



[April 2019]

## GENERAL TERMS AND CONDITIONS OF PURCHASE

**CONTRACT:** These terms and conditions of purchase (“Conditions”) constitute an integral and binding part of any purchase of Products or Services, whether incorporated by reference to an Internet website, by notice or transmitted electronically or in paper form. These Conditions together with the Order constitute the contract (“Contract”) and such purchase is conditioned on and limited to its terms. By performing pursuant to, or acknowledging receipt of, an Order, Supplier assents to these Conditions as fully as if Supplier had accepted them in writing. Unless and only to the extent expressly adopted in the Order, Buyer rejects, and these Conditions expressly exclude, any additional or inconsistent terms and conditions regardless of materiality offered by Supplier at any time, irrespective of Buyer’s acceptance of Products or Services. Any reference in the Order to Supplier’s quotation, offer or proposal will be deemed adoption of only those portions of the quotation, offer or proposal which are not inconsistent with, or does not conflict with, these Conditions.

The following terms and conditions of purchase will apply to each Order:

### 1. DEFINITIONS:

- 1.1. “**Affiliate**” means those corporations, companies and business entities which are, directly or indirectly, controlled by, controlling or under common control with a party hereto, and with respect to Purchaser, those corporations, companies and business entities in which Buyer has ownership of more than twenty-five percent (25%) of the voting stock or the issued and paid up share capital. “Control” meaning ownership of more than fifty percent (50%) of the voting stock or the issued and paid up share capital or the power to appoint to or elect the majority of the directors.
- 1.2. “**Applicable Law and Regulations**” means laws and regulations (i) applicable to Supplier in all places where Supplier does business, (ii) applicable to the Products or Services provided pursuant to this Order, including without limitation, such laws and regulations applicable at the place of Delivery and all sites where Services are performed, or (iii) required by the law governing the Contract.
- 1.3. “**Delivery**” means performance of the Services and/or with respect to Product/s delivery of (i) Product/s pursuant to an Order, in conformance with the Contract and free from any defects or damages, to the destination set forth in such Order pursuant to the terms of the International Chamber of Commerce's INCOTERM 2010 (“**INCOTERMS**”) set forth in the Order; and (ii) all documents required by the Order, including without limitation, a properly executed bill of lading, documents required for custom clearance, delivery note, measuring note, and certificate of compliance with standards (where applicable), which in each case must bear the applicable Order number together with Buyer’s material symbol numbers or code numbers if furnished by Buyer. “Deliver” and “Delivered” will have correlative meanings.
- 1.4. “**Order**” means the document or documents issued and delivered by Buyer to Supplier specifying, among other things, the Product or Service being

purchased (including any technical details, specifications or plans), the price, quantities, the time and place of Delivery, the INCOTERM applicable to the Delivery of Products, the payment terms and other technical and commercial terms unique to such Product or Service. Unless otherwise specifically excluded in an Order, such Order for Products or Services shall be deemed to include without additional cost or expense all services, products, licenses, permits and approvals necessary for performance under the Order in accordance with the standards set forth in this Contract and all other mandatory standards contained in Applicable Laws and Regulations.

- 1.5. “**Product/s**” means goods manufactured or lawfully distributed by Supplier and specified in the Order. Such Product(s) includes, but is not limited to, goods manufactured or produced in accordance with specifications provided by Buyer, pursuant to design documents developed by Buyer or developed by Supplier specifically for Buyer (“**Special Ordered Product/s**”).
- 1.6. “**Services**” means the work specified in the Order to be performed by Supplier.

