and to data and records (including tools and procedures) relating to the processing. BE Group's auditors and other representatives shall comply with the Supplier's reasonable work rules, security requirements and standards when conducting site visits. Notwithstanding the aforesaid, any Supervisory Authority shall always have direct and unrestricted access to the Supplier's premises, data processing equipment and documentation in order to investigate that the Supplier's processing of the personal data is performed in accordance with the Regulatory Requirements.
- 4.3 The right to perform audits and inspections shall also include a right to receive relevant information upon request and without BE Group staff being physically present at the Supplier's site.
- 4.4 If any Supervisory Authority: (i) contacts the Supplier with respect to its systems or any processing of personal data carried out by the Supplier, (ii) conducts, or gives notice of its intent to conduct, an inspection of the Supplier with respect to the processing of personal data, or (iii) takes, or gives notice of its intent to take, any other regulatory action alleging improper or inadequate practices with respect to any processing of personal data carried out by the Supplier, then the Supplier shall immediately notify BE Group and shall subsequently supply BE Group with all information pertinent thereto to the extent permissible by law.
- 4.5 The Supplier shall at all times keep a comprehensive and up to date record of where the IT system(s) used to process personal data on behalf of BE Group is/are located. For the avoidance of doubt, this shall include the locations of any IT systems belonging to any subcontractor(s). Upon request, the Supplier shall promptly provide BE Group with a copy of the record.
- 4.6 BE Group's personal data may not be processed in a manner which entails a transfer to a third country or an international organisation (including inadvertently through the use of cloud based IT solutions) unless (i) this is in accordance with the Regulatory Requirements, and (ii) BE Group has given its prior explicit written consent to such transfer.

5. INTERNATIONAL PERSONAL DATA TRANSFERS

5.1 No transfer of personal data outside of the EU/EEA

The Supplier may not, without the consent of BE Group, transfer personal data processed on behalf of BE Group, to a country outside the EU/EEA.

6. REMUNERATION

- 6.1 The remuneration for the Supplier's undertakings under this Agreement shall, unless otherwise stated in this Clause 6, be included in the remuneration paid by BE Group under the Master Agreement. Thus, unless stated in this Clause 6, the Supplier shall not be entitled to additional remuneration based on this Agreement.

- 6.2 In the event that (i) BE Group amends the written processing instructions mentioned in Clause 2.3.1(a), or (ii) BE Group would require the implementation of technical or organisational measures in accordance with Clause 2.3.1(c) beyond what is reasonably required in accordance with the Regulatory Requirements, and this would cause a material cost increase to the Supplier, then the Supplier shall be entitled to request an equitable adjustment in the remuneration.
- 6.3 An adjustment of the remuneration shall be agreed between the parties and based on reasonable and verified additional costs that the Supplier can demonstrate have been incurred as a direct result of an event set out in Clause 6.2 despite the Supplier taking reasonable actions to mitigate such additional costs.
- 6.4 [The payment terms for the adjusted remuneration shall, mutatis mutandis, be governed by the provisions regarding payment in Clause [●] in the Master Agreement.]

7. TERM AND TERMINATION

- 7.1 This Agreement shall enter into force on the Effective Date. Unless terminated earlier (i) due to a material breach of the terms of this Agreement, or (ii) in accordance with Clause 7.2, this Agreement shall remain in force until the termination or expiration of the Master Agreement, whereupon it shall terminate automatically without further notice.
- 7.2 BE Group may terminate this Agreement by giving the Supplier thirty (30) days written notice.
- 7.3 On termination of this Agreement for any reason, the Supplier shall cease to process the personal data processed on behalf of BE Group and shall arrange for the prompt and safe return to BE Group (or its nominated third party), or destruction, at BE Group's sole option, of all such personal data together with all copies in its or its subcontractor's possession or control unless storage of the personal data is required under the Regulatory Requirements. BE Group may require the Supplier to promptly confirm in writing to BE Group that the Supplier has returned or destroyed all copies of such personal data.

8. LIABILITY AND INDEMNIFICATION

Each Party shall indemnify and hold the other Party harmless from and against all losses due to claims from third parties resulting from, arising out of or relating to any breach by such first-mentioned Party of this Agreement.

