

Aeroflex Hose and Engineering Ltd

Terms & Conditions of Purchase 2018



1. DEFINITIONS - INTERPRETATION

CONFIDENTIAL INFORMATION shall mean any information, knowledge, specifications, design or data, whether written or not, received by the SUPPLIER from the PURCHASER in furtherance of or pursuant to the CONTRACT.

CONTRACT shall mean all provisions contained in these Terms and conditions of purchase, the PURCHASE ORDER and the TECHNICAL INFORMATION provided by the PURCHASER.

CONTRACT PRICE shall mean total price to be paid by the PURCHASER to the SUPPLIER under the PURCHASE ORDER.

CUSTOMER shall mean PURCHASER's customer as defined in Special terms and conditions for a defined project, as a case may be.

EVENT OF FORCE MAJEURE shall mean any unforeseeable cause or circumstance whatsoever beyond either PARTY's reasonable control provided the same arises without fault or negligence of the affected Party.

GOOD INDUSTRY PRACTICE means that degree of skill, care, diligence, prudence, efficiency and foresight which would reasonably be expected to be observed by a world class supplier appropriately skilled and experienced acting with due and professional care engaged in carrying out activities the same as or similar to those of the SUPPLY under the same or similar circumstances for the lawful, safe, reliable and efficient delivery of the SUPPLY.

INTELLECTUAL PROPERTY RIGHTS shall mean all copyright, database rights, topography rights, design rights, trademarks, trade names, trade secrets, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the SUPPLY.

LAWS shall mean any applicable international, national, municipal or state treaty, statute, ordinance, customs regulations (import and export) or other law, regulation or by-law or any rule, code or direction or any license, consent, permit, authorization or other approval (whether governmental or non-governmental) including any conditions attached thereto in any place where the SUPPLY or any part thereof is to be performed, or of any public body or authority, local or national agency, department, inspector, ministry, official or public or statutory person (whether autonomous or not) which has appropriate jurisdiction.

PURCHASE ORDER shall mean any unconditional document sent to the SUPPLIER and mentioning the reference of the SUPPLY, quantities and PRICES and including, whether expressly written or not, these T&Cs.

SUBCONTRACT shall mean any contract between the SUPPLIER and any party (other than the PURCHASER or any employees, officers, agents or its other contractors) for the performance of any part of the SUPPLY.

SUB-SUPPLIER shall mean company/ies and/or person(s) contracted by the SUPPLIER for executing a specific part of the SUPPLY and/or to perform any works and/or services related to the SUPPLY.

SUPPLY shall mean all the work that the SUPPLIER is required to carry out in accordance with the provisions of the CONTRACT, including the provision of all materials, documentation, services and equipment to be rendered in accordance with the CONTRACT.

T&Cs shall mean these Terms and Conditions of Purchase.

TECHNICAL INFORMATION shall mean all such information provided by or caused to be provided by the PURCHASER pursuant to the CONTRACT.

VARIATION shall mean such instructions or adjustments as set out in clause 3.

All instructions, notices, agreements, authorizations, approvals and acknowledgements shall be in writing. Nevertheless, if for any reason it is considered necessary by the PURCHASER to give an instruction to the SUPPLIER orally in the first instance, the SUPPLIER shall comply with such instruction. Any such oral instruction shall be confirmed in writing as soon as is possible under the circumstances, provided that, if the SUPPLIER confirms in writing any such oral instruction which is not contradicted in writing by the PURCHASER without undue delay, it shall be deemed to be an instruction in writing by the PURCHASER.

Any references to Incoterm shall be read as per the latest Incoterms version issued by the International Chamber of Commerce and found at <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>.

All such documentation together with all correspondence and other documents shall be in the English language.

2. Scope

The CONTRACT applies to the SUPPLY to be furnished, performed and carried out by the Parties hereto.

The CONTRACT shall constitute the entire agreement between the PURCHASER and the SUPPLIER. All previous proposals and communications relative to the PURCHASE ORDER, oral or written are hereby superseded, except to the extent that they have expressly been incorporated into the CONTRACT.