## 2. **PERFORMANCE UNDER ORDER.**

- 2.1. **Performance by Supplier.** Acceptance of the Order constitutes an irrevocable confirmation that Supplier has examined, or had the chance to examine, the requirements of the Buyer and its premises (if relevant) and all other information which Supplier deems relevant to fulfill the Order, and Supplier hereby irrevocably waives any right to claim non-suitability.
- 2.2. **Delivery.** Unless otherwise agreed in writing, Supplier will Deliver Products and perform Services when and as directed by the Order, it being understood that TIME IS OF THE ESSENCE with respect to such Delivery and performance. If the Product has associated manuals, Supplier shall Deliver to Buyer at least two (2) hard copies of such manuals and a copy in printable media, which may be used by Buyer to make additional copies of such manuals.
- 2.3. **Packaging.** All Products will be packaged in accordance with Buyer's instructions as set forth in the Order; or if the Order does not include instructions with respect to packaging, all items will be packaged in accordance with the best available packaging materials and methodologies to ensure receipt by Buyer at its premises, in an undamaged condition. Supplier will be liable for all discharge, spill or other environmental incident (including clean-up costs) involving any Products shipped under the Order until Delivery to Buyer. Unless expressly stated in the Order, the cost of packaging is included in the costs defined in the Order.
- 2.4. **No Subcontracting or Delegations.** Supplier shall not use sub-contractors (including any Affiliate of Supplier) to perform Services or purchase from sub-vendors (including any Affiliate of Supplier) components for Special Ordered Products without advance written authorization from Buyer.
- 2.5. **Non-Conforming Shipments.** Supplier shall deliver only the quantity specified in the Order and Buyer may return to Supplier, at the expense and risk of loss of Supplier, or purchase from Supplier, at the unit price specified in the Order, any Products Delivered in excess of such quantities. The actual

delivery quantity for Products ordered by weight shall be determined by Buyer if Buyer weighs the Product at the time of Delivery, otherwise, Supplier's invoiced weight shall control in the absence of manifest error. In the event of a shortfall in the quantity of Products Delivered, Buyer shall have the option to accept the quantity Delivered or to treat such shortfall as a breach and, in addition to any other remedies, reject the shipment and return it to Supplier at the expense of Supplier. If Buyer accepts the quantity Delivered, it may also require that the shortfall amount be shipped to Buyer as soon as possible at Supplier's expense and risk of loss.

2.6. **Title and Risks.** The title to the Products or any work product resulting from Services ("**Work Product**") shall pass to Buyer upon the earlier of: (i) Delivery of the Product or performance of the Services, or (ii) any payment by Buyer under the Order. However, Supplier shall bear all risks with respect to (a) the Products in accordance with the INCOTERM set forth in the Order; and (b) the Work Product until acceptance in accordance with the Order.

2.7. **Inspection, Storage and Testing.**

2.7.1. Buyer is not obliged to inspect or examine any Product or Work Product. Buyer's omission to inspect or examine any Product or Work Product shall not relieve Supplier of any obligation, warranty or liability set forth herein or under Applicable Law and Regulations. Examination, sampling or testing of Products or Work Products or use of Products or Work Products shall not relieve Supplier of its obligations nor derogate from Supplier's warranties, obligations or liability set forth hereunder or under Applicable Law and Regulations or any additional warranty of Supplier whether made by Supplier to Buyer or made publicly available by Supplier.

2.7.2. Should Buyer choose to inspect, examine, sample or test any Product or Work Product, Buyer shall have the right to examine, sample or test the Products, the Work Products and their operation upon installation and commencement of use of such Products or upon completion of the Services, and may, but shall not be obliged, to notify Supplier within a reasonable time thereafter of any defect found in such examination. Supplier shall provide all information which Buyer reasonably requests to carry out such an inspection.

### 3. **COMPLIANCE WITH LAWS, REGULATIONS AND INSTRUCTIONS OF BUYER**

3.1. **Licenses and Permits.** Supplier shall hold and maintain in good standing, during all times relevant to the fulfillment of any Order, all requisite licenses, permits and approvals, including, without limitation, permits to hold, store, use, import and export hazardous materials. At the request of Buyer, Supplier shall promptly deliver to Buyer a copy of such permit, license or approval. In addition, at the request of Buyer, Supplier shall deliver to Buyer a certificate, executed by a duly authorized officer of Supplier, certifying compliance with any Applicable Law and Regulations.