9. MISCELLANEOUS

- 9.1 Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.
- 9.2 This Agreement sets forth and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and all prior agreements, understandings or promises with respect thereto are superseded hereby.
- 9.3 No amendment, modification, release or discharge of this Agreement shall be binding upon the Parties unless in writing and duly executed by authorised representatives of both Parties.

10. GOVERNING LAW AND DISPUTES

10.1 [Provisions regarding governing law and disputes are set forth in the Master Agreement.]

This Agreement has been signed in two (2) originals, of which the parties have received one each.

Effective Date: [●]

Place:
Date:

Place:
Date:

[NAME OF RELEVANT BE GROUP COMPANY]

[NAME OF SUPPLIER]

Clarification of signature

Clarification of signature

SCHEDULE 1

DESCRIPTION OF THE PROCESSING OF PERSONAL DATA

1. THE PROJECT

[State background and describe the objective and purpose of the Project which will result in the processing of personal data and which this agreement is intended to cover.]

2. DATA SUBJECTS

The personal data processed concern the following categories of data subjects:

[State the categories of data subjects covered by the processing, e.g. employees, consumer customers and/or representatives of corporate customers and suppliers.]

3. CATEGORIES OF PERSONAL DATA

The personal data processed concern the following categories of personal data:

[State the categories of personal data, e.g. name, address, email address, personal identification number, credit card information, device information, IP number, behaviour, location tracking, finger prints, iris scanning, facial recognition, voice recognition.]

4. PURPOSE OF THE PERSONAL DATA PROCESSING

[State the initial purpose for which the personal data has been collected (and to which the data subjects have consented, if applicable). Note that the purpose must be specific.]

5. PROCESSING OPERATIONS

The personal data processed will be subject to the following basic processing activities:

[State the relevant processing activities.]

6. DURATION OF PROCESSING

The personal data will be processed with the following duration:

[State the duration of the processing of personal data, e.g. during the term of the agreement or during a longer or shorter period of time. If it is not possible to state the exact time period, insert information regarding the considerations or events which will be decisive for the time period.]

7. SECURITY MEASURES

Description of the technical and organisational security measures implemented by the Supplier:

[Describe the security measures which the Supplier must implement as a minimum.]

SCHEDULE 2

SUBCONTRACTOR NOTICE

1. BACKGROUND

This is a Subcontractor Notice to the Data Processor Agreement entered into by **[Name of relevant BE Group company]**, Reg. No. [number], a limited liability company incorporated under the laws of [jurisdiction] (“**BE Group**”), and **[Name of supplier]**, Reg. No. [number], a limited liability company incorporated under the laws of [jurisdiction] (the “**Supplier**”), dated [insert date] (the “**Agreement**”).

By submitting this Subcontractor Notice to BE Group, the Supplier notifies BE Group that (i) it intends to engage a new subcontractor as a sub-processor in the processing of personal data on behalf of BE Group, and (ii) that the subcontractor is bound by a written contract which states that it must adhere to the same data protection, privacy and audit obligations as the Supplier under the Agreement.

As stated in the Agreement, the Supplier shall remain responsible for all obligations performed and any omission to perform or comply with the provisions under the Agreement by subcontractors to the same extent as if such obligations were performed or omitted by the Supplier. The Supplier shall also remain BE Group’s sole point of contact.

2. NOTICE FORM NEW SUBCONTRACTOR

Company name	Reg. No. or equivalent	Accession date	Location
[Insert company name]	[Insert Reg.No.]	[Insert date]	[Insert location of IT-systems used in processing]

3. COMPLETE LIST OF SUBCONTRACTORS

This list is a complete list of all subcontractors engaged by the Supplier as sub-processors, including the new subcontractor covered by this Subcontractor Notice (to be updated and resubmitted each time a Subcontractor Notice is submitted by the Supplier).

Company name	Reg. No. or equivalent	Accession date	Location
[Insert company name]	[Insert Reg.No.]	[Insert date]	[Insert location of IT-systems used in processing]

Company name	Reg. No. or equivalent	Accession date	Location
[Add rows as needed]			

This Agreement has been signed in two (2) originals, of which the parties have received one each.

[Place:]
[Date:]

[Place:]
[Date:]

[NAME]

[NAME]

[Clarification of signature:]

[Clarification of signature:]