

## **GENERAL CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES**

ANY TERMS AND CONDITIONS PROPOSED IN THE SELLER'S ACCEPTANCE OR IN ANY ACKNOWLEDGEMENT, INVOICE, OR OTHER FORM OF THE SELLER THAT ADD TO, VARY FROM, OR CONFLICT WITH THE TERMS HEREIN ARE HEREBY REJECTED. SUCH TERMS AND CONDITIONS SHALL NOT APPLY TO THE CONTRACT UNLESS ACKNOWLEDGED BY A WRITTEN INSTRUMENT EXECUTED BY AUTHORISED REPRESENTATIVES OF THE BUYER AND THE SELLER. DESPATCH OR DELIVERY OF THE GOODS BY THE SELLER TO THE BUYER SHALL BE DEEMED CONCLUSIVE EVIDENCE OF THE SELLER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS.

### **1. DEFINITIONS**

- (a) "Airworthiness Authority" means the airworthiness authority to whose authority Buyer or its Customer's operations are subject to.
- (b) "Buyer" shall mean the legal entity issuing the Purchase Order, which may be ST Engineering Aerospace Ltd or its affiliates, which expression shall include its successors and permitted assigns.
- (c) "Contract" shall mean the agreement entered into between the Buyer and the Seller for the purchase of the Goods and/or Services. The terms and conditions of the Contract shall comprise the terms in the Buyer's purchase order, the terms and conditions herein and all annexes, appendices, schedules, exhibits, supplemental agreements, specifications, plans, drawings, patterns, samples or other documents or conditions which may be incorporated by contract.
- (d) "Contract Price" shall mean the price payable to the Seller for the Goods and/or Services.
- (e) "Customer" shall mean any customer of the Buyer.
- (f) "days" shall mean a reference to calendar day unless expressly stated otherwise.
- (g) "Goods" shall mean the Goods described in the Contract which the Seller is required under the Contract to supply and shall include any operating/instruction manuals and maintenance manuals relating to the Goods.
- (h) "Purchase Order" means the purchase order for Goods and/or Services issued by the Buyer.
- (i) "Seller" shall mean the person, firm or corporation who by the Contract undertakes to supply the Goods or to render such other Services as may be required by the Contract which expression shall include its successors and permitted assigns.
- (j) "Services" shall mean the Services described in the Contract which the Seller is required under the Contract to perform.

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- (k) “Serviceable” means a Good which fulfils the operational purpose for which it was initially designed for and which shall be certified in accordance with any relevant manufacturer instructions and specifications in accordance with the relevant maintenance manual and requirements of a relevant Airworthiness Authority, as the case may be.

## **2. ESTABLISHMENT OF THE CONTRACT**

If the Seller fails to accept the Purchase Order for any reason whatsoever, the shipment by the Seller of any Goods or the furnishing or commencement of any Services ordered, or the acceptance of any payment by the Seller hereunder or any other conduct by the Seller that recognises the existence of a contract pertaining to the subject matter herein, may, at the Buyer’s election, be treated as an unqualified acceptance by the Seller of the Purchase Order and all terms and conditions herein.

## **3. VARIATIONS**

Subject to Clause 13, no variation, amendment or addition will apply to the Contract unless expressly agreed upon in writing and signed by the parties’ respective authorised representatives.

## **4. QUALITY, STANDARD AND DESCRIPTION**

- (a) Subject to Clauses 9 and 11, the Goods shall:
- (i) be new and conform in all respects with the specifications and other requirements or descriptions stated in the Contract;
  - (ii) be of sound materials, design and workmanship;
  - (iii) be equal in all respects to the samples, patterns or specifications provided or given by either party;
  - (iv) be capable of any standard of performance specified in the Contract;
  - (v) if the purpose for which they are required is indicated in the Contract either expressly or by implication be fit for that purpose;
  - (vi) be of satisfactory quality; and
  - (vii) be Serviceable.
- (b) The Services shall be:
- (i) performed using all due care and diligence, in accordance with the turnaround time specified; and

- (ii) performed in accordance with appropriate service bulletins, specifications provided by Customer, maintenance and overhaul manuals of the manufacturer of the Goods and the directives of the relevant Airworthiness Authority, as may be applicable. In addition, the Seller shall maintain a certificate of approval for the Services issued by the Airworthiness Authority at all times during the period of the Contract.

The Services shall be deemed completed only if they meet all requirements and all applicable acceptance tests have been successfully completed under the Contract.

- (c) All documents, records, test reports, etc, relating to the production of the goods must be retained on file for evaluation for a contractually agreed upon period. Unless otherwise specified, this period shall be ten years.
- (d) If any Goods are to be provided and/or Services are to be performed by the Seller's subcontractors (if such subcontracting is expressly allowed under the Contract or if the Buyer's prior written approval has been obtained), the Seller shall be and remain fully responsible for the actions of its subcontractors.
- (e) If the Seller is required to provide Services on the premises of the Buyer or a Customer, the Seller shall, and shall procure its employees, directors, officers or agents who are working on the Buyer's premises in connection with the Contract to, comply with all of the Buyer's safety and security procedures, as may be amended from time to time, and shall take any and all necessary steps and precautions to prevent injury to any person or property during the duration of the provision of Services under the Contract. If required by the Buyer, Seller shall also provide all other certificates and permits necessary in order for Services to be provided on the premises of the Buyer or a Customer.

## **5. INSPECTION AND TESTING**

- (a) Before dispatching the Goods, the Seller shall carefully inspect and test them for compliance with the Contract. The Seller shall, if requested by the Buyer, give the Buyer reasonable notice of such tests and the Buyer shall be entitled to be represented thereat. The Seller shall also, at the request of the Buyer, supply to the Buyer a copy of the Seller's test sheets certified by the Seller to be a true copy.
- (b) Where inspection of any of the Goods, whether completed or in the course of production, is required by the Buyer, the Seller shall give the Buyer full and free access to the Seller's works as and when required for that purpose and the Seller shall give the Buyer all facilities and applicable records, at any level of the supply chain involved in the order, as may be required therefore, at no cost to the Buyer. Where necessary, this free access shall also be extended to Customers and any applicable Regulatory Authorities or Agencies.
- (c) If, as a result of any inspection or test under Clause 5(a) or 5(b), the Buyer's representative is of the reasonable opinion that the Goods do not comply with the Contract or are unlikely to comply upon completion of manufacture or processing, he may inform the Seller accordingly in writing and the Seller shall forthwith take such steps as may be necessary to ensure such compliance.

## **6. DELIVERY AND PACKING**

- (a) Unless otherwise agreed and except as set forth herein, the relevant Incoterm Rules as stipulated in the Purchase Order, as interpreted in accordance with “INCOTERMS 2010” (Publication No. 715E of the International Chamber of Commerce), shall apply to the Contract.
- (b) The Seller shall deliver the Goods to the Buyer in the manner and at the place and time specified in the Contract. The Seller shall also comply with any additional instructions with respect to the Goods which the Buyer may give from time to time and any additional costs incurred by the Seller in complying with such instructions may be added to the Contract Price upon the Buyer’s approval in writing.
- (c) The Seller shall, at its own cost, ensure that the Goods are adequately packed for rough handling so as to ensure that they reach the Buyer intact and undamaged. In addition, the Seller shall ensure that the Goods are packed in such a manner that they are suitable for export to and storage in the tropics and are protected from deterioration during their transit until their delivery to the Buyer. The Seller shall further comply with any other requirements on packing explicitly specified in the Contract. Any packages containing dangerous or hazardous Goods shall be packed and marked in accordance with the best international commercial practice and all applicable laws and regulations.
- (d) The Buyer’s signature or stamp given on any delivery note or other documentation presented for signature in connection with delivery of the Goods is not evidence that the correct quantity of Goods has been delivered or that the Goods delivered are in good condition or of the correct quality but is only evidence of the number of packages received.
- (e) The Seller shall promptly notify the Buyer if it knows or suspects there was a security breach affecting the Goods.

## **7. PASSING OF PROPERTY AND RISK OF LOSS OR DAMAGE**

- (a) Risk of loss or damage to the Goods shall pass to the Buyer at the time of acceptance by the Buyer of the Goods.
- (b) Title in the Goods shall pass to the Buyer upon delivery to the Buyer at the destination specified in the Contract, unless payment for the Goods is made prior to delivery, in which case title shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## **8. TIME OF ESSENCE OF CONTRACT**

Time shall be of the essence of the Contract, both as regards the dates and periods mentioned and as regards any dates and/or periods which may be substituted for them in accordance with the Contract and by agreement in writing between the Buyer and the Seller.

## **9. REJECTION OF THE GOODS AND/OR SERVICES**

- (a) The Buyer shall have the right (without liability and in addition to its other rights and remedies under the Contract or otherwise) to reject the Goods or refuse acceptance of the Goods and/or Services if any of the same is found not to be in accordance with the Contract or if the Seller fails to deliver the Goods and/or Services within the time specified.
- (b) In the case of Goods, upon such rejection, the Seller shall, at the Seller's risk and expense, arrange for the return of the Goods to the Seller, and the Seller shall return to the Buyer the Contract Price and reimburse the Buyer for all freight, insurance and other incidental costs incurred by the Buyer in connection with the purchase of the Goods.
- (c) Without prejudice to the Buyer's other rights and remedies, in the case of Services which do not comply with all the requirements of the Contract, the Buyer shall be entitled to terminate the Contract under the provisions of Clause 21 herein.
- (d) The Buyer shall also have the right to purchase the Goods and/or Services or substitutes thereof from alternative sources and the Seller shall reimburse the Buyer, upon demand, all additional costs incurred by the Buyer in obtaining the Goods and/or Services or substitutes thereof.

## **10. LIQUIDATED DAMAGES**

Without prejudice to the Buyer's other rights and remedies, if the Goods or any part thereof or the Services are not delivered or performed within the time(s) specified in the Contract or any extension thereof as may be granted by the Buyer, the parties agree that the Buyer may recover from the Seller, as genuine pre-estimated losses, damages calculated based on half per cent (½%) of the Contract Price subject to delay for each week or any part thereof which may elapse between the time(s) specified in the Contract and the actual date of delivery or performance subject to a maximum of ten per cent (10%) of the value of Goods or Services so delayed. The Buyer may, without prejudice to any other method of recovery, deduct the amount of such liquidated damages from any monies in the Buyer's hands due or which may become due to the Seller. The payment or deduction of such damages shall not relieve the Seller from its obligations to complete the delivery or performance of the Goods or Services, or from any other of its obligations or liabilities under the Contract. If any sum payable under this Clause is not paid within fifteen (15) days after the due date then (without prejudice to the Buyer's other rights and remedies at law or otherwise) the Buyer reserves the right to charge interest on such sum on a day-to-day basis (as well after as before any judgement) from the due date to the date of payment (both dates inclusive) at the rate of two per cent (2%) per month or part thereof compounded.

## **11. REPRESENTATIONS AND WARRANTY**

- (a) The Seller represents and warrants that the Goods and Services and any part thereof will be of satisfactory quality and free from any defect in manufacture or any defect arising out of design, materials or workmanship, assembly or installation, from the date of acceptance of the Goods

- or Services by the Buyer for the period specified in the Purchase Order or **Contract** (hereinafter referred to as the “**Warranty Period**”). If unspecified, the Warranty Period shall be one (1) year.
- (b) Where during the Warranty Period the Goods or any part or unit thereof is found by the Buyer to be defective, the Seller shall at the written request of the Buyer, replace the same at the risk and expense (including transport costs and other incidental charges) of the Seller or if the Buyer agrees, make good or repair the same at the risk and expense (including transport costs and other incidental charges) of the Seller within sixty (60) days from the date of the written demand from the Buyer to replace, make good or repair the same. The Goods or part or unit so replaced or repaired shall be subject to the warranty for the unexpired portion of the original warranty, or a period of ninety (90) days, whichever is longer from the date of receipt by the Buyer of the Goods or part of unit so replaced or repaired. If the Seller fails to make good or repair the Goods as stated herein, the Buyer reserves the right without prejudice to its other rights under the Contract or otherwise to buy such defective Goods from alternative sources or have the Goods repaired at alternative sources and all additional costs incurred thereby shall be recoverable from the Seller.
- (c) The Seller represents and warrants that it will select and furnish personnel experienced and skilled in the type of work they are to perform under the Contract and that the Services to be performed under the Contract will be performed with due care and diligence and in a workmanlike manner within the turnaround time specified by the Buyer and in accordance with the Buyer’s requirements. In the event the Services or part thereof do not conform to the requirements under the Contract, the Seller shall, upon demand in writing by the Buyer, forthwith re-perform the Services. The services so re-performed being then subject to the warranty for a further period of one (1) year from the date of such re-performance is accepted by the Buyer.
- (d) Until such time as the defective Services are re-performed to the satisfaction of the Buyer, the Buyer shall not be obliged to make payment therefor or, if payment has already been made, the Seller shall refund to the Buyer all sums paid. Any additional or incidental costs related to the re-performance of the Services or part thereof shall be borne solely by the Seller.

## 12. PAYMENT

- (a) The Contract Price shall be payable by the Buyer within thirty (30) days or any further period which may be mutually agreed by the parties in writing upon the Buyer’s receipt of the Seller’s correct invoice (which shall be in duplicate) together with all supporting documents as may be required under the Contract save that the Seller agrees to accept the correct invoice amount discounted by 3% in exchange for the Buyer’s initiation of payment on the fifteenth (15<sup>th</sup>) day following receipt of Seller’s correct invoice.
- (b) Invoices must be issued in the name of the Seller. If the Buyer receives an invoice from another entity (whether related to the Seller or not), the Buyer shall be entitled to reject all such invoices as improper. If the Seller insists on payment for improper invoices, such action shall be deemed to be a breach of the Contract and all remedies for such breach shall then be available to the Buyer.
- (c) In the event the Seller wishes the Buyer to make payment of the Contract Price to a party other than the Seller, the Seller shall seek the prior written consent of the Buyer pursuant to Clause 20 herein.

- (d) The Buyer shall be entitled to set off against any amount owing from the Seller to the Buyer or to any of the Buyer's affiliates against any amount payable under the Contract.

### **13. ALTERATIONS OF SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND SAMPLES**

After acceptance of the Contract, the Seller shall not alter the specifications, plans, drawings, patterns or samples of any part of the Goods and/or Services unless directed by or with the prior written agreement of the Buyer, but the Buyer reserves the right to alter from time to time the specifications, plans, drawings, patterns and samples as from the date specified by the Buyer and the Goods and/or Services shall thereafter be in accordance with the specifications, plans, drawings, patterns and samples so altered. In the event that such alteration(s), directed by the Buyer, result in changes to costs or time of delivery, these changes shall be agreed to between the Buyer and the Seller. In all other respects, the Contract shall remain unaltered.

### **14. INDEPENDENT CONTRACTOR**

Nothing in the Contract shall be construed to create a relationship of employer and employee or partnership between the Buyer and the Seller. The Seller shall at all times be deemed to be an independent contractor.

### **15. COMPLIANCE WITH LAWS AND PAYMENT OF TAXES**

- (a) The Seller shall be responsible for compliance with all applicable laws including all applicable import and export customs regulations and formalities.
- (b) The Seller undertakes to pay or reimburse the Buyer for the payment of all fees, levies, duties and taxes (including sales, use or consumption taxes, goods and services tax, withholding tax, value added tax and taxes incurred and/or payable according to and/or under the relevant laws) and the application to the relevant authorities for any required licences and any authorisations as a result of the sale and importation of the Goods or Services.

### **16. INTELLECTUAL PROPERTY RIGHTS**

- (a) The Seller represents and warrants that:
  - (i) neither the sale nor the use of the Goods and/or Services nor the performance of the Contract will infringe any patent, trademark, registered design or other industrial or intellectual property rights;
  - (ii) it is not the proprietor and/or owner of any intellectual property rights that would affect, impair or restrict the use by the Buyer and its affiliates and Customers from utilising the Goods and Services; and

- (iii) it shall not assert any of its rights in connection with the use by the Buyer and its affiliates and Customers of any Seller's Background IP.
- (b) All Background IP disclosed in connection with the Contract shall remain the property of the disclosing party.
- (c) The Seller shall grant to the Buyer an irrevocable, non-exclusive, perpetual, worldwide, royalty-free license to use and make modifications to the Seller's Background IP and to disclose the Seller's Background IP to the Buyer's affiliates, customers, clients, partners and contractors in connection with the maintenance, repair, sale, test, qualification and/or modification of the Goods and/or Services.
- (d) Any Foreground IP developed shall be delivered to, and shall be the property of, the Buyer. The Seller shall assign, and shall procure its directors, employees, officers and/or agents to assign, all such Foreground IP to the Buyer. In addition, the Seller shall provide reasonable and prompt assistance to the Buyer to enable it to secure any intellectual property rights in the Foreground IP.
- (e) If a Purchase Order includes a line item for Goods or Services or modification or improvement to existing Goods and Services, any intellectual property relating to such Goods and Services shall be considered Foreground IP which shall be owned by the Buyer unless the Seller can provide clear and convincing evidence that such intellectual property was wholly developed outside the scope of the Contract at the Seller's own costs and expenses.
- (f) The Seller shall indemnify the Buyer against all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement as aforesaid, and shall at its own expense defend or (at the Buyer's option) assist in the defence of any proceedings which may be brought in that connection.
- (g) For the purposes of this Clause, the following definitions shall apply:
  - (i) "Background IP" means all intellectual property developed or acquired by either party before, or which is outside the scope of, the Contract.
  - (ii) "Foreground IP" means all intellectual property developed by the Seller pursuant to its obligations under the Contract.

## **17. CONFIDENTIALITY**

- (a) Except with the consent of the Buyer in writing, the Seller shall not disclose the Contract or any provision thereof or any specification, plan, drawing, pattern, sample or any information issued or furnished by or on behalf of the Buyer in connection therewith, to any person other than a person employed by the Seller in the carrying out of the Contract. The disclosure to any such employee of the Seller shall be made in confidence and on a "need to know" basis. The Seller shall ensure that such of its employee(s) is/are bound by the terms of this Clause. If the Seller is required to disclose any information mentioned herein to its subcontractor for the purposes of performing its obligations under the Contract, it shall be permitted to do so if the Seller



- ensures that such subcontractors agree in writing to be bound by the confidentiality obligations as set out in the Contract.
- (b) Except with the consent in writing from the Buyer, the Seller shall not make use of any information mentioned herein supplied by the Buyer for the purposes of the Contract for any other purpose other than the performance of its obligations under the Contract.
  - (c) All specifications, plans, drawings, patterns or samples mentioned herein shall remain the property of the Buyer and shall be returned to the Buyer (together with all copies made) immediately upon termination or completion of the Contract.
  - (d) **Records and Audit.** For the purposes of this Clause 17(d), "Confidential Information" shall mean the Contract or any provision thereof or any specification, plan, drawing, pattern, sample or any information issued or furnished by or on behalf of the Buyer in connection therewith. To the extent that the Seller receives any Confidential Information of Buyer or its affiliates (which includes any entity controlled by, controlling or under common control with, Buyer) in its performance of this Contract, Seller shall, at all times during the term of the Contract and for a period of ten (10) years thereafter, maintain records relating to the Contract, its performance thereof, and its storage and transfer, where permitted, of such Confidential Information, together with supporting or underlying documents and materials.

The Seller shall at any time requested by the Buyer, whether during or after completion of the Contract, and at Seller's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the Buyer and its authorized representatives. Such records shall be made available to the Buyer during normal business hours at the Seller's office or place of business and subject to a three (3) day written notice.

The Seller shall ensure the Buyer has the rights stated in the foregoing paragraph in relation to the Seller's employees, agents, assigns, successors, and subcontractors, and these rights shall be explicitly included in any subcontracts formed between the Seller and any subcontractors to the extent that those subcontracts relate to fulfilment of the Seller's obligations to the Buyer.

This Clause 17(d) shall survive termination or expiry of the Contract for ten (10) years.

## 18. PERSONAL DATA

(a) *The Seller acknowledges that it has read the Buyer's Personal Data Policy, as may be amended from time to time, and consents to the collection, use and disclosure of any Personal Data for the purposes set out in the Buyer's Personal Data Policy.*

(b) *For the purposes of this Clause:*

*"GDPR" means the General Data Protection Regulations which covers the EU and the Data Protection Act 2018 ("DPA"), together "the Data Protection Laws".*

*"Personal Data" shall mean data, whether true or not, about an individual who can be identified:*

- (i) *from that data; or*
- (ii) *from that data and other information to which the organisation has or is likely to have access,*

*and which shall specifically include the name, telephone number, email address, residential address, residential telephone number and payment account details.*

- (c) *The Seller confirms that if it provides Personal Data of individuals to the Buyer, it is authorised to disclose and consent, on their behalf, to the processing of such Personal Data for the purposes described in the Buyer's Personal Data Policy, or other purposes for which the Seller's consent has been sought and obtained.*
- (d) *The Seller undertakes to comply with all applicable data protection laws and regulations, including but not limited to the GDPR, and shall ensure that any Personal Data provided by the Buyer shall be collected, used, disclosed and/or transferred in accordance with all applicable data protection laws and regulations, including but not limited to the GDPR.*
- (e) *Any Personal Data provided by the Buyer to the Seller shall only be used for the purposes of complying and fulfilling its obligations under the Contract.*
- (f) *The Seller may provide access to any director, employee, officers or subcontractor who requires access to Personal Data provided by the Buyer provided that such director, employee, officers or subcontractor shall not access, use, disclose, or retain such Personal Data provided by the Buyer except in performing their duties of employment in connection with the Contract.*
- (g) *The Seller shall not transfer Personal Data held in connection with the Contract outside the United Kingdom or allow parties outside the United Kingdom to have access to it, without the prior approval of the Buyer.*
- (h) *The Seller shall, in event it is notified of a breach of the provisions of this Clause 19 by itself, its director, employee, officers or subcontractor, immediately notify the Buyer."*

## **19. PROPERTY OF THE BUYER**

- (a) All tooling, equipment or materials furnished to the Seller by the Buyer or paid for or partially paid for by the Buyer and any replacement thereof, or any materials affixed thereto ("**Buyer's Property**") shall at all times remain the property of the Buyer and the Seller shall not use the same for any purpose other than for the fulfilment of its obligations under the Contract. Such Buyer's Property shall be held at the Seller's risk when the same is in the Seller's custody and control, and shall be returned promptly in the same condition as originally received by Seller (except for reasonable wear and tear), at Seller's costs and expense, upon written demand by the Buyer.

- (b) Any such Buyer's Property shall be clearly marked and identified as being the Buyer's Property and to the extent practicable, shall be stored in a safe and secure place and separated from any of the Seller's property.
- (c) The Seller does not acquire by implication or otherwise any right in or title to or license in connection with such Buyer's Property. The Seller shall not be allowed to analyse, reproduce, redesign, reverse engineer or manufacture such Buyer's Property.
- (d) In event the Seller designs and/or manufactures hardware, equipment or other property for the purpose of selling to a third party which is substantially similar to or has the ability to replace a product designed and/or manufactured by the Buyer, the Seller is obliged to, in any proceedings involving the Buyer's Property, provide clear and convincing evidence that neither the Seller nor any of its directors, officers, employees or agents or those of its affiliates had utilised, directly or indirectly, any of the Buyer's Property, in the design or manufacturing of the product.

## **20. ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF CONTROL**

- (a) The Seller shall not assign or transfer the Contract and any rights or obligations therein, including any rights to receive payment, to any person, firm or corporation, without the prior written approval of the Buyer. For the purposes of the Contract, a Change of Control of the Seller shall constitute an assignment of the Contract and a "Change of Control" shall mean the occurrence of any of the following events: (i) an acquisition of the Seller by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation); or (ii) a sale of all or substantially all of the assets of the Seller, so long as in either case the Seller's shareholders immediately prior to such event set out in subparagraphs (i) or (ii) will, immediately after occurrence of such event, hold less than 50% of the voting power of the surviving or acquiring entity.
- (b) The Seller shall not, without the prior written consent of the Buyer, sub-contract the Contract or any part thereof other than for materials, minor details or for any part of the Goods for which the manufacturers are named in the specifications. The Seller is at all times responsible for ensuring compliance with all requirements of the Contract, including in relation to all goods and services supplied by its sub-contractors. Any consent given by the Buyer to the Seller to sub-contract the Contract or any part thereof shall not relieve the Seller from any of its obligations under the Contract.

## **21. TERMINATION**

- (a) The Buyer shall be entitled forthwith to terminate the Contract by notice in writing to the Seller:
  - (i) if the Seller commits any breach of any of the provisions of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice from the Buyer requiring it to be remedied; or
  - (ii) the Seller fails to deliver the Goods or perform the Services within the turnaround time or delivery time specified by the Buyer; or

- (iii) if the Seller suspends or discontinues its business or sells or otherwise disposes of all or a substantial part of its assets which materially affects its financial position; or
  - (iv) if the Seller consents to the appointment of a receiver, administrator, trustee, liquidator or similar officer of itself or of all or a substantial part of its assets, or admits in writing its insolvency, or bankruptcy or its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors, or files a petition of bankruptcy, or (being insolvent) seeks relief under the provisions of any bankruptcy or other similar law which provides for the protection, reorganisation or winding up of insolvent corporation (other than for the purpose of amalgamation or reconstruction); or
  - (v) if the Seller ceases, or threatens to cease, to carry on business;
  - (vi) if anything analogous to any of the foregoing under the laws of any jurisdiction occurs in relation to the Seller; or
  - (vii) by giving not less than seven (7) days' written notice to the Seller.
- (b) In event the Buyer terminates the Contract pursuant to Clause 21(a)(vii), Seller shall, and shall procure its subcontractors to, immediately stop the supply of Goods and/or Services under the Contract. Subject to the terms of the Contract, the Seller may, within ninety (90) days after the effective date of termination, submit a claim to the Buyer:
- (i) setting out the percentage of work performed prior to the effective date of termination and/or the amount of Goods supplied (as the case may be); and
  - (ii) reasonable charges that the Seller can justify to the satisfaction of the Buyer have resulted from the termination.
- Seller shall mitigate its losses and further shall not be paid for any Services performed and/or Goods supplied or costs incurred which reasonably could have been avoided. Further, Seller shall not be paid, and in no event shall Buyer be obligated to pay the Seller for any special, indirect, consequential and incidental losses or damages or any loss of profits or economic loss or unabsorbed indirect costs or overheads. In no event shall the Buyer be obligated to pay Seller any amount in excess of the Contract Price. The provisions of this Clause 21(b) shall not limit or affect the right of Buyer to terminate the Contract or any Purchase Order for default. In addition, Seller shall continue to perform all work that has not been terminated.
- (c) The rights to terminate the Contract given by this Clause 21 shall not prejudice any other right or remedy of the Buyer in respect of the breach concerned or any other breach.
  - (d) Notwithstanding anything contained herein, the Buyer shall, upon termination of the Contract, be entitled to purchase the Goods or any substitutes thereof from alternative sources and the Seller shall be liable for any loss and the amount of any additional costs incurred. Further, upon termination of a contract for Services, the Seller shall refund to the Buyer the full Contract Price and any other incidental costs incurred by the Buyer in obtaining the Services.

## **22. REMEDIES**

No remedy in the Contract is intended to be exclusive, but each shall be cumulative and in addition to any other legal remedy available to the Buyer, whether in law or equity.

**23. LIMITATION OF LIABILITY**

- (a) Nothing shall limit the Seller's responsibility to the Buyer regarding any claim to the extent arising from:
  - (i) death, injury or property damage to third parties;
  - (ii) failure of the Seller to comply with applicable laws and regulations;
  - (iii) fraud, negligence or wilful misconduct;
  - (iv) intellectual property infringement or misuse or misappropriation of intellectual property; or
  - (v) intentional breach of the Contract.
- (b) The Buyer will not be responsible in any way to the Seller or any third party (whether arising in contract, tort or otherwise) for any special, indirect, consequential and incidental losses or damages or any loss of profits or economic loss, arising out of or resulting from a breach of the Contract.

**24. INSURANCE AND INDEMNITY**

- (a) The Seller shall have in effect and maintain, at its expense, the following insurance:
  - (i) Public Liability – US\$5,000,000 combined single limit per occurrence;
  - (ii) Aviation Liability (including but not limited to Third Party Legal Liability, Products Liability and War Risks and Allied Perils Liability (in accordance with Lloyd's of London Aviation Clause AVN.52, or its equivalent)) Insurance with combined single limit of liability (Bodily Injury/Property Damage) of not less than US\$50,000,000 per occurrence and in the aggregate in respect of Products Liability and War Risks and Allied Perils Liability;
  - (iii) Workmen's Compensation insurance including employer's liability at common law to cover all workmen engaged to manufacture or process the Goods under the Contract; and
  - (iv) Comprehensive Automobile Liability – Bodily injury/property damage covering all vehicles used in connection with the Goods in the amount of US\$1,000,000 combined single limit each occurrence.
- (b) The Buyer may require the Seller to furnish the Buyer with certificate(s) from the Seller's insurance company, evidencing that such insurance requirements are in full force and effect

and indicating the expiration dates and limits of coverage of such insurance. The Seller shall not be relieved of any of its obligations under the Contract at common law or, pursuant to any statute, rule, regulation or other enactment by virtue of the taking out of any insurance as herein provided.

- (c) Seller hereby agrees to indemnify and hold harmless Buyer and its directors, officers, employees and agents from and against third party claims for injury, death or property damage arising out of or in connection with the Goods and/or Services provided by Seller hereunder, to the extent such injury, death or property damage was caused by the negligence or wilful misconduct of Seller.
- (d) Seller further agrees to indemnify and hold harmless the Buyer and its directors, officers, employees and agents from and against claims by the Seller's workman, personnel or employee for injury, death or property damage arising out of or in connection with the performance of the Contract, except to the extent such injury, death or property damage was caused by the gross negligence or wilful misconduct of Buyer.

## **25. CONFLICT OF INTEREST**

- (a) The Seller shall exercise reasonable care and diligence during the term of the Contract to prevent any action or condition which could result in a conflict of interest with those of the Buyer. This obligation shall apply to the activities of the employees and agents of the Seller in their relations with the employees and the families of the Buyer, their representatives, vendors, sub-contractors and third parties.
- (b) The Seller's compliance with this requirement shall include but shall not be limited to establishing precautions to prevent the other party and the Seller's employees or agents from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration for the purpose of influencing individuals to act contrary to the Buyer's interest.
- (c) The Seller shall promptly notify the Buyer of the identity of any of its representatives or employees who is known in any way to have a substantial interest in the business or the financing thereof, failing which the Buyer shall be entitled to terminate the Contract without any liability whatsoever.

## **26. BUSINESS ETHICS**

- (a) The Seller shall:
  - (i) Not take any action that would subject the Buyer to liability or penalty under any laws, regulations or decrees of any government authority.
  - (ii) Maintain throughout the term of the Contract such business standards, procedures, and controls as are necessary to avoid any adverse impact on the interest of the Buyer.

- (iii) Ensure that all invoices, financial settlements, reports and billings to the Buyer reflect properly the facts about all the activities and transactions handled for its account.
  - (iv) Notify the Buyer promptly upon discovery of any instance when it has not complied with the requirements of the Contract. This includes the discovery of any nonconforming products used in the production of the goods ordered by the Buyer, and obtaining the Buyer's approval for nonconforming product disposition.
- (b) None of the above contained in this Clause shall be deemed waived by the Buyer unless notified to the Seller by the Buyer's authorised representative in writing.

## **27. NOTICES**

Any notice to be served on either of the parties by the other shall be in English and in writing and shall be sent by hand, registered post, courier or facsimile. Such notice shall be deemed to have been received by the addressee within seven (7) days of posting (if by registered post) or within twenty-four (24) hours (if sent by facsimile to the correct facsimile number of the addressee) or upon receipt if sent by hand or courier.

## **28. CHOICE OF LAW AND DISPUTE RESOLUTION**

- (a) The Contract shall be governed by and construed in accordance with the laws of England, without reference to its conflict of laws rules.
- (b) For Purchase Orders issued to Sellers incorporated in Singapore, unless otherwise specified in the Purchase Order, the parties submit to the jurisdiction of the courts of Singapore.
- (c) For Purchase Orders issued to Sellers other than those described in Clause 28(b) above, unless otherwise specified in the Purchase Order, any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in England in accordance with the Arbitration Rules of the England. The arbitration award shall be enforceable before a court of competent jurisdiction.
- (d) For the avoidance of doubt, parties are not precluded from seeking injunctive relief from a court of competent jurisdiction in relation to any breach or threatened breach of the Contract to avoid irreparable harm or injury.

## **29. ENTIRETY OF CONTRACT**

The Contract constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous negotiation, representations and agreements whether written or oral.

**30. SEVERABILITY**

If any provision of the Contract is declared invalid by any tribunal or competent authority, then such provision shall be deemed automatically adjusted to conform to the requirements for validity as declared at such time and as so adjusted, shall be deemed a provision of the Contract as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted upon the Contract as though the provision had never been included, in either case, the remaining provisions of the Contract shall remain in full force and effect.

**31. NO WAIVER OF RIGHTS**

The failure of any party to enforce at any time any of the provisions herein shall not be construed to be a waiver of such provisions or a waiver of the right of such party thereafter to enforce any such provisions. No waiver by a party of any right hereunder shall be deemed as a waiver of any other right.

**32. HEADINGS**

The headings herein are for reference purposes only and shall not be taken into consideration in the interpretation or construction of the Contract.

**33. VIENNA CONVENTION TO BE EXCLUDED**

The United Nations Convention on Contracts for the International Sales of Goods (Vienna, 1980) shall not apply to the Contract, and all provisions thereof, expressed, implied or otherwise, which may or will have any effect on any of the terms and conditions herein are hereby expressly excluded.

**34. THIRD PARTY RIGHTS**

A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**35. PREVAILING LANGUAGE**

Except as the parties may otherwise agree, the Contract shall be in the English language. In the event of inconsistency between the Contract and a version of the Contract which has been translated into another language, the English language version shall prevail at all times.



**36. OFFSET REQUIREMENTS**

Seller recognizes that Buyer may incur international offset obligations, which could involve Goods placed under the Contract. Seller shall cooperate with Buyer in the fulfilment of any such international offset obligations. All offset credit or value resulting from the Contract shall accrue solely to the benefit of the Buyer.

Should any quantity of Goods placed hereunder become necessary to support such offset obligations, Buyer reserves the right to remove that portion from the Contract.