3.2. **Compliance with Customs Regulations.** At the request of Buyer, Supplier shall submit to Buyer all documents and information required from the Supplier in order to export and import the Products within three (3) weeks of

receipt of the relevant Order so as to avoid delay in receiving a required export and/or import permit. The Certificate of Origin or equivalent document will be delivered to Buyer together with the Delivery of the relevant Products.

**3.3. Compliance with Law, Safety, Security, Environmental Protection and Buyer's Code of Ethics.**

3.3.1. In the production or supply of the Products or the performance of the Services, Supplier shall comply with all Applicable Law and Regulations, including, without limitation, those applicable to safety, security and environmental protection.

3.3.2. Without derogating from the above, in case the supplier is in the United States and to the extent and when applicable, Supplier represents that the Products and Services will comply with all applicable federal, state and local laws, rules, regulations, executive orders, including, without limitation, the regulations and requirements issued under the Department of Labor and the Environmental Protection Agency, the requirements of Executive Order 11246, as amended, and Executive Order 13496, 41 CFR Section 60-1.4(a)(7), 60-300.5(a) and 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. In addition and when applicable, Supplier shall abide by the requirements of 41 CFR §§60-300.5(a) and 60-741.5(a) (These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities).

3.3.3. Supplier shall, and shall cause its officers, employees and anyone performing on behalf of Supplier to, comply with Buyer's Code of Ethics published at the following website:

<http://www.icl-group.com/careers/codeofethics/Pages/default.aspx>

3.3.4. Supplier covenants that it (a) shall not, and shall not permit any of its affiliates, officers, directors, employees, agents or representatives or any permitted subcontractors to violate any anti-bribery, anti-corruption and anti-money-laundering laws applicable to the Products or Services provided pursuant to this Contract.

**3.4. Cooperation Regarding Compliance.** Supplier agrees to cooperate with any assessment, investigation or similar inquiry conducted by Buyer or anyone on behalf of Buyer, in connection with any potential breach, violation or infringement of any Applicable Law and Regulations or the Code of Ethics, including the provision of detailed replies to any question, survey or demand for documents in connection with such inquiry.

**3.5. Restrictions on Trade.** Supplier, for itself, its Affiliates, and their respective employees, officers and directors, hereby represents and warrants to Buyer and its Affiliates that it is not listed on any sanctioned party list issued by any nation, including, without limitation, the United States of

America, any member state of the European Union or the place where the Order is to be delivered or Services performed. Supplier shall notify in writing Buyer and its Affiliates immediately in the event it, any of its Affiliates, or their respective employees, officers and directors are so listed.

#### **4. DELIVERY AND PERFORMANCE DELAY.**

- 4.1. **Notice of Non-Compliance.** In the event that Supplier believes that a delay in Delivery of Products or performance of Services may occur for any reason including but not limited to Force Majeure, or Supplier believes it may be unable to fulfill any of its other obligations under the Order, Supplier must notify Buyer in writing as soon as Supplier becomes aware of such circumstances. Such written notice shall include all relevant information and the full particulars with respect to such delay or non-fulfillment including a reasonable estimation of the duration of such delay or inability to perform such obligations. Such notice does not relieve Supplier of its obligations, liability or warranties hereunder.
- 4.2. **Results of Delay.** Any delay in Delivery of Products or performance of Services (other than as a result of a Force Majeure) exceeding five (5) days shall be deemed a material breach of the Contract. In the event that Buyer is willing to accept such delay in accordance with Section 4.3 below, Supplier shall make such Delivery or perform such Services at such time as the parties mutually agree in writing, or failing such agreement, within twenty (20) days from the original due date for Delivery or performance. Failure of Supplier to comply with such extended due date also shall be a material breach of the Contract. In the event of either such material breach of Contract and without limiting any other remedy to which Buyer may be entitled hereunder or under Applicable Law and Regulations, Supplier shall reimburse Buyer (i) an amount equal to any cost or price increase (including transportation costs) that Buyer is required to pay to obtain a comparable product or service from another source; and (ii) any costs and expenses related to such procurement.
- 4.3. **Discount for Late Delivery or Performance.** In the event that Supplier does not deliver all of the Products or complete performance of all of the Services pursuant to the Order (for any reason other than as a result of a Force Majeure) within five (5) days of the date for such Delivery or completion set forth in the Order, then Buyer shall have the right but not the obligation to accept such delay and reduce the price for such undelivered quantities or Services for each week of such delay by an amount equal to one percent (1%) of the agreed upon unit price or rate for Services up to a maximum reduction of five percent (5%). Buyer's election under this Section shall be deemed a cure of Supplier's initial breach of the Contract under Section [4.2](#).

#### **5. FORCE MAJEURE, ORDER MODIFICATION, CANCELLATION AND RETURN OF PRODUCTS**

- 5.1. **Force Majeure.** Neither party shall be responsible to the other for loss or damage due to any unanticipated circumstances beyond such party's reasonable control and which could not have been avoided by due care,

including without limitation war, national emergency, civil unrest, labor strike, fire, flood, windstorm or other act of God, order or act of any government, whether foreign, national or local, whether valid or invalid, labor disputes or any other cause of like or different kind beyond the reasonable control of such party (hereinafter, a “**Force Majeure**”). The obligations of the party affected by Force Majeure shall be suspended for the duration such Force Majeure provided however that such party will use commercially reasonable efforts to resume performance of the Order as soon as possible, however, such efforts do not require the resolution of labor disputes.

- 5.2. **Buyer’s Rights During Force Majeure.** At Buyer’s option, any quantity of Products so affected by a Force Majeure shall be deducted from the total quantity purchased by Buyer. Supplier, during any period of shortage due to any of the above causes, shall allocate its actual production among its internal needs and its contract customers in a manner that results in Buyer receiving not less than the same allocation on a pro rata basis as it received prior to such event of Force Majeure. If Supplier’s performance is suspended for more than fourteen (14) calendar days due to a Force Majeure, Buyer may, at its option, terminate the Contract with immediate effect upon written notice to Supplier.
- 5.3. **Order Modification.** Buyer may, at any time, notify Supplier in writing of a change in an Order for Products or Services. Supplier shall use its commercially reasonable efforts to promptly perform such Order as revised by Buyer under the same terms and conditions set forth in these Conditions or as shall be agreed in writing prior to implementation of the changes by the Buyer and Supplier. No change to the Products or Services may be made by Supplier without the prior written consent of the Buyer.
- 5.4. **Order Cancellation.** Buyer may, at any time and for any reason, cancel any outstanding Order, in whole or in part, by reasonable advance notice to Supplier, and Supplier shall promptly comply. Supplier’s sole and exclusive remedy in the event of such cancellation shall be limited to (i) the reasonable out of pocket costs actually incurred by Supplier in the production of Products which cannot be resold or reused for another purpose less any value received by Supplier as a result of such cancellation; or (ii) the reasonable value of any Services performed to the satisfaction of Buyer prior to cancellation by Buyer. The Supplier shall use commercially reasonable efforts to reduce such costs, including finding an alternative purchaser for the Products.
- 5.5. **Immediate Termination.** Without derogation from the aforesaid, in any of the following events, Buyer may immediately terminate the Order upon notice to Supplier, and Supplier shall not be entitled to any payment or remedy pursuant to such termination:
  - 5.5.1. Supplier’s breach of any Order or any other undertaking or contract between Supplier and Buyer or Affiliates of Buyer, which is not cured within 14 days (or such longer period as Buyer may reasonably set) of receipt of Buyer's notice of such breach;
  - 5.5.2. Supplier’s filing of an application under any bankruptcy legislation

or declaration of bankruptcy or insolvency or commencement of liquidation, voluntary or otherwise, or the placement of Supplier's assets under the administration, receivership, trusteeship, judicial management or compound with, or the making any arrangement with, its creditors, confiscation of any of Supplier's real estate or bank accounts, or Supplier's taking or suffering any similar action relating to its indebtedness or creditors;

- 5.5.3. Supplier's transfer or assignment of its business activity or material assets relating, in whole or in part, to the performance of the Order without obtaining Buyer's advance, written consent;
- 5.5.4. Supplier's breach or violation of its obligations under Section 3;
- 5.5.5. The commencement of actions or procedural, legal or other proceedings against Supplier alleging facts or circumstances which, if true, would constitute a breach of Supplier's obligations under Section 3.

5.6. In the event of termination of any Order in accordance with the provisions of this Section 5, Supplier shall refund to Buyer all amounts Supplier had received in consideration of such terminated Order prior to such termination other than with respect to Services already performed and accepted by Buyer in addition to any other remedy to which Buyer may be entitled under the Contract or Applicable Law and Regulations.

## **6. PRICE, PAYMENT, TAX AND INVOICING**

- 6.1. **Full Consideration.** Unless otherwise mutually agreed in writing, prices set forth in the Order are full compensation for the performance of the Order and Buyer shall have no obligation to pay any amount in excess of the price set forth therein.
- 6.2. **Invoice and Payment Terms.** Supplier shall invoice Buyer using an invoice containing the purchase order numbers and other agreed references, which shall also clearly indicate the Products or Services ordered. All customs invoices and proofs of origin (if applicable) shall be attached to the relevant invoice. Buyer is entitled to return invoices that do not meet these requirements and Supplier shall reissue invoices which satisfy these requirements. Buyer shall pay Supplier the prices agreed between the parties and specified in the Order for Products Delivered and Services performed in compliance with such Order.

Payment is subject to the Supplier's fulfillment of its obligations hereunder to the satisfaction of Buyer, including without limitation the supply of bank guarantees, if such guarantees are required. The terms of the payment shall be the number of days set forth in the Order, commencing from the end of the calendar month in which a correct tax invoice was received by the Buyer (the "**Payment Terms**"), and the payment will be transferred to the Supplier on Buyer monthly payment date, which follows the date of the Payment Terms.

Unless otherwise set forth in the Order, Supplier shall deliver such invoice no later than the tenth (10<sup>th</sup>) day of the month immediately following the month when Delivery or performance was completed. Invoices delivered

after the tenth (10<sup>th</sup>) day of the month shall be deemed delivered on the first day of the next month. Failure to submit such invoice to Buyer within six (6) months after such invoice should have been delivered shall be a waiver and release of Supplier's right to payment for the Products or Services. No payment or invoice approved by Buyer shall limit the Buyer's rights to dispute any of the charges invoiced or to claim unsatisfactory performance under the Order, and shall not be construed as Buyer's acceptance of any Products or Services.

- 6.3. **Taxes.** All taxes on the performance of Services, production, Delivery or sale of the Products required by Applicable Law and Regulations, including customs fees, shall be paid by Supplier. Buyer shall be responsible only for taxes, which under Applicable Law and Regulations Buyer is required to pay.
- 6.4. **Withholding and Deduction.** Buyer may set off against the payments of any amount otherwise payable to Supplier hereunder or pay on behalf of Supplier, such taxes and other sums, if any, as required by any Applicable Law and Regulations or which would otherwise result in a lien or become an obligation of the Buyer. Buyer shall deliver to Supplier official tax receipts, certificates or other appropriate evidence issued by the relevant authorities in respect of any sum so withheld and paid.

## **7. WARRANTIES AND REMEDIES NOTIFