

GENERAL TERMS AND CONDITIONS FOR PURCHASE ORDER (SUPPLY)

1 Definitions and Interpretation

1.1 For the purposes of these General Terms and Conditions, the term:

"Client" means the client for whom the Goods is ultimately purchased for, the name, which appears in the Purchase Order and/or Particular Conditions.

"Contract" means the Purchase Order (including all attachments), Particular Conditions (if any), Schedules/Specifications/Scope, these General Terms and Conditions and all other documents, which are signed and identified by the Parties as forming part of the Contract.

"Goods" means any materials, machinery, equipment, article, item provided for in the Contract.

"Day/week/month/year" means calendar day/ week/month/ year unless otherwise stated.

"Purchaser" means the entity which is issuing the Purchase Order, the name as indicated therein;

"Supplier" means the entity supplying the Goods and where indicated the relevant services, to which the Purchase Order is addressed.

1.2 Unless otherwise mutually agreed in writing, all documentation under or pursuant to the Contract shall be in English Language.

1.3 Priority of Documents

1.1.1 The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of documents shall be in accordance with the following sequence: (a) Purchase Order, (b) Particular Conditions (if applicable), (c) Schedules/Specifications/Scope and (d) General Terms and Conditions.

1.1.2 In the event of any ambiguity, discrepancy or conflict in the documents, the Party detecting the ambiguity, discrepancy or conflict shall notify the other Party of such ambiguity, discrepancy or conflict without any delay.

1.1.3 Where the General Terms and Conditions refers to a subject or issue in general terms an inconsistency shall not be deemed to exist where the subject or issue is further elaborated in detail in the Purchase Order and/or the Particular Conditions and/or the Schedules/Specifications/Scope.

2 Acceptance of Purchase Order

2.1 The Purchase Order and/or the Letter of Award and the Contract shall not be binding upon the Purchaser until accepted by the Supplier by returning the duly counter-signed Purchase Order or Letter of Award, which must be received by the Purchaser within seven (7) days after the date of the Purchase Order or Letter of Award otherwise the Purchaser shall have the right to reject the acceptance if the acknowledgements received after such period.

2.2 Unless agreed otherwise, the execution of the Contract, or the delivery of the Goods or the performance of any works under this Contract by the Supplier, whichever is earlier, shall constitute irrevocable acceptance by the Supplier of the Letter of Award or Purchase Order and each and all of its terms and conditions.

3 Scope of Supply

The Goods to be supplied and delivered by the Supplier under this Contract are as indicated on the Purchase Order and detailed in the Schedules/Specifications/Scope, as applicable. Unless otherwise mutually agreed, all Goods supplied under the Contract shall not contain any hazardous and/or ozone-depleting substance prohibited by any applicable laws and relevant convention.

4 Price

Price for the Goods and other deliverables shall be inclusive of all indirect taxes and as indicated on the Purchase Order and/or Conditions.

5 Taxes

The Supplier shall be responsible for and shall bear all duties, levies, fees, fines, and direct and indirect taxes payable in Malaysia or outside Malaysia in relation to the Goods.

6 Securities

6.1 Performance Bond

The Supplier shall furnish the Purchaser with a performance bond not later than fourteen (14) days after acknowledgement and acceptance of the Contract, at no cost to the Purchaser. Such performance bond shall be issued by a reputable bank in Malaysia (for RM Bank Guarantee) or a reputable International Bank (for foreign currency Bank Guarantee) in the form of a bank guarantee the format of which to be provided/approved by the Purchaser, for a sum equivalent to ten percent (10%) of the Contract Price. Such performance bond shall be irrevocable and payable on demand. The validity period of the performance bond shall be until expiry of the warranty period stated in the Warranty Clause.

6.2 Advance Payment Guarantee (APG)

The Supplier shall furnish the Purchaser with an APG in the format of which to be provided/approved by the Purchaser, within fourteen (14) days from the date of acceptance of the Purchase Order, in an amount equivalent to the advance payment to be made by the Purchaser, guaranteeing repayment of such advance payment upon demand. Such APG shall be a bank guarantee from a reputable bank in Malaysia (for RM Bank Guarantee) or a reputable International Bank (for foreign currency Bank Guarantee) to the Purchaser. The APG shall be irrevocable and payable on demand, unconditionally. The corresponding advance payment shall be made within forty-five (45) days of receipt of the APG.

7 Payment

Payment shall be made in accordance with the Payment Schedule and unless otherwise specified in the Purchase Order or Particular Conditions, no later than forty-five (45) days after submission of the supporting documents. The payment of moneys in accordance with this clause shall not be taken as evidence of or as an admission by the Purchaser that any Goods have been delivered in accordance with the Contract. Subject to provision of Clauses 4 and 5, any indirect taxes shall be clearly defined in the invoices as required under the law and regulations.

8 Packing, Markings and Delivery

8.1 Packing & Markings shall be in accordance with the Schedules/Specifications/Scope.

8.2 Delivery shall be in accordance to the agreed delivery schedule/date.

8.3 Any changes to the delivery dates shall only be made after mutual agreement. Unless otherwise mutually agreed the liquidated damages specified in Clause 9 shall apply in respect of the original dates.

8.4 Partial deliveries are only allowed with the Purchaser's prior written consent.

9 Liquidated Damages

If the Supplier should delay or exceed the agreed delivery dates as per stated in the Schedules/Specifications/Scope wholly or partly, then the Supplier shall pay liquidated damages of two percent (2%) of the Contract Price per month, prorated where applicable, up to an aggregate amount of twelve percent (12%) of the Contract Price. The acceptance or the unreserved/unconditional acceptance of such Goods or of any of the Supplier's obligations under the Contract or any part thereof shall not imply any waiver of a right without limiting other rights of the Purchaser.

10 Permit, Licences And Certificates

10.1 The Supplier shall apply for all necessary export licenses or other approvals from the relevant authorities in the country of origin for the Goods or any part thereof to be

exported to Malaysia. The Supplier shall observe the timeline and the required documents/information and advise the Purchaser on any documents required from the Purchaser.

10.2 Any failure of the Supplier to apply for such approval or which causes a delay in obtaining such approval, the Supplier shall hold harmless and keep indemnified the Purchaser against costs, expenses, action and/or liability arising from such failure on the part of the Supplier.

11 Transfer of Title and Acceptance of Goods

11.1 Unless agreed otherwise, the title and risk shall transfer from the Supplier to the Purchaser upon physical delivery to the Purchaser at the point specified and in accordance to the Schedules/Specifications/Scope. Nevertheless, Purchaser's lien shall apply, upon payment made.

11.2 Title to any Goods that are rejected on receipt or retention of which is refused by the Purchaser, or acceptance of which is justifiably revoked, shall re-vest in the Supplier, whereupon the Supplier shall bear all responsibility, risk and costs for removal, re-packing, assembly or disassembly, freighting and/or disposal of the Goods.

11.3 Delivery of the Goods to the receiving personnel does not imply their final acceptance. The Purchaser shall be entitled to claim to the Supplier, even after receipt and notwithstanding the payment, if any, of relevant invoices, the non-compliance of the items delivered or the presence of defects and deficiencies against the Contract. In this instance, the Supplier shall be bound to substitute in good time, the defective or non-consistent materials.

11.4 The acceptance of the Goods shall take place upon delivery and subject to conforming to the acceptance requirements indicated in the Schedules/Specifications/Scope.

11.5 Where any of the Goods do not conform to the Schedules/Specifications/Scope or the Purchaser's specification or are otherwise defective, the Purchaser shall have the sole right either to ask the Supplier to rectify or replace the Goods and the Supplier shall promptly replace the same at the Supplier's sole expense and apply Clause 9 or to reject the Goods and terminate the Contract and all the provisions of Clause 16 shall apply.

11.6 In any case of return of the Goods, the relevant expenses shall be debited to the Supplier.

12 Warranty

12.1 The Supplier hereby warrants and guarantees that:

12.1.1 the Goods shall comply with the specifications and requirements of the Schedules/Specifications/Scope;

12.1.2 notwithstanding any inspection, delivery to or acceptance by the Purchaser of the Goods, or any part thereof, the Goods delivered under the Contract shall be genuine and unused, fit for its purpose, free from defects in design in accordance to the military standard specified, material, workmanship and manufacture, not inferior in standard, quality or performance capability or differing in design, form of material from the requirements, standards, terms and conditions provided in the Contract;

The above warranty shall further cover the materials, the correctness and the completeness of the interface specifications and the packing, handling, care, storage and maintenance in accordance with the Schedules/Specifications/Scope.

12.2 Without in any way limiting the specificity of the above provision, the Supplier shall replace and/or rectify without any delay all defects and deficiencies in the Goods and all non-conformity with the Schedules/Specifications/Scope and its own specifications at its own expense. The Supplier shall meet all costs incidental to the discharge of its warranty

obligations including any packing, freighting, disassembly and re-assembly costs.

12.3 Unless agreed otherwise, the Supplier hereby warrants that the period of warranty in respect of the Goods shall be twelve

(12) months after delivery and acceptance the Goods, by the Purchaser or the Client, whichever is later.

12.4 Any defect or deficiency or non-conformity with the Schedules/Specifications/Scope, which requires replacement parts of the Goods, will be remedied by the Supplier by providing replacement parts of the Goods.

12.5 During the course of the warranty period the Supplier shall remedy the defects without delay upon receiving the notification of the claim hereof, notwithstanding any further responsibilities. The remedy of such defect shall be initiated within five (5) days upon receipt of such notification and shall be completed fourteen (14) days or such other reasonable period, from notification of such claim. Within seven (7) days after the completion of the remedial work, the Supplier shall submit the Guarantee Rectification Report, the format of which to be furnished by the Purchaser. If the Supplier fails to remedy such defects which affect the warranty within the specified time herein stipulated, the Purchaser reserves the right to remedy defects themselves or have these remedied by third parties. In such event, the Supplier shall pay to the Purchaser such sum incurred by the Purchaser to have the remedial work done.

12.6 The warranty period for the rectified parts or replaced items shall be as follows:

12.6.1 for parts or items which are rectified, the warranty period shall be the remaining period of warranty of the said parts or items however not less than six (6) months; and

12.6.2 for parts or items which are replaced, the warranty period shall be twelve (12) months.

12.7 The Supplier warrants that the rectified or replaced parts or items shall be free from defects in design, material, workmanship or manufacture.

12.8 The running of the warranty period shall be suspended for the period necessary to repair a defective part of the Goods or to replace it with a non-defective part of the Goods, irrespective of whether the part of the Goods concerned is an article supplied by the Supplier or another manufacturer, unless the Supplier is not responsible for the reasons leading to the repair or the replacement and/or during times when the Goods cannot be used because of the occurrence of an event causing the guarantee to come into operation, whatever the nature of such event be, and/or as a result of periods necessary for the Supplier to install the items or parts replaced on the Goods after the respective Goods has been accepted.

12.9 Warranty is not applicable for misuse or mishandling or faulty operation or maintenance of the Goods by the Purchaser's or the Client's personnel, unless the faulty operation or maintenance is a result of incorrect instructions, given by the Supplier, or contained in its maintenance and operational manuals; or damage caused during conflict situation or war-like operation; or repair and modification except where such repair or modification is carried out or approved by the Supplier in writing; or normal wear and tear.

13 Intellectual Property

13.1 The Supplier warrants that all Goods supplied performed under this Contract shall not infringe any intellectual property rights, including letters patent, copyright, registered design, trademark or trade name. In the event of any action, claim or demand for the infringement of an intellectual property right by the use of the Goods supplied or services performed under this Contract, the Supplier shall defend, safe and hold harmless and indemnify the Purchaser against all such claims and against all costs, expenses, charges and damages which the Purchaser may be required to pay by reason thereof.

- 13.2 Where development forms part of this Contract, the ownership of any developed intellectual property rights including but not limited to patents, registered designs, unregistered design rights and copyright arising from such development shall be transferred to the Purchaser and the Supplier shall co-operate in any manner necessary to make such transfer effective as soon as any such right arises.
- 13.3 Where software is required to be supplied hereunder the Supplier warrants that the Purchaser has been provided with all conditions of use or license terms relating to such software prior to the date of this Contract. In the event that such conditions or license terms have not been provided, the Supplier agrees to waive their application. The Supplier warrants that they are the owner of the copyright or other intellectual property in such software to be supplied or that has a valid license from the owner of the copyright or intellectual property to sell or sublicense the software to the Purchaser.
- 14 Variation and Amendment**
Any amendment or supplement to this Contract or variation to the scope of supply shall only be valid and binding on the Parties if it is agreed upon in writing by the Parties prior to the execution.
- 15 Force Majeure**
- 15.1 Neither Party shall be in breach of its obligations under the Contract if it is unable to perform such obligation as a result of the occurrence of an event of Force Majeure.
- 15.2 An event of Force Majeure in this Contract shall comprise an event not within the control of the Purchaser and/or the Supplier, as the case may be, and has a direct effect on its obligations, which it is unable to prevent, avoid or remove and shall include without limitation, government intervention, war whether declared or not, hostilities, invasions, armed conflict, act of foreign enemy, riot, insurrection, strike, lock-out, revolution or usurped power, act of terrorism, sabotage or criminal damage, and natural disasters including severe weather conditions, lightning, floods and fires. For the purpose of this clause, the following events shall not be construed as an event of Force Majeure namely machinery breakdown; and where this provision refers to "strikes" and "lock-outs" (whether consisting of one or a number of a series of strikes/lock-outs relating to the same or different issues) which have a measurable effect on the schedule of delivery and which continue of less than six (6) days.
- 15.3 Upon the occurrence of Force Majeure event the Party declaring the Force Majeure shall inform the other within five (5) days from the date of the Force Majeure and as soon as practicable provide all the necessary proof of the occurrence and circumstances of the Force Majeure and its effect on the performance of its obligations under this Contract. Both parties shall then, immediately discuss and agree upon the appropriate measures to be taken under such circumstances to mitigate any delay and reduce the interruption to the implementation of the Contract.
- 15.4 In the event that the Parties are unable to reach agreement on the appropriate course of action to be taken within three (3) months of the date of commencement of such consultation and if such delays continue to exist, then the Purchaser may elect to terminate the Contract and the Supplier shall be paid by the Purchaser (insofar as such amounts or items shall not have already been covered in payments on account made to the Supplier) for work done up to the date of termination on a quantum merit basis.
- 16 Termination**
- 16.1 **Supplier's Default**
The Purchaser shall be entitled to terminate the Contract in whole or in respect of any part of the Goods, forthwith by fourteen (14) day' notice in writing to that effect to the Supplier upon the occurrence of any of the following events:
- 16.1.1 the Supplier fails to deliver the Goods specified in the Schedules/Specifications/Scope or fulfill its obligations in accordance with the terms of the Contract;
- 16.1.2 the Supplier fails to make progress with the Contract so as to jeopardise the purpose of the Contract;
- 16.1.3 the Supplier becomes insolvent or wound-up;
- 16.1.4 the Supplier goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or being subject to any petition or proceedings in a court for the compulsory winding-up or being subject to the supervision of the court either voluntarily or otherwise;
- 16.1.5 if the Supplier suffers execution against any of its major assets, which has an adverse effect on the Supplier's ability to perform its obligations under the Contract;
- 16.1.6 if the Supplier assigns its rights otherwise than in accordance with the requirements of the Contract;
- 16.1.7 if the Supplier fails to apply for the necessary export licenses or other approvals from the relevant authorities in the country of origin for the Goods pursuant to Clause 10.1;
- 16.1.8 the Supplier has committed a fundamental and/or persistent breach of one or more terms of the Contract;
- 16.1.9 if it is proven that the Supplier or its agent or any person employed by it or acting on its behalf, has engaged in any illegal means or malpractice in relation to the obtaining of the Contract;
- 16.1.10 substantial changes in the shareholding, which has an adverse effect on Supplier's ability to perform its obligations under the Contract.
- 16.2 Remedies upon Termination Due to Supplier's Default
If the Contract is terminated under Clause 16.1:
- 16.2.1 the Supplier shall return to the Purchaser all payments received from the Purchaser less such portions of the Contract Price as applicable for those Goods as already delivered/rendered accepted by the Purchaser at the time of termination as well as for such Goods as the Purchaser is willing to receive after such time;
- 16.2.2 the Purchaser is relieved from its duty to pay any further sum pursuant to the Contract;
- 16.2.3 termination of the Contract shall not relieve the Supplier from its duty to pay any liquidated damages having become due until the date of termination pursuant to Clause 16.1 above;
- 16.2.4 the foregoing is without prejudice to any claim, which the Purchaser may have against the Supplier for any damages and compensation, which the Purchaser would be entitled to under law.
- 16.3 Termination for Convenience
Where applicable, if the Client terminates the contract, for which the Goods are purchased, between itself and the Purchaser ("Main Contract") for any reason, the Purchaser may terminate the Contract in whole by notifying the Supplier in writing and the Contract shall terminate on the date specified in the notice. Upon such notice being given the Supplier shall cease to perform its obligations under the Contract and shall forthwith do everything possible to mitigate losses consequent thereto.
- 16.4 Payment in the event of Termination by the Purchaser for Convenience
In the event of the termination of the Contract in

accordance with Clause 16.3, the Supplier shall be paid by the Purchaser (insofar as such amounts or items shall not have already been covered in payments on account made to the Supplier) for work done up to the date of termination on a quantum merit basis and as against any payments due from the Purchaser under this Clause 16.4, the Purchaser shall be entitled to be credited with any outstanding balances in respect of the Goods including by way of illustration any balance of any advance payment remaining unpaid and any sum previously paid by the Purchaser to the Supplier in respect of the execution of the Goods. However, the Purchaser shall not be liable to pay under the provisions of this Clause 16.4, any sum, which in addition to any sums paid or due or becoming due to the Supplier under the Contract, would together exceed the Contract Price.

16.5 Clauses Surviving Termination

The Clauses of this General Terms and Conditions relating to confidentiality, defense security and dispute resolution or any rights arising on termination as specified in the Contract shall survive termination.

16.6 Purchaser's Default

In the event of default on the Purchaser's side, the Supplier's rights and entitlements shall be governed by the governing law of the Contract.

17 Dispute Resolution

17.1 The Parties shall take all reasonable measures to settle any dispute that may arise out of or in connection with the Contract amicably by way of negotiation.

17.2 Any dispute arising out of or in connection with the execution of the Contract, which could not be resolved amicably within thirty (30) days under Clause 17.1 above, may be referred to and determined by the courts of Malaysia.

17.3 If a dispute of any kind whatsoever arises between the Purchaser and the Client regarding or relating to Goods supplied by the Supplier, whether or not in connection with the performance of the other suppliers, then the Supplier shall support the Purchaser by defending all claims, in particular provide promptly all necessary information and documents to the Purchaser at the Purchaser's request.

18 Miscellaneous Provisions

18.1 Confidentiality and Publicity

The Supplier shall treat all information provided by the Purchaser as confidential and use such information only for performing the Contract. Prior written consent shall be obtained from the Purchaser before any publicity is issued by the Supplier about the Contract.

18.2 Rights to Recover Monies

Without limiting the Purchaser's rights under any other provision of the Contract, subject to prior written notice and justification to the Supplier, the Purchaser reserves the right to deduct any monies due from the Supplier to the Purchaser under or by any provision of the Contract from any monies payable to the Supplier by the Purchaser and if such monies are insufficient for this purpose, then from the Supplier's security under the Contract. Nothing in this provision shall affect the Purchaser's right to recover by other means from the Supplier the whole of the debt or any balance that remains owing after deduction.

18.3 Lien

Commencing on the respective dates of delivery the Supplier shall indemnify and hold the Purchaser harmless from all lien and other encumbrances against the Goods or any part thereof on account of claims or monies owing or alleged to be due from the Supplier or its sub-contractors, to any person and shall on behalf of the Purchaser defend at the Supplier's expense all claims and/or litigation in connection therewith. The obligations imposed herein shall survive the termination or expiry of

the Contract.

18.4 Security and Access

18.4.1 Where a security classification appears on the Contract, the Supplier shall at all time comply with the relevant procedures for handling the classified items, as provided by the Purchaser, where necessary.

18.4.2 Access to the Purchaser's premises, manufacturing and production plant of the Purchaser or other related manufacturer or sub-contractors necessary in the performance of the Contract is subject to observance of security rules and regulations applying thereat.

18.5 Legal Relationship

Nothing herein shall be construed as establishing or creating a relationship of master and servant or agent and principal between the Purchaser and the Supplier, it being understood that the position of the Supplier and any other person supplying the Goods is that of an independent contractor.

18.6 Information

18.6.1 The Supplier shall at the request of the Purchaser provide detailed information with respect to the Goods provided under the Contract.

18.6.2 Any such request for information shall be in writing attached to or endorsed on the Contract or by separate correspondence with reference to the Contract. The Supplier hereby grants to the Purchaser the rights to use, reproduce, adapt or otherwise modify all such information for the purposes of operation, repair, maintenance and support of the Goods. These rights shall be irrevocable, royalty free and transferable.

18.7 Waiver

Any concession or indulgence made by the Purchaser shall not be considered as a waiver of the Purchaser's rights under the Contract.

18.8 Anti-Corruption

Each Party represents, warrants, covenants, and agrees to the following with respect to the transactions contemplated by this Contract or in connection with any other related activities:

- a. None of the Party's owners, directors, officers or employees is an officer of the other Party or is closely related to officer of the other Party. Each Party will notify the other Party if any of the Party's owners, directors, officers or employees subsequently becomes an officer of the other Party or closely related to officer of the other Party.
- b. Each Party, its directors, officers, and employees shall comply with Section 17A of the Malaysian Anti-Corruption Commission (MACC) Act 2009 (Amendment 2018), as amended and any law or regulation of Malaysia that prohibits bribes and/or conferring any improper gift, payment, or other benefit on any person or any officer, employee, agent or adviser of such person;
- c. Each Party has not and shall not, for any improper purpose, directly or indirectly, offer, pay, give, promise or attempt to pay or give, or authorize the payment or giving of any money, gift, or anything of value to any person for the purpose of obtaining or retaining business or to obtain any improper advantage;
- d. Each Party shall immediately notify the other Party in writing if it, or any of its owners, partners, members, directors, officers, employees, shareholders or agents, commits a violation of the MACC Act, or any other applicable anti-corruption law or regulation.

e. Violation of this clause shall be grounds for immediate termination.

18.9 Assignment

Unless agreed in writing by the Purchaser, the Supplier shall not assign or sub-contract the Contract to any other party.

18.10 Successors' Bound

The Contract shall be binding upon each party, its respective successors and permitted assigns, and shall inure to the benefit of each party and its respective successors and/or permitted assigns.

18.11 Compliance with Authorities' Regulations

The Supplier agrees to comply with all laws, orders, Purchaser may require at any time and from time to time. If the Supplier fails to comply with the above laws, orders, rules, ordinances, codes and regulations and as a result the Purchaser is held liable for such Supplier's failure by the applicable regulatory body or a court of law, then at the Purchaser's sole discretion, the Supplier shall either pay fines, damages and/or other costs other costs incidental thereto or reimburse the Purchaser for the payment of the same

18.12 Indemnity

The Supplier shall indemnify and hold harmless the Purchaser and its employees, officers, directors, authorized representative from all claims, costs, liabilities, judgments, expenses, damages or losses resulting from any injury to property or persons due to any act, omission or negligence of the Supplier, its agent, employees or contractor or arising out of the Supplier's performance of this Contract or arising out of any breach or alleged breach of this Contract or any representation or warranty made by the Supplier, its agents, employees or contractors.

18.13 Notices

Any notices and correspondences to be given under the terms of the Contract shall be served by sending the same by registered mail, courier or fax to the addresses stipulated in the Purchase Order / the Head of Agreement / Particular Conditions and as updated by the Party from time-to-time. The notice shall be deemed to be accepted by the other Party if, by letter, upon receipt, or seven (7) days after posting, whichever is the earlier; or if by fax, cable or telex, on the business day following such transmission; or if by registered mail or courier service or hand, upon acknowledgement of receipt. Correspondences through electronic mails shall not be considered as valid notice and shall be used for operational purposes only.

18.14 Entire Contract

The Contract constitutes the entire agreement between the Parties with respect to the matters contained herein, supersedes any and all previous agreements and understandings between the Parties with respect to such matters and ensures to the benefit of the Parties, their successors and assigns.

18.15 Severability

Any invalidity or nullity of individual clause or provision of this Contract shall not render the entire Contract invalid. Such invalid clause or provision shall be replaced with a new obligation coming as close as possible to the economic purpose of the original obligation, taking into account the purpose of this Contract.

18.16 Limit of Liability

The total aggregate liability of each Party under this contract including consequences in case of termination shall be limited to the total Contract Price. Any further rights and/or claims including but not limited to loss of profit, loss of interests, loss of use, loss of production or any indirect or consequential damages shall be excluded, unless specifically allowed under the governing law. The

Party and its sub-contractors, partners, servants and agents shall only be liable for damages to property or injury to persons caused by their gross negligence during the performance of their contractual obligations.

18.17 Insurances

Contractor shall be responsible for but not limited to all insurance coverage in the process of discharging the obligation, which shall include third party liability, workmen's compensation and professional indemnity

19 Governing Law

This Contract shall be governed by and construed in accordance to the laws of Malaysia.

GENERAL TERMS AND CONDITIONS (SUPPLY AND SERVICES)

1. Interpretation

- 1.1 In these Contract:
 - 1.1.1 "Purchaser" means the entity which is issuing the Work Order, the name as indicated therein and/or the Head of Agreement or the Particular Conditions;
 - 1.1.2 "Client" if applicable, means the client for whom the Goods is ultimately purchased for, the name, which appears in the Work Order and/or the Head of Agreement or the Particular Conditions, otherwise, it is understood that the Purchaser is the user;
 - 1.1.3 "Contract" means the Work Order (including all attachments), Section 1 - Head of Agreement or the Particular Conditions, Section 2 - Schedules/Specifications/Scope, Section 3 - these General Terms and Conditions and all other documents, which are signed and identified by the Parties as forming part of the Contract;
 - 1.1.4 "Day/week/month/year" means calendar day/week/month/year unless otherwise stated;
 - 1.1.5 "the Purchaser's Representative" means the person named by the Purchaser in the Contract or appointed from time to time by the Purchaser under Clause 20, who acts on behalf of the Purchaser.
 - 1.1.6 "Goods" means any materials, machinery, equipment, article and/or item as per the specifications to be supplied by the Supplier under the Contract;
 - 1.1.7 "Site" means the places where the Works/Services are to be executed and to which Goods are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
 - 1.1.8 the "Supplier" is the entity supplying the Goods and performing/providing the relevant Works/Services, to whom the Work Order and/or the Letter of Award (if applicable) is addressed;
 - 1.1.9 "Works/Services" means the performance of works and/or provision of services specified in the Work Order and/or Section 1 and Section 2;
- 1.2 Other definitions of the terms are as per Section 1, Section 2 and this Section 3, as applicable.
- 1.3 Priority of Documents
 - 1.3.1 The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of documents shall be in accordance with the following sequence: (a) Work Order, (b) Section 1 - Head of Agreement or the Particular Conditions (if any), Section 2 - Specifications/Scope, (c) Section 3 - these General Terms and Conditions, (d) Letter of Award/Acceptance (if any).
 - 1.3.2 In the event of any ambiguity, discrepancy or conflict in the documents, the Party detecting the ambiguity, discrepancy or conflict shall notify the other Party of such ambiguity, discrepancy or conflict without any delay.
 - 1.3.3 Where the General Terms and Conditions refer to a subject or issue in general terms, an inconsistency shall not be deemed to exist where the subject or issue is further elaborated in detail in the Work Order and/or Section 1 and/or Section 2.
- 1.4 Unless otherwise mutually agreed in writing, all documentation under or pursuant to this Contract shall be in English language.

2. Acceptance of Work Order

- 2.1 The Work Order and/or the Letter of Award and the

Contract shall not be binding upon the Purchaser until accepted by the Supplier by returning the duly counter-signed Work Order or Letter of Award, which must be received by the Purchaser within seven (7) days after the date of the Work Order or Letter of Award otherwise the Purchaser shall have the right to reject the acceptance if the acknowledgement is received after such period.

- 2.2 Unless agreed otherwise, the execution of the Contract, or the delivery of the Goods or the performance of any Works/Services under this Contract by the Supplier, whichever is earlier, shall constitute irrevocable acceptance by the Supplier of the Letter of Award or Work Order and each and all of its terms and conditions.

3. Scope of Supply and Works/Services

- 3.1 The Goods to be supplied and delivered by the Supplier under this Contract are specified in the Specifications (Section 2) whereas:
 - 3.1.1 The Supplier shall ensure that all Goods supplied under the Contract shall not contain any hazardous and/or ozone-depleting substance prohibited by any applicable laws and relevant convention.
 - 3.1.2 Packing and markings of the Goods for delivery shall be in accordance with the Specifications (Section 2).
 - 3.1.3 The details of the Works/Services to be performed by the Supplier are specified in the Scope of Work (Section 2).
 - 3.1.4 Unless otherwise stated herein, the provisions of the Sale of Goods Act 1957 shall apply to the Goods. The title and risk shall transfer from the Supplier to the Purchaser upon physical delivery to the Purchaser at the point specified and in accordance to the Schedules/Specifications. Nevertheless, title shall automatically transfer to the Purchaser proportionately, upon payment made.
 - 3.1.5 Title to any Goods that are rejected on receipt or retention of which is refused by the Purchaser, or acceptance of which is justifiably revoked, shall re-vest in the Supplier, whereupon the Supplier shall bear all responsibility, risk and costs for removal, re-packing, assembly or disassembly, freighting and/or disposal of the Goods
- 3.2 The Works/Services shall be undertaken and performed by the Supplier:
 - 3.2.1 strictly in conformity with the requirements and specifications as set out in the Contract (including the Schedules);
 - 3.2.2 exercising the degree of care, skill, diligence, efficiency and professionalism in the discharge and performance of the Works/Services with standards normally exercised by highly qualified persons in the performance of similar works/services;
 - 3.2.3 ensuring that the Works/Services shall be of international standards using sound principles and practices;
 - 3.2.4 using qualified, experienced and competent personnel;
 - 3.2.5 in compliance with the "General Administration Guidelines, Security, Human Resource Administration & Health, Safety, Environment (HSE)" of the Purchaser and/or the Client, if applicable;
 - 3.2.6 ensuring that it has in its name valid licences, registrations and permits required under the laws, regulations and governing professional bodies to undertake the performance of the Contract; and
 - 3.2.7 in compliance with all applicable laws and regulations.
- 3.3 Notwithstanding any design and specifications

- provided by the Purchaser, if the Supplier is required under this Contract to undertake the design of any part of the Works/Services:
- 3.3.1 the Supplier shall ensure that such design is suitable, functional, safe and compatible with the design and specifications of the Works and that it shall be undertaken and approved and endorsed by a competent and registered professional.
- 3.3.2 the Supplier shall submit to the Purchaser all drawings, specifications, calculations and any other relevant information for approval. No work shall commence without prior written consent of the Purchaser.
- 3.3.3 the Supplier shall be fully responsible for the design, execution and maintenance of the Works/Services or part thereof for which his design has been accepted by the Purchaser, and shall absolutely guarantee the Purchaser independent of fault, that the design, materials and workmanship for the Works/Services or part of the works is suitable, functional, safe and compatible with the requirements of the Purchaser.
- 3.3.4 The approval by the Purchaser pursuant to sub-clause 3.3.2 shall not relieve the Supplier of any of his responsibilities under sub-clause 3.3.3.
- 4. Prices**
- 4.1 All applicable prices quoted (hereinafter referred to as "Contract Price") in the Work Order shall be inclusive of all indirect taxes and in accordance with the relevant Attachment/Schedule on Price Breakdown, as applicable.
- 4.2 The Contract Price shall not be varied without the prior mutual written agreement of the Parties.
- 4.3 The Contract Price and its detailed breakdown shall be valid throughout the validity of this Contract.
- 5. Taxes**
- The Supplier shall be responsible for and bear all duties, levies, fees, fines and direct and indirect taxes of whatsoever nature levied on the Supplier, in carrying out its obligations under the Contract or as a result of this Contract.
- 6. Performance Guarantee**
- The Supplier agrees to both or either one, as mutually agreed, of the following arrangements as security and guarantee for its performance of the Works/Services and delivery of the Goods.
- 6.1 Bank Guarantee
- The Supplier shall furnish the Purchaser with a performance bond to be issued by a bank operating in Malaysia acceptable to the Purchaser in the form of a bank guarantee as the format of which to be furnished or approved by the Purchaser (hereinafter referred to as the "Performance Bond") for a sum equivalent to ten percent (10%) of the Contract Price within fourteen (14) days from the date of acceptance of the Work Order/Letter of Award. The validity period of the Performance Bond shall be from the date of issuance up to the end of the warranty and/or defects liability periods as per Clause 11.

AND/OR

- 6.2 Retention Sum
- 6.2.1 The Parties agree that the Purchaser shall be entitled to retain a sum of money equivalent to ten percent (10%) based on the Contract Price (hereinafter referred to as "Retention Sum"), as security for the due performance of the Works/Services and delivery of the Goods by the Supplier.
- 6.2.2 The Retention Sum shall be deducted pro-rated from each and every progress payment or lump sum payment (whichever is applicable) including any mobilisation fee payable by the Purchaser. Any

- applicable tax, for the relevant payment shall be on the nett amount.
- 6.2.3 The Retention Sum shall be held by the Purchaser and shall be released, without interest upon fulfilment of the warranty obligations or certified completion, whichever is applicable. Notwithstanding anything contained in this Agreement, the Purchaser shall be entitled at any time to forfeit the Retention Sum in the event the Supplier fails to perform or fulfil its obligations under this Contract and such breach is not remedied in accordance with the terms hereof without prejudice to any other right that the Purchaser shall have against the Supplier.
- And,
- 6.3 Design Guarantee
- 6.3.1 If provisions of Clause 3.3 are applicable, the Supplier shall furnish a Design Guarantee issued by an approved licensed bank or financial institution of the sum amounting to five percent (5%) of the Contract Price apportioned for Works/Services, upon or before the issuance of the Certificate of Practical Completion of the Works/Services. Such Design Guarantee shall remain valid for a period of five (5) years from the date of practical completion of the Works/Services.
- 6.3.2 If any defect or damage shall occur to that particular part of the works as a result of any defect, fault, insufficiency or inadequacy in the design including workmanship, materials or equipment which has become defective arising directly from design fault then the approved licensed bank or financial institution issuing the Design Guarantee pursuant to sub-clause 6.3.1 above will indemnify and pay the Purchaser, on demand by the Purchaser in writing notwithstanding any objection by the Supplier or any third party, the amount equal to five percent (5%) of the value of the said part of the Works/Services.
- 6.3.3 If the Design Guarantee is not deposited with the Purchaser in accordance with sub-clause 6.3.1 above, the Purchaser shall have the right to claim from the Performance Bond and/or the Retention Sum the amount being five percent (5%) of the value of the said part of the Works/Services.
- 7. Terms of Payment**
- 7.1 The terms of payment of the Contract Price shall be in accordance with the Schedule of Payment and provisions of clause 6.2 hereinabove, if applicable. Any terms indicated in such Schedule of Payment shall prevail over the relevant terms of this Clause 7.
- 7.2 Where there is advance payment, the Supplier shall furnish the Purchaser with an advance payment bond to be issued by bank operating in Malaysia acceptable to the Purchaser in the form of bank guarantee for amount equivalent to the advance payment within thirty (30) days from the date acceptance of the Work Order/Letter of Award. The amount of the advance payment bond shall be progressively reduced in accordance with accepted deliveries and/or completion. Format of the advance payment bond shall be furnished or approved by the Purchaser.
- 7.3 Upon accepted/certified delivery of the Goods and/or progress/completion of the Works/Services, after the end of the period of payment stated in the Contract (if not stated, after the end of each month), the Supplier shall lodge with the Purchaser one
 (1) original and two (2) copies of the Supplier's signed statement/commercial invoices showing in detail the amounts to which the Supplier considers himself to be entitled, together with supporting documents which shall include one (1) original and two
 (2) copies of the accepted delivery orders/statement of progress (interim certificate)/certificate of practical completion, which format shall be furnished by the Purchaser, signed by both Parties. The statement shall

include estimated contract value of the Goods delivered and Works/Services executed, adjustments due to reasons of Clauses 15, 16, 17 and deduction of amounts included in previous statements/invoices. Subject to provision of Clauses 4 and 5, any indirect taxes shall be clearly defined in the invoices as required under the law and regulations.

- 7.4 The Supplier shall submit a statement in three copies to the Purchaser relevant report on progress in accordance with Clause 9.7.
- 7.5 Payment shall be made by the Purchaser no later than forty-five (45) days after submission of the documents referred to clause (or as specified in the relevant Attachment). The payment of moneys in accordance with this Clause shall not be taken as evidence of or as an admission by the Purchaser that any Works/Services have been executed or Goods have been delivered in accordance with the Contract.
- 7.6 If the Contract includes a Schedule of Payments specifying the installments in which the Contract Price will be paid, then unless otherwise stated in this Schedule the installments quoted in the Schedule of Payments shall be the estimated contract values for the purposes of interim payments and if these installments are not defined by reference to the actual progress achieved in delivery of the Goods and/or executing the Works/Services, and if actual progress is found to be less than that on which the Schedule of Payments was based, then the Purchaser may proceed to agree or determine revised installments, which shall take account of the extent to which progress is less than that on which the installments were previously based.
- 7.7 If the Contract does not include a Schedule of Payments, the Supplier shall submit non-binding estimates of the payments which he expects to become due during each payment period.
- 7.8 As soon as is practicable but not later than three (3) months after the issuance of the Certificate of Practical Completion, the Supplier shall submit full particulars complete with receipts, vouchers records that would substantiate its claim with any documents, supporting vouchers and any explanation and calculations, which may be necessary to enable the Final Account to be prepared by the Purchaser PROVIDED ALWAYS the Supplier had given the notice of claim in writing within the stipulated time or times in the said provisions.
- 7.9 If the Supplier fails to submit full particulars of all claims within the stipulated period, the Purchaser shall forthwith make the assessment based on the available documents submitted by the Supplier for the purpose of the Final Account. The Purchaser shall be discharged from all liabilities in connection with the claims.
- 7.10 Within three (3) months after the expiry of the Defects Liability Period for the whole of the Works/Services or three (3) months after the issue of the Certificate of Completion of Making Good Defects referred to in Clause 11.12, whichever is the later, the Purchaser shall issue the Final Certificate.
- The Final Certificate shall be supported by documents, and full particulars and records showing the Purchaser's final valuation of Goods and Works/Services and any amount determined accordance with the terms of this Contract. After setting out or allowing for all payments or other expenditure or permitted deductions made by the Purchaser, the Final Certificate shall state any final balance due from the Purchaser to the Supplier or vice versa, as the case may be, which shall thereupon become the debt payable. Such certificate shall also take account of any outstanding permitted deductions not yet made by the Purchaser under the terms of this Contract whether by way of liquidated damages or

otherwise.

- 7.11 No final payment due to the Supplier under the Final Certificate, shall be made unless and until the Supplier shall have satisfied the Purchaser by means of a Statutory Declaration made by or on behalf of the Supplier to the effect that the workmen who have been employed by the Supplier on the Works/Services including workmen employed by sub-contractors, whether nominated or otherwise have received all wages due to them in connection with such employment, and that all dues or contributions under the Employment Act 1955 or equivalent, the Employee's Social Security Act 1969 or equivalent, the Employee's Provident Fund Act 1965 or equivalent and any other laws relevant to the employment of workmen, have been paid.
- 8. Permits, Licences and Certificates**
- 8.1 The Supplier shall apply for and obtain all necessary export licenses or other approvals from the relevant authorities in the country of origin for the Goods or any part thereof to be exported to Malaysia or performance of the Works/Services in Malaysia, if applicable. In case of any failure or delay of the Supplier in obtaining such approval, the Supplier shall hold harmless and keep indemnified the Purchaser against costs, expenses, action and/or liability arising from such failure on the part of the Supplier.
- 9. Delivery and Acceptance of the Goods and Works/Services**
- 9.1 Time shall be of the essence. The Supplier shall deliver all Goods and perform all Works/Services under the Contract to/at the Site or other specified location and within the times stipulated in the delivery/implementation schedule of this Contract.
- 9.2 The terms of delivery of the Goods shall be as indicated in the Work Order.
- 9.3 Delivery of the Goods to the receiving personnel does not imply their acceptance. the Purchaser shall be entitled to claim to the Supplier, even after receipt and notwithstanding the payment, if any, of relevant invoices, the non-compliance of the items delivered or the presence of defects and deficiencies against the Contract. In this instance, the Supplier shall be bound to substitute in good time, the defective or non-consistent materials.
- 9.4 The acceptance of the Goods shall take place after the successful completion of the installation and commissioning according to the Specifications and the demonstration of the Goods as part of the proof of functioning, special consideration to be given to the fulfillment of the specified performance data, the integration into the overall system and the finishing, being ready to function and safe to operate.
- 9.5 Unless agreed otherwise in writing by the Parties, the start date for the Works/Services and the completion date are as per the Implementation/Delivery Schedule. Any revision to the Schedule and/or extension of the completion date shall be treated as a variation under Clause 16.
- 9.6 Where any of the Goods do not conform to the Specifications, the Purchaser shall not be required to accept the Goods and shall have the sole right either:
- 9.6.1 to ask the Supplier to rectify or replace the Goods and the Supplier shall promptly replace the same at its sole expense and the Purchaser shall apply Clause 5; or
- 9.6.2 to reject the Goods and terminate the Contract and all the provisions of Clause 16 shall apply.
- 9.7 Acceptance of the Works/Services as having been completed by the Supplier shall be through certification by the Purchaser and/or the relevant classification society, if any, and/or the Client, if applicable, whereas for progress completion, a

- statement of progress and interim certificate shall be issued and for full completion, a certificate of practical completion shall be issued.
- 9.8 Unless contractually agreed, partial deliveries of the Goods and/or sectional completion of the Works/Services are only allowed with the Purchaser's prior written consent. In such case, provisions related to Clauses 9.7, 10 and 11 may be revisited.
- 9.9 If proof has been given that the Supplier fails to deliver the Goods and/or Works/Services within the stipulated time period, the Purchaser shall have the right to have the Contract salvaged and/or terminated with immediate notice.
- 9.10 Notwithstanding the right to salvage or terminate, the Purchaser shall be entitled to claim for any proven cost and expenses incurred as a result of such salvation and/or termination.
- 10. Liquidated Damages**
- 10.1 In the event of delay in the delivery of all or any part of the Works/Services or performance of Works/Services which are not due to Force Majeure and/or Suspension:
- 10.1.1 Such delay does not affect or cause a corresponding delay in the overall delivery schedule of the Goods and/or Works/Services the Supplier shall pay liquidated damages for each month of delay at the rate of two percent (2%) of the value of that portion of the Goods and/or Works/Services which is so delayed.
- 10.1.2 Such delay causes or results in a delay in the overall delivery schedule of the Goods and/or Works/Services, then the Supplier shall pay liquidated damages for each month of delay at the rate of two percent (2%) of the amount of the Contract Price.
- 10.2 Provided always that the total sum of the liquidated damages shall not exceed twelve percent (12%) of the Contract Price, in which event the Purchaser shall have the option to terminate the Contract. Liquidated damages shall be paid proportionately for any period of less than one (1) month calculated on the basis of thirty (30) days in a month.
- 11. Warranty and Defects Liability**
- 11.1 The Supplier hereby warrants and guarantees that the Goods shall comply with the specifications and requirements of the Contract and notwithstanding any inspection, delivery to or acceptance by the Purchaser of the Goods, or any part thereof, the Goods delivered under the Contract shall be genuine and unused, fit for its purpose, free from defects in design in accordance to the standard specified, material, workmanship and manufacture, not inferior in standard, quality or performance capability or differing in design, form of material from the requirements, standards, terms and conditions provided in the Contract. Such warranty shall further cover the materials, the correctness and the completeness of the interface specifications and the packing, handling, care, storage and maintenance in accordance with the Specifications.
- 11.2 The Supplier hereby agree that the period of warranty in respect of the Goods shall be twelve (12) months after delivery and acceptance the Goods, by the Purchaser or the Client, whichever is applicable.
- 11.3 The Supplier warrants and guarantees that the Works/Services provided under the Contract will comply in every respect with the agreed specifications and that they are not inferior in standard, quality or performance capability.
- 11.4 The Supplier warrants that the period of defects liability in respect of the Works/Services shall be twelve (12) months from the date of issuance of the certificate of completion (hereinafter referred to as "Defects Liability Period").
- 11.5 Back to back warranty is given to the Purchaser for any item, material and/or equipment provided by the Original Equipment Manufacturer (O.E.M.) through the Supplier. The Supplier shall, wherever applicable, ensure that every warranty from each supplier or manufacturer (as the case may be) of the said components and materials used in its Works/Services shall be directly given to or made in favour of the Purchaser.
- 11.6 During the course of the Warranty Period and/or Defects Liability Period, the Supplier shall remedy the defects without delay upon receiving the notification of the claim hereof, notwithstanding any further responsibilities. The remedy of such defect shall start within five (5) days upon receipt of such notification and shall be completed fourteen (14) days from notification of such claim. Within seven (7) days after the completion of the remedial work, the Supplier shall submit the Guarantee Rectification Report, which format shall be furnished by the Purchaser.
- 11.7 All costs and expenses incurred as a result of such warranty and/or defects liability to be called for, which shall include without limitation the transportation, relevant insurance and other charges incurred by the Purchaser shall be borne by and paid for by the Supplier.
- 11.8 The Supplier shall conduct all repair/rectification works for the Goods and/or Works/Services, which call for the warranty and/or defects liability, at Site or a location mutually agreed by the Parties.
- 11.9 If the Supplier fails to remedy such defects which affect the warranty and/or defects liability within the specified time herein stipulated, the Purchaser reserves the right to remedy defects themselves or have these remedied by third parties. In such event, the Supplier shall pay to the Purchaser such sum incurred by the Purchaser to have the remedial work done.
- 11.10 The warranty period for the rectified parts or replaced items (for the Goods) shall be the remaining period of warranty of the said parts or items however not less than six (6) months.
- 11.11 The running of the warranty period shall be suspended for the period necessary to repair a defective part of the Goods or to replace it with a non-defective part of the Goods, irrespective of whether the part of the Goods concerned is an article supplied by the Supplier or another manufacturer, unless the Supplier is not responsible for the reasons leading to the repair or the replacement and/or during times when the Goods cannot be used because of the occurrence of an event causing the guarantee to come into operation, whatever the nature of such event be, and/or as a result of periods necessary for the Supplier to install the items or parts replaced on the Goods after the respective Goods has been accepted.
- 11.12 When in the opinion of the Purchaser the Supplier has made good the defects, imperfections, shrinkages or any other fault whatsoever which he is required to make good under this Clause, the Purchaser shall issue a certificate to that effect, and the date specified in such certificate shall be the date on which the Supplier has completed making good such defects, imperfections, shrinkages or any other fault whatsoever. The said certificate shall be referred to as the "Certificate of Completion of Making Good Defects".
- 12. Insurances**
- The Supplier shall be responsible for but not limited to all insurance coverage in the process of discharging the obligation, which shall include third party liability, workmen's compensation, builder's all risks and professional indemnity. All policies shall be in the name of the Supplier which shall name the Purchaser as the beneficiary, as applicable. Failure to furnish

copy of valid insurance policies latest within seven (7) working days of Site possession or commencement of Works/Services, whichever is earlier, shall be construed as breach under Clause 18.1.5, for which the Purchaser shall, in its sole discretion, be entitled to exercise Clause 15 or Clause 17.

13. Intellectual Property Rights

13.1 The Supplier warrants that all Works/Services provided under the Contract shall not infringe any intellectual property rights, including letters patent, copyright, registered design, trademark or trade name. In the event of any action, claim or demand

13.2 Where software is required to be supplied hereunder the Supplier warrants that the Purchaser been provided with all conditions of use or license terms relating to such software prior to the date of this Contract. In the event that such conditions or license terms have not been provided, the Supplier agrees to waive their application. The Supplier warrants that they are the owner of the copyright or other intellectual property in such software to be supplied or that has a valid license from the owner of the copyright or intellectual property to sell or sub-license the software to the Purchaser.

14. Developed Intellectual Property Rights

Where development forms part of the Contract, the ownership of any intellectual property rights including but not limited to patents, registered designs, unregistered design rights and copyright arising from such development shall be transferred to the Purchaser and the Supplier shall co-operate in any manner necessary to make such transfer effective as soon as any such right arises.

15. Suspension and Remobilization

15.1 The Parties agree that the Purchaser may at any time instruct the Supplier by giving a seven (7) day written notice to suspend the progress of Works/Services or any part thereof provided that the Purchaser has reasonable cause to do so.

15.2 Any changes to the delivery dates shall only be made after mutual agreement. The liquidated damages specified in Clause 10 hereinabove shall apply in respect of the new dates.

15.3 Any instruction by the Purchaser to suspend progress of the Works/Services for any reason other than the Supplier's default under this Contract shall be deemed to be a Variation Order.

15.4 Any amendments to the Payment Schedule and Delivery Schedule, which may be necessary as a result of the suspension, shall be mutually agreed by the Parties within fourteen (14) days of receipt of notice to suspend by the Supplier.

15.5 The Supplier must take all measures to minimise the costs and losses of such suspension both to the Purchaser and the Supplier and where any extra costs necessarily incurred as a direct result of a suspension are incurred by the Supplier, these may be paid by the Purchaser provided that the Supplier shall not be entitled to recover any such costs unless within seven (7) days after receipt of the order to suspend progress of the Works/Services or any part thereof the Supplier gives to the Purchaser notice in writing of his intention to make such claim together with an estimate of the likely daily costs and the likely delay.

15.6 The Purchaser the Purchaser may, at any time following a suspension ordered pursuant to Clause 15.1, give notice to the Supplier to remobilize and continue with the Works/Services the subject of the suspension.

15.7 Such remobilization referred to in Clause 15.6 above, must be executed by the Supplier within ten (10) days

of receiving such order from the Purchaser.

16. Variation and Amendment

16.1 The Purchaser may make changes at any time in the specifications or written instructions furnished to the Supplier pertaining to the Contract. Any differences in price or time for performance due to the aforesaid changes shall be agreed between the Parties.

16.1.1 Variations may be initiated by the Purchaser at any time prior to issuing the Certificate of Practical Completion for the Works/Services, either by an instruction or by a request for the Supplier to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others.

16.1.2 The Supplier shall execute and be bound by each Variation, unless the Supplier promptly gives notice to the Purchaser stating (with supporting particulars) that (i) the Supplier cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works/Services, or (iii) it will have an adverse impact on the achievement of the Performance Guarantees. Upon receiving this notice, the Purchaser shall cancel, confirm or vary the instruction.

16.1.3 The Supplier may, at any time, submit to the Purchaser a written proposal which (in the Supplier's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Purchaser of executing, maintaining or operating the Works/Services, (iii) improve the efficiency or value to the Purchaser of the completed Works/Services, or (iv) otherwise be of benefit to the Purchaser.

16.1.4 The proposal under Clause 16.1.1 and 16.1.3 shall be prepared at the cost of the Supplier and shall include the items listed in 16.1.5.

16.1.5 If the Purchaser requests a proposal, prior to instructing a Variation, the Supplier shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting (a) a description of the proposed design and/or work to be performed and a programme for its execution; (b) the Supplier's proposal for any necessary modifications to the Implementation/Delivery Schedule; and (c) the Supplier's proposal for adjustment to the Contract Price.

16.1.6 The Purchaser shall, within fourteen (14) days or as soon as practicable after receiving such proposal under Clause 16.1.5 respond with approval, disapproval or comments. The Supplier shall not delay any work whilst awaiting a response. Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Purchaser to the Supplier, who shall acknowledge receipt.

16.1.7 All Variations instructed in writing by the Purchaser in accordance with this Clause shall be measured and valued by the Purchaser. The valuation of Variations, unless previously or otherwise agreed, shall be made in accordance with the following rules: (a) the rates in the Bills of Quantities or Schedule of Rates after adjustment if necessary shall determine the valuation of work of similar character and executed under similar conditions as work priced therein; (b) the said rates, where work is not of similar character or executed under similar conditions as aforesaid, shall be the basis of rates for the same, so far as may be reasonable, failing which a fair valuation thereof shall be made by the Purchaser; (c) the rates in the Bills of Quantities or Schedule of Rates shall determine the valuation of items omitted, PROVIDED THAT if the omission substantially vary the conditions under which any remaining items of work are carried out, the rates of such remaining items shall be valued under rule (b).

- 16.1.8 Upon instructing or approving a Variation, the Purchaser shall proceed to agree or determine adjustments to the Contract Price, the Schedule of Payments and/or the Implementation/Delivery Schedule.
- 16.2 Any Variation, amendment or supplement to the Contract shall only be valid and binding on the Parties if it is agreed upon by Parties prior to the execution in writing.
- 17. Force Majeure, Excusable Delay and Extension of Time**
- 17.1 An event of Force Majeure which has a direct effect on its obligations, it is unable to prevent, avoid or remove and shall include without limitation, war whether declared or not, hostilities, invasions, armed conflict, act of foreign enemy, riot, insurrection, strikes, revolution or usurped power, act of terrorism, sabotage or criminal damages, and natural disasters including lightning, floods and fires.
- 17.2 Upon the occurrence of a Force Majeure event, the affected Party shall within three (3) days of event inform the other Party and both Parties shall, immediately discuss and agree upon the appropriate measures to be taken under such circumstances to mitigate any delay and reduce the interruption to the implementation of the Contract.
- 17.3 In the event that both Parties are unable to reach agreement within one (1) month from the date of occurrence of such Force Majeure, then either Party may elect to terminate the Contract. In such case, provisions of Clause 18.4 shall apply.
- 17.4 Apart from Force Majeure, the Supplier shall be entitled to claim excusable delay and an extension of the time for completion if such completion is or will be delayed by any of the following causes: (a) a Variation (unless an adjustment to the time for completion has been agreed; (b) any delay, impediment or prevention caused by or attributable to the Purchaser, the Purchaser's Representative and/or the Purchaser's employers and/or the Purchaser's other contractors on the Site; (c) the Supplier has diligently followed the procedure laid down by the relevant authorities and these authorities delay or disrupt the Supplier's work whereas the delay or disruption was not reasonably foreseeable by an experienced contractor by the date for submission of the tender or quotation.
- 17.5 If the Supplier considers himself to be entitled to an extension of the time for completion, the Supplier shall give notice to the Purchaser, describing the event or circumstance giving rise to the claim. The notice shall be given not later than seven (7) days after the Supplier became aware, or should have become aware, of the event or circumstance. When determining each extension of time under this Clause, the Purchaser shall review previous determinations and may increase, but shall not decrease, the total extension of time.
- 18. Termination**
- 18.1 the Purchaser may terminate in whole or in part this Contract, forthwith by notice in writing upon the occurrence of any of the following events of default:
- 18.1.1 the Supplier becomes insolvent or woundup;
- 18.1.2 the Supplier makes any composition or arrangement with their creditors;
- 18.1.3 any petition is presented for the Supplier's winding up;
- 18.1.4 the Supplier passes any resolution for its winding up;
- 18.1.5 the Supplier commits a fundamental and/or persistent breach of one or more terms or its obligations under this Contract and fails to rectify the same after a seven (7) day written notice from the Purchaser; or
- 18.1.6 the Supplier failing to commence, or proceeding at a rate of progress, so as to endanger the due and proper delivery of the Goods and/or completion of the Works/Services and fails to rectify the same after a seven (7) day written notice from the Purchaser; or
- 18.1.7 the Supplier fails to deliver the Goods specified in the Schedules/Specifications/Scope.
- 18.2 Upon such termination under Clause 18.1:
- 18.2.1 the Supplier shall return to the Purchaser all payments received from the Purchaser less such portions of the Contract Price as applicable for those Goods as already delivered and/or Works/Services rendered and accepted by the Purchaser at the time of termination as well as for such Goods and/or Works/Services as the Purchaser is willing to receive after such time;
- 18.2.2 the Supplier shall be liable for and pay the Purchaser all proven loss and damage suffered by the Purchaser resulting from the termination;
- 18.2.3 the Purchaser is relieved from its duty to pay any further sum pursuant to the Contract;
- 18.2.1 termination of the Contract shall not relieve the Supplier from its duty to pay any liquidated damages having become due until the date of termination if delay is the event of default.
- 18.3 Where applicable, if the Client terminates the contract, for which the Goods and/or Works/Services are purchased, between itself and the Purchaser ("Main Contract") for any reason, the Purchaser may terminate the Contract in whole by notifying the Supplier in writing and the Contract shall terminate on the date specified in the notice. Upon such notice being given the Supplier shall cease to perform its obligations under the Contract and shall forthwith do everything possible to mitigate losses consequent thereto.
- 18.4 In the event of the termination of the Contract in accordance with Clause 17.3, the Supplier shall be paid by the Purchaser (insofar as such amounts or items shall not have already been covered in payments on account made to the Supplier) for Goods delivered and/or Works/Services done up to the date of termination on a quantum merit basis and as against any payments due from the Purchaser under this Clause 17.4, the Purchaser shall be entitled to be credited with any outstanding balances in respect of the Goods and/or Works/Services including by way of illustration any balance of any advance payment remaining unpaid and any sum previously paid by the Purchaser to the Supplier in respect of the execution of the Goods. However, the Purchaser shall not be liable to pay under the provisions of this Clause 17.3, any sum, which in addition to any sums paid or due or becoming due to the Supplier under the Contract, would together exceed the Contract Price.
- 18.5 In the event of default on the Purchaser's side, unless otherwise indicated in this Contract, the Supplier's rights and entitlements shall be governed by the Malaysian Sales of Goods Act 1957.
- 19. Dispute Resolution**
- 19.1 The Parties shall take all reasonable measures to settle any dispute arising from the interpretation or application of the contract including any other documents pertaining thereto, amicably by way of negotiation.
- 19.2 Any dispute arising out of or in connection with the execution of this Agreement, which could not be resolved amicably within thirty (30) days under Clause 19.1 above, may be referred to and determined by the courts of Malaysia.
- 19.3 If a dispute of any kind whatsoever arises between the Purchaser and the Client regarding or relating to Goods supplied by the Supplier, whether or not in connection with the performance of the other suppliers, then the

Supplier shall support the Purchaser by defending all claims, in particular provide promptly all necessary information and documents to the Purchaser at the Purchaser's request.

20. Miscellaneous Provisions

20.1 Confidentiality and Publicity

The Supplier shall treat all information provided by the Purchaser as confidential and use such information only for the purpose of performing the Contract. Prior written consent shall be obtained from the Purchaser before any publicity is issued by the Supplier in connection with the Contract.

20.2 Rights to Recover Monies

Without limiting the Purchaser's rights under any other provision of the Contract, subject to prior written notice and justification to the Supplier, the Purchaser reserves the right to deduct any monies due from the Supplier to the Purchaser under or by virtue of any provision of the Contract from any monies payable to the Supplier by the Purchaser and if such monies are insufficient for this purpose, then from the Supplier's security under the Contract. Nothing in this provision shall affect the Purchaser's right to recover by other means from the Supplier the whole of the debt or any balance that remains owing after deduction.

20.3 Lien

Commencing on the respective dates of delivery the Supplier shall indemnify and hold the Purchaser harmless from all lien and other encumbrances against the Goods or any part thereof on account of claims or monies owing or alleged to be due from the Supplier or its sub-contractors, to any person and shall on behalf of the Purchaser defend at the Supplier's expense all claims and/or litigation in connection therewith. The obligations imposed herein shall survive the termination or expiry of the Contract.

20.4 Security and Access

20.4.1 Where a security classification appears on the Contract, the Supplier shall at all time comply with the relevant procedures for handling the classified items, as provided by the Purchaser, where necessary.

20.4.2 Access to the Purchaser's premises, manufacturing and production plant of the Purchaser or other related manufacturer or sub-contractors necessary in the performance of the Contract is subject to observance of security rules and regulations applying thereat.

20.5 Legal Relationship

Nothing herein shall be construed as establishing or creating a relationship of master and servant or agent and principal between the Purchaser and the Supplier, it being understood that the position of the Supplier and any other person supplying the Goods is that of an independent contractor.

20.6 Information

20.6.1 The Supplier shall at the request of the Purchaser provide detailed information with respect to the Goods and Works/Services provided under the Contract.

20.6.2 Any such request for information shall be in writing attached to or endorsed on the Contract or by separate correspondence with reference to the Contract. The Supplier hereby grants to the Purchaser the rights to use, reproduce, adapt or otherwise modify all such information for the purposes of operation, repair, maintenance and support of the Works/Services. These rights shall be irrevocable, royalty free and transferable.

20.7 Waiver

Any concession or indulgence made by the Purchaser shall not be considered as a waiver of the Purchaser's rights under the

Contract.

20.8 Anti-Corruption

Each Party represents, warrants, covenants, and agrees to the following with respect to the transactions contemplated by this Contract or in connection with any other related activities:

20.8.1 None of the Party's owners, directors, officers or employees is an officer of the other Party or is closely related to officer of the other Party. Each Party will notify the other Party if any of the Party's owners, directors, officers or employees subsequently becomes an officer of the other Party or closely related to officer of the other Party.

20.8.2 Each Party, its directors, officers, and employees shall comply with Section 17A of the Malaysian Anti-Corruption Commission (MACC) Act 2009 (Amendment 2018), as amended and any law or regulation of Malaysia that prohibits bribes and/or conferring any improper gift, payment, or other benefit on any person or any officer, employee, agent or adviser of such person;

20.8.3 Each Party has not and shall not, for any improper purpose, directly or indirectly, offer, pay, give, promise or attempt to pay or give, or authorize the payment or giving of any money, gift, or anything of value to any person for the purpose of obtaining or retaining business or to obtain any improper advantage;

20.8.4 Each Party shall immediately notify the other Party in writing if it, or any of its owners, partners, members, directors, officers, employees, shareholders or agents, commits a violation of the MACC Act, or any other applicable anti-corruption law or regulation.

20.8.5 Violation of this clause shall be grounds for immediate termination.

20.9 Assignment

Unless agreed in writing by the Purchaser, the Supplier shall not assign or sub-contract the Contract to any other party.

20.10 Successors' Bound

The Contract shall be binding upon each party, its respective successors and permitted assigns, and shall inure to the benefit of each party and its respective successors and/or permitted assigns.

20.11 Compliance with Authorities' Regulations

The Supplier agrees to comply with all laws, orders, rules, ordinances, codes and regulations of any governmental or regulatory body applicable to it and relating to the Goods and/or Works/Services and shall furnish the Purchaser with evidence of compliance as the Purchaser may require at any time and from time to time. If the Supplier fails to comply with the above laws, orders, rules, ordinances, codes and regulations and as a result the Purchaser is held liable for such Supplier's failure by the applicable regulatory body or a court of law, then at the Purchaser's sole discretion, the Supplier shall either pay fines, damages and/or other costs incidental thereto or reimburse the Purchaser for the payment of the same.

20.12 Indemnity

The Supplier shall indemnify and hold harmless the Purchaser and its employees, officers, directors, authorized representative from all claims, costs, liabilities, judgments, expenses, damages or losses resulting from any injury to property or persons due to any act, omission or negligence of the Supplier, its agent, employees or contractor or arising out of the Supplier's performance of this Contract or arising out of any breach or alleged breach of this Contract or any representation or warranty made by the Supplier, its agents, employees or contractors.

- 20.13 Notices
Any notices and correspondences to be given under the terms of the Contract shall be served by sending the same by registered mail, courier or fax to the addresses stipulated in the Work Order / the Head of Agreement / Particular Conditions and as updated by the Party from time-to-time. The notice shall be deemed to be accepted by the other Party if, by letter, upon receipt, or seven (7) days after posting, whichever is the earlier; or if by fax, cable or telex, on the business day following such transmission; or if by registered mail or courier service or hand, upon acknowledgement of receipt. Correspondence through electronic mail shall not be considered as valid notice and shall be used for operational purposes only.
- 20.14 Entire Contract
The Contract constitutes the entire agreement between the Parties with respect to the matters contained herein, supersedes any and all previous agreements and understandings between the Parties with respect to such matters and ensures to the benefit of the Parties, their successors and assigns.
- 20.15 Severability
Any invalidity or nullity of individual clause or provision of this Contract shall not render the entire Contract invalid. Such invalid clause or provision shall be replaced with a new obligation coming as close as possible to the economic purpose of the original obligation, taking into account the purpose of this Contract.
- 20.16 Limit of Liability
The total aggregate liability of each Party under this contract including consequences in case of termination shall be limited to the total Contract Price. Any further rights and/or claims including but not limited to loss of profit, loss of interests, loss of use, loss of production or any indirect or consequential damages shall be excluded, unless specifically allowed under the governing law. The Party and its sub-contractors, partners, servants and agents shall only be liable for damages to property or injury to persons caused by their gross negligence during the performance of their contractual obligations.
- 21. Management of Contract**
- 21.1 For the purpose of implementation and administration of this Contract, including supervision and direction of the Works/Services, the Purchaser has authorised the person named in Section 1, as its representative, the responsibilities and authorities of whom include:
- 21.1.1 Acting on behalf of the Purchaser for actions under relevant provisions in Clauses 1.3.2, 7, 9, 11, 15, 16, 17 (subject to an approved limit indicated in Section 1), 18 and 19.1;
- 21.1.2 Issuance of notices and/or instructions and/or approvals on behalf of the Purchaser, including removal of materials from the Site, substitution of materials, removal and/or re-execution of any works executed by the Supplier, object to and require the Supplier to remove immediately from the Site any person employed by the Supplier who misconducts himself or is competent or negligent and opening up for inspection of any work covered up.
- 21.2 Site Possession
- 21.2.1 No work under this Contract shall commence unless and until the Performance Bond stipulated under Clause 6.1, if applicable, and such insurance policies as specified under Clauses 12 shall have been deposited with the Purchaser, PROVIDED THAT for the purposes of this clause only (but for no other), if the Supplier shall produce to the Purchaser the valid cover note of the said insurance policies and the receipt of premiums paid, it shall be a sufficient discharge of his obligations under this Clause.
- 21.2.2 The Purchaser shall give the Supplier right of access to and possession of all parts of the Site within the time (or times) stated in Section 1. The right and possession may not be exclusive to the Supplier. However, the Purchaser may withhold any such right or possession until provisions of Clause 21.2.1 are fulfilled.
- 22. Governing Law**
This Contract shall be governed by and construed in accordance to the laws of Malaysia.