The PURCHASE ORDER is subject to the CONTRACT, and, by accepting the PURCHASE ORDER, the SUPPLIER agrees to execute the SUPPLY in compliance with it. Hence either the PURCHASER and the SUPPLIER's terms and conditions are expressly excluded and any provisions different from or additional to the provisions of the Terms and Conditions of Purchase which may be contained in the SUPPLIER's acknowledgement or the SUPPLIER's other documents are expressly rejected by the PURCHASER unless accepted in writing by the PURCHASER. Under no circumstance the PURCHASER silence shall be considered as acceptance.

The SUPPLIER shall acknowledge receipt of the PURCHASE ORDER within five (5) working days after the date of transmission thereof by email. Silence kept by the SUPPLIER more than 5 working days after the transmission of the PURCHASE ORDER shall be considered as the unconditional acceptance of the PURCHASE ORDER.

By his acceptance of the PURCHASE ORDER, the SUPPLIER acknowledges that he has the competence and ability to furnish the SUPPLY in accordance with the CONTRACT, that he is properly organized and financed to proceed and to allocate all necessary resources thereto.

Should any works or services be required which are not directly denoted as SUPPLIER's responsibility in the CONTRACT but which are necessary for the proper carrying of the intent of the CONTRACT according to GOOD INDUSTRY PRACTICE, the SUPPLIER shall furnish all such works and services if they had been so denoted. The furnishing of such works and services shall not give rise to a claim for an increase in the CONTRACT PRICE or adjustment of the delivery date.

3. VARIATIONS

At any time during the performance of the CONTRACT, the PURCHASER reserves the right to notify VARIATIONS in the SUPPLY.

An equitable adjustment in the CONTRACT PRICE and time of performance mutually satisfactory to the PURCHASER and the SUPPLIER may be negotiated, subject to submission to the PURCHASER of a preliminary written proposal stating as a minimum the estimated effects the CONTRACT PRICE and the schedule within 5 (five) days after receipt

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of such notification and subject to submission of a firm, full proposal within 10 (ten) days of receipt of the notification.

Any adjustment in CONTRACT PRICE will be paid to the SUPPLIER only under a VARIATION agreed to in writing by the PURCHASER, and no agreement or understanding modifying the conditions or terms of the CONTRACT shall be binding upon the PURCHASER unless made in writing and signed by the PURCHASER.

In the absence of the SUPPLIER's proposals within the aforesaid time periods or in the absence of an agreed VARIATION, the PURCHASER shall have the right to instruct the SUPPLIER and the SUPPLIER shall have the obligation to carry out the VARIATION notified. In such event the consequences of the VARIATION shall be mutually agreed at the earliest.

Any work to be performed by the SUPPLIER (including the replacement or remedying of defects in any Materials supplied) resulting from examination or rejection as referred to in the CONTRACT shall not be regarded as a VARIATION and shall not entitle the SUPPLIER to any revision of the delivery date(s) specified in the CONTRACT, and shall be carried out at the SUPPLIER's own expense.

4. Price – Payment terms

The prices in the PURCHASE ORDER are firm and not subject to any escalation for any reasons whatsoever. The prices shall be deemed to include all direct and indirect costs, expenses and charges of the SUPPLIER arising from or in connection with the execution of the SUPPLY.

Except as otherwise stated in the PURCHASE ORDER, the SUPPLIER shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the SUPPLY. By signing the PURCHASE ORDER, the SUPPLIER accepts total responsibility of having foreseen all difficulties. The CONTRACT PRICE shall not be adjusted to take account of any unforeseen difficulties or costs, except where such adjustment incurs from a VARIATION as per clause 3.

The time for payment or for determining the amount of any discount shall commence from the date of receipt by the PURCHASER of a correct invoice. All payments shall be made within sixty (60) days from the date of acceptance of the invoice. Invoicing shall occur after complete delivery of the SUPPLY.

Payment by the PURCHASER of the SUPPLIER's approved invoices shall not constitute as a waiver by the PURCHASER of any of its rights under the CONTRACT and/or at LAW.

Payment of the SUPPLIER's invoices shall be effected in the currency stated in the PURCHASE ORDER.

The SUPPLIER's failure to submit correct invoice, properly documented, without error whatsoever and mentioning the PURCHASER's PURCHASE ORDER reference will be considered as a fair and reasonable cause for rejection of said invoice.

The PURCHASER may require the SUPPLIER to execute a release of liens, claims and certification of full payment satisfactory in form and content provided by the PURCHASER as a condition to making final payment to the SUPPLIER.

The PURCHASER shall be entitled to deduct and or set-off against any penalties, fines, claims or losses from any sums due to the SUPPLIER under the CONTRACT.

5. Delivery

The SUPPLIER acknowledges that time is of the utmost importance for the CONTRACT and hence, undertakes to make and deliver the SUPPLY at the due delivery date indicated in the PURCHASE ORDER. Except in case of Event of Force Majeure as per clause 20, no vacations or closing periods whatsoever shall impact the performance of the SUPPLY.

Any failure by the SUPPLIER to meet the schedule related to defined intermediate and/or final dates or warranty as per clause 9, shall give rise to the application of Liquidated Damages as per clause 6 hereof.

The SUPPLY will not be considered as delivered in accordance with the CONTRACT if all the documents necessary for forwarding the SUPPLY as well as the required export licenses/documents, technical documentation, data and documents/certificates required from the SUPPLIER for import have not been delivered.

The SUPPLIER shall immediately inform the PURCHASER in writing should a delay become foreseeable. Such notification shall include any remedial actions to be taken by the SUPPLIER to mitigate the delay, any such cost being exclusively at SUPPLIER's cost.

If at any time during the performance of the SUPPLY, the SUPPLIER's actual progress is in the PURCHASER's judgment, in-adequate to meet the delivery date, SUPPLIER shall take such steps as may be necessary to improve his progress. If within a reasonable period, as determined by the PURCHASER, the SUPPLIER does not improve his performance to meet the delivery date, the PURCHASER may require any additional measures to be taken by the SUPPLIER at no cost to PURCHASER.

No dispute whatsoever between the PARTIES shall entitle the SUPPLIER to suspend part of or all of the SUPPLY.

6. Liquidated damages

The SUPPLIER hereby acknowledges the critical importance of the delivery date. The SUPPLIER shall use its best efforts to ensure that the SUPPLY shall have the highest priorities.

Should the SUPPLIER fail to execute the delivery of the SUPPLY or any portion thereof by the due date, the SUPPLIER shall be liable to, and shall pay to the PURCHASER, as Liquidated Damages, an amount equal to 1 % (one percent) of the CONTRACT PRICE per each day of delay, up to 15 % (fifteen percent) of the CONTRACT PRICE.

The PARTIES agree that such Liquidated Damages represent a fair, reasonable and genuine pre-estimate of any and all the damages and/or losses likely to be suffered by the PURCHASER as a result of the late delivery of the SUPPLY. If the SUPPLIER becomes liable for the payment of any Liquidated Damages pursuant to this clause, such Liquidated Damages shall become due and payable. The PURCHASER, at its option, shall invoice the SUPPLIER for Liquidated Damages, as they accrue, or offset the accrued Liquidated Damages against amounts then owing by the PURCHASER to the SUPPLIER, once the PURCHASER notifies its intention to levy such Liquidated Damages.

Subject always to the right of the PURCHASER to terminate in whole or in part the CONTRACT, the payment of Liquidated Damages shall in no case constitute a waiver, reduction, or restriction of the PURCHASER's rights, in law or in equity, in respect of any other breach by the SUPPLIER of its obligations under the CONTRACT, or relieve the SUPPLIER of its obligations to diligently complete the SUPPLY, or from any other of its obligations and liabilities under the CONTRACT or under applicable LAWS.

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7. Title and risks

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Title to the SUPPLY provided by the SUPPLIER or his SUB-SUPPLIERS to the PURCHASER under the CONTRACT shall pass to the PURCHASER on whichever is earlier between the date when such item has been identified to be provided to the PURCHASER, it is first identified as being specific to the SUPPLY or when is delivered.

Risk in the SUPPLY provided by the SUPPLIER under the CONTRACT shall pass to the PURCHASER upon delivery of the SUPPLY by the SUPPLIER in accordance with the applicable Incoterm.

8. Inspection

All Inspection and Testing shall form an integral part of the carrying out of the works and shall be the responsibility of the SUPPLIER to provide the necessary material, appliances and testing equipment for use by the PURCHASER at no cost for the purpose of the PURCHASER's or his Customer's Inspection and Testing requirements.

The PURCHASER and his Customer shall have the right, but not the obligation, at all times to observe the progress, to inspect the SUPPLY in progress, witness, collect evidence and report with respect to all and any such review, inspection or tests.

The SUPPLIER shall notify the PURCHASER in writing in advance and within a reasonable time that SUPPLY or any part thereof, is ready for inspection and no work shall be covered up or put out of view without giving the PURCHASER the opportunity of being present at such inspection and/or test. If the PURCHASER representative is not present at the inspection and/or test of the SUPPLY or any part thereof for which the scheduled date has been properly notified by the SUPPLIER, the SUPPLIER may proceed with such inspection and/or test provided that the results be, without any delay, communicated in writing to the PURCHASER.

The SUPPLIER including his SUB-SUPPLIERS shall promptly remove, replace or repair at his own cost and expense, any workmanship and supplied material/equipment which fails to meet the requirements of the CONTRACT.

Neither review, approval, acknowledgement nor certificate given by the PURCHASER or his Customer shall relieve the SUPPLIER from any or all of its liabilities or obligations under the CONTRACT.

9. Warranty

The SUPPLIER shall execute the CONTRACT with due diligence and efficiency and in accordance with sound design, engineering, manufacturing and installation practices and principle of GOOD INDUSTRY PRACTICE, in the most practical and economical manner upon the circumstances and in full compliance with the requirements of the CONTRACT.

The SUPPLIER warrants and guarantees that the design, engineering, materials, workmanship and all other aspects of the SUPPLY shall be free from defect for a period of 2 (two) years following the delivery date, as per the applicable Incoterm.

In the event any defect becomes apparent before the expiration of the relevant warranty period, the SUPPLIER shall promptly upon the PURCHASER's written request to that effect, in such manner so as to minimize any downtime or delay to the PROJECT or operations, such as re-design, re-engineer, make good, re-do, replace or amend any item of the SUPPLY.

The obligations set forth hereabove shall apply to any remedial work from the date the remedial work is completed in accordance with the CONTRACT.

The warranty period shall be extended for the part of the SUPPLY affected by any defect. The defect period shall be calculated from the date of notice of defect by the PURCHASER to the date of acceptance by the PURCHASER of repair or corrective work.

If the SUPPLIER does not promptly upon receipt of the PURCHASER's written notice carry out all work necessary to correct any defect within seven (7) days, the PURCHASER shall be entitled to either remedy the defects itself, or arrange for others to remedy the defect and the PURCHASER shall be entitled to recover from the SUPPLIER all reasonable, substantiated and auditable costs thereof.

The SUPPLIER shall, when fulfilling its obligations referred this clause 9, keep the PURCHASER fully informed of the action that will be taken, the costs involved and the results obtained. Each such action shall require the PURCHASER's prior written approval which approval will not unreasonably be withheld.

The foregoing guarantees shall be without prejudice to any other rights which the PURCHASER may have against the SUPPLIER in respect of any breach of the terms and conditions of the CONTRACT.

The SUPPLIER shall not be liable for:

- the costs of routine maintenance of the SUPPLY; or
- the costs of correcting any such defects, which result from actual operating conditions being different from those specified in the CONTRACT or normal wear and tear of the SUPPLY.

The foregoing guarantees shall be without prejudice to any other rights which the PURCHASER may have against the SUPPLIER in respect of any breach of the terms and conditions of the CONTRACT.

10. Spare parts

The SUPPLIER warranty spare parts availability for a ten (10) year period starting from the delivery date.

11. Indemnities

The SUPPLIER does hereby indemnify and hold harmless the PURCHASER, his Customer and their directors, officers, employees, agents and representatives (hereinafter called "Indemnified Parties") from and against any and all liability to others and all claims, causes of action and suits of others for personal injury or death or property damage arising out of acts or omissions of employees, or SUPPLIER's SUBCONTRACTORS or arising out of defects in the design, equipment, materials or workmanship or other items furnished by SUPPLIER or his SUB-SUPPLIER pursuant to the CONTRACT.

12. Insurance

The SUPPLIER shall take out and maintain an insurance policy with an accurate coverage in regard of the CONTRACT PRICE and the risk of the SUPPLY. The SUPPLIER shall communicate, upon PURCHASER's request, an insurance certificate evidencing the coverage and its limitations. Should PURCHASER consider, upon its sole reasonable opinion, that the coverage is not appropriate, the PURCHASER would be entitled to subscribe any additional insurance coverage, at SUPPLIER's cost.

Under no circumstances shall insurance certificate be considered as being a limitation of SUPPLIER's liability whatsoever toward PURCHASER.

13. Confidentiality

Each PARTY shall maintain the confidentiality of the other PARTY's CONFIDENTIAL INFORMATION and shall not, without the prior consent of the other use, disclose, copy or modify the other PARTY's CONFIDENTIAL



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INFORMATION (or permit others to do so) other than as strictly necessary for the performance of its rights and obligations under the CONTRACT.

Each PARTY undertakes to disclose the other PARTY's CONFIDENTIAL INFORMATION only to those of its officers, employees, agents and contractors (here being understood that none of them may be a competitor or officers, employees, agents of a competitor), to whom and to the extent to which, such disclosure is necessary for the purposes contemplated under this CONTRACT and to procure that such persons are made aware of and agree to observe an equivalent confidentiality obligation.

Each PARTY shall give notice to the other of any unauthorized misuse, disclosure, theft or other loss of the other PARTY's CONFIDENTIAL INFORMATION immediately upon becoming aware of the same.

The provisions of this confidentiality obligation shall not apply to information which:

- Is or comes into the public domain through no fault of the Receiving Party, its officers, employees, agents or contractors;
- Is lawfully received from a Third Party free of any obligation of confidence at the time of disclosure;
- Is demonstrably independently developed by the Receiving Party, its officers, employees, agents or contractors;
- Is required by Law, by court or by governmental order to be disclosed provided that, to the extent permitted by Law, prior to any disclosure, the Receiving Party notifies the Disclosing Party and, at the Disclosing Party's request and cost, assist the Disclosing Party in opposing any such disclosure.

This confidentiality obligation shall survive for five (5) years after the Order Acknowledgment date.

The SUPPLIER shall not make news releases or issue other advertising pertaining to the CONTRACT without first obtaining the written approval of the PURCHASER.

14. Intellectual Property

Under the below limitations, each PARTY remain the OWNER of the INTELLECTUAL PROPERTY RIGHTS it owns.

The SUPPLIER shall grant to the PURCHASER an irrevocable and non-exclusive right to use, reproduce, translate and adapt the SUPPLY or parts hereof, even if they are covered by any INTELLECTUAL PROPERTY RIGHTS, such as drawings, manuals, document, non-specific softwares. Such right shall be granted for all countries.

The SUPPLIER shall at his sole cost hold harmless the PURCHASER and his Customer from and against and shall defend any claim, suit or proceedings brought against the PURCHASER and his CUSTOMER based on a claim that the SUPPLY or any part thereof furnished under the CONTRACT constitutes or is likely to constitute infringement of any patent, copyright, trademark, proprietary information or ownership rights of others and the SUPPLIER shall pay all damages and costs awarded therein against the PURCHASER and his Customer.

The PURCHASER shall be notified promptly in writing of any claims, suit or proceeding and shall be given adequate authority, information and assistance (at the SUPPLIER's expense) for the defence of same subject to the right of the PURCHASER and his Customer to participate and to be fully advised by the SUPPLIER in advance of all actions taken. In case said the SUPPLY or any part thereof is in such suit held to constitute infringements and the sale or use of same is enjoined, the SUPPLIER shall at his own cost either procure for the PURCHASER and his Customer the right to use said SUPPLY or any part thereof or replace or modify same with equal but non-infringing SUPPLY or part thereof; or if approved by the PURCHASER or his Customer remove said SUPPLY or any part thereof and refund the CONTRACT PRICE and the transportation, installation cost and other related charges.

15. Compliance with LAWS

The SUPPLIER shall observe and abide by and shall cause or procure that all his employees, his SUB-SUPPLIERS and any agency personnel observe and abide by all LAWS and approvals in the performance of the SUPPLY including but not limited to those with respect to labour, insurance, HSSE, unions and in accordance with sound principles and practices in the oil and gas industry and take all necessary safety precautions related to his performance of the SUPPLY in order to protect all persons and property whatsoever, as an essential part of its obligations.

The SUPPLIER shall be liable to the PURCHASER for, and defend, hold harmless and indemnify the PURCHASER for any fine or penalty, or any documented costs or expense incurred, by the PURCHASER as a result of failure by the SUPPLIER, any of his SUB-SUPPLIERS to comply with the foregoing provision.

16. International Compliance

The SUPPLIER shall procure, at its own risk and expense, all necessary permit, certificates and licenses (including export licenses) required by LAW.

The SUPPLIER shall inform the PURCHASER in the acknowledgment of receipt of any Dual Use Good and provide to the PURCHASER the ECCN number as well as any documentation required for license application.

The SUPPLIER shall provide to the PURCHASER reasonable assistance to help them to obtain the export license which may be required for re-export.

The SUPPLIER shall hold the PURCHASER harmless from any liability or penalty which might be imposed by reason of any asserted or established violation of such LAW as well as any liability incurred by a deficient information.

17. Taxes

The SUPPLIER shall be responsible and liable for and pay all taxes assessed against him in connection with the CONTRACT. The SUPPLIER agrees to protect, indemnify and hold the PURCHASER and his Customer harmless from any and all claims or liability for income, excess profits, royalty or any other taxes assessed or levied by any governmental authority against the SUPPLIER in connection with the CONTRACT. The SUPPLIER further agrees to protect, indemnify and hold the PURCHASER and his Customer harmless from all taxes assessed or levied against or on account of wages, salaries or other benefits paid to the SUPPLIER's employees and all taxes assessed or levied against or for account of any property of the SUPPLIER.

18. Assignment – subcontracting

18.1 Assignment

The PURCHASER is entitled to assign at any time the CONTRACT or any benefits to any third party without the SUPPLIER's consent.

The SUPPLIER shall not assign the CONTRACT or any benefits or part thereof without the prior written approval of the PURCHASER.

Should be considered as assignment the fact that the SUPPLIER is the subject of a merger, take-over, acquisition or transfer of business.

18.2 Subcontracting

The SUPPLIER shall not subcontract the main components of the CONTRACT without the PURCHASER's prior written approval. The SUPPLIER shall not be relieved of any liability or obligation under the CONTRACT and shall be fully responsible for the works, acts, omissions, defaults and neglect of his sub-SUPPLIER(s).



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19. Business Ethics

The Parties shall comply with Accudyne Industries Code of Ethics or adhere to equivalent ethics principals.

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20. Force majeure

Neither PARTY shall be liable for any loss or damage suffered or incurred by the other PARTY arising from the first PARTY's delay in performing or failure to perform its obligations hereunder to the extent that and for so long as such delay or failure results from an EVENT OF FORCE MAJEURE. The affected PARTY shall notify the other PARTY within a maximum of five (5) days (or a longer period if the context otherwise requires) of becoming aware of the same of such EVENT OF FORCE MAJEURE and the manner and the extent to which its obligations are likely to be prevented or delayed. SUB-SUPPLIERS delays will only be considered as EVENT OF FORCE MAJEURE should have they incurred from a FORCE MAJEURE EVENT.

Each PARTY shall use all reasonable endeavors to mitigate the extent of the excusable delay or failure arising from or in connection with an EVENT OF FORCE MAJEURE and its adverse consequences and to recommence performance of the affected obligations as soon as and to the extent reasonably practicable.

If any EVENT OF FORCE MAJEURE occurs, the date(s) for performance of the obligation(s) affected shall be postponed for so long as is made necessary by the EVENT OF FORCE MAJEURE provided that if any EVENT OF FORCE MAJEURE continues for, or is reasonably foreseen as exceeding a period of or exceeding thirty (30) days, either PARTY shall have the right to terminate the CONTRACT forthwith on written notice to the other PARTY.

21. Suspension

The PURCHASER may, at its sole option and upon, as a maximum, five (5) days prior notice, require, at any time, the SUPPLIER to suspend the performance of all or any portion of his work under the CONTRACT. During the period of suspension, the SUPPLIER shall use his best efforts to use his personnel and resources in such a manner as to minimize the costs associated with the suspension.

Upon receipt of any such notice, the SUPPLIER shall, unless otherwise required: (a) Immediately discontinue the execution of the SUPPLY and; (b) take no further action related to suspended work other than to the extent such action is necessary to protect and preserve the SUPPLY or is required in the notice and; (c) promptly make every reasonable effort to obtain suspensions upon terms satisfactory to the PURCHASER of all SUBCONTRACTS to the extent they relate to the portion of work object of the suspension notice.

After a ninety (90) days period of grace, the direct, reasonable and substantiated extra-cost incurred from the suspension shall be paid by the PURCHASER unless such suspension is attributable (either totally or partially) to the SUPPLIER and to the extent the PURCHASER's is informed of such extra-cost within fifteen (15) days starting from the suspension notice.

22. Termination

22.1. Termination for convenience

Without prejudice to the provisions of clause 11 thereof, the PURCHASER reserves the right to terminate, at any time and for any reason, the CONTRACT by written notice to the SUPPLIER. On the date of such termination stated in said notice, the SUPPLIER shall discontinue all works pertaining to the CONTRACT and shall place no additional

orders, and shall preserve and protect materials on hand purchased for or committed to the CONTRACT, work in progress and completed work and shall dispose of same in accordance with the PURCHASER's instructions.

In the event of termination of the CONTRACT by the PURCHASER as above mentioned, the PURCHASER shall not be liable to the SUPPLIER for any damages or loss whatsoever including without limitation loss of anticipated profits as a result of such termination. However, the SUPPLIER is entitled to receive as a result of said termination:

☐ The CONTRACT PRICE for any part of the SUPPLY issued at the date of the notification;

☐ A fair and reasonable payment for the work in progress, estimated on a prorate basis of the CONTRACT PRICE

☐ The direct, reasonable and documented costs incurred by such termination from the SUB-SUPPLIERS.

Under no circumstances shall the amount paid by the PURCHASER exceed the CONTRACT PRICE.

All monies paid to the SUPPLIER by the PURCHASER under the CONTRACT shall be deducted from the above mentioned compensation.

In the event of such termination, the SUPPLIER shall execute and deliver to the PURCHASER all documents required and take all steps necessary to fully vest in the PURCHASER the rights and benefits of the SUPPLIER under existing contracts with SUB-SUPPLIERS.

22.2 Termination for default

In the event the SUPPLIER shall be adjudged bankrupt, or make a general assignment for the benefit of his creditors, or if a receiver shall be appointed on account of the SUPPLIER's insolvency, or in the event the SUPPLIER fails to take action to correct any default within ten (10) days after being notified in writing of such default by the PURCHASER, the PURCHASER may, by written notice to the SUPPLIER, without prejudice to any other rights and remedies which the PURCHASER may have under the CONTRACT or at LAW terminate further performance by the SUPPLIER of the CONTRACT.

In the event of termination pursuant to the provisions of this clause 22.2, the PURCHASER may complete the performance of the CONTRACT by such means as the PURCHASER selects, and the SUPPLIER shall be responsible and liable to the PURCHASER for any additional costs incurred by the PURCHASER in doing so.

The SUPPLIER shall deliver to the PURCHASER all drawings, documents and data prepared in connection with SUPPLY.

Any amounts due to the SUPPLIER for equipment, materials and works delivered by the SUPPLIER in full compliance with the provisions of the CONTRACT prior to such termination shall be subject to set-off of the PURCHASER's additional costs of completing the CONTRACT and any other damages incurred by the PURCHASER as a result of the SUPPLIER's default.

23. Settlement of disputes – Arbitration

The CONTRACT and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law. The Parties agree to exclude application of the International Convention of Vienna regarding Sales of Goods as may be amended from time to time.

The Parties shall endeavor to settle by negotiation any dispute arising out of or in connection with the Agreement and all the consequences thereof. Such dispute shall be duly notified by the claiming Party to the other Party, in the forms required under the Agreement, and the Parties shall endeavor to settle such dispute by negotiation within fifteen (15) days from receipt of said notice.

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In case of failure to settle the dispute by negotiation within the period of time above-mentioned, the claiming Party shall notify to the other Party its intention to submit the dispute to the jurisdiction or arbitration court mentioned below.

If the Parties are both located in a EU member Country

The Parties irrevocably agree that London Courts shall have exclusive jurisdiction to settle any dispute arising out or in connection with this Agreement.

Each Party agrees to waive any objection to the English Courts, whether on the ground of venue, or on the grounds that the forum is not appropriate.

If one of the PARTIES is located outside EU

The dispute shall then be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with the said Rules. Unless the Parties agree upon another place, the arbitration shall be held in London, UK. Unless, the PARTIES agree otherwise, the arbitrator shall be fluent in English language and the arbitration shall be conducted in the English language.

The arbitrators shall decide according to Law and not ex aequo et bono.

The arbitration award shall be in writing and shall be final and binding upon the Parties. Each Party waives, to the fullest extent permitted by Law, any right to apply to any court of Law and/or other judicial authority to determine any preliminary point of Law and/or review any question of Law and/or the merits. However, any Party may make an application to any court having jurisdiction for judgment to be entered on the award and/or for the enforcement of any award, including any award granting interlocutory relief and any order for the obtaining of potential evidence which the arbitrators direct be produced as part of the arbitration.

The Parties undertake to keep strictly confidential the contents of the arbitration proceedings, the decision and any award of the tribunal of arbitration except to the extent necessary for the enforcement of such award.

24. Miscellaneous

24.1 Surviving obligations

All provisions of the CONTRACT, which by their nature extend beyond the expiration or termination thereof, including but not limited to warranties, indemnifications, intellectual property, confidentiality, shall survive the expiration or other termination.

24.2 Non-waiver

No relaxations, forbearance, delay or indulgence by the PURCHASER in enforcing any of the terms and conditions of the CONTRACT or the granting of time by the PURCHASER to the SUPPLIER shall prejudice, affect or restrict the right to the PURCHASER under the CONTRACT nor shall any waiver by the PURCHASER of any breach of the CONTRACT operate as a waiver of any subsequent or continuing breach of the CONTRACT. Any waiver of the PURCHASER'S rights, powers, or remedies under the CONTRACT must be in writing, dated and signed by an authorized representative.

24.3 Severability

If at any time any provision of these GPC shall be found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of these GPC which shall remain in full force and effect.

In the event that the circumstances referred to the first paragraph of this article occur, the Parties agree to attempt to substitute for any invalid, illegal, or unenforceable provision a valid, legal and enforceable provision which achieves, to the greatest extent possible the same effect as would have been achieved by the invalid, illegal or unenforceable provision.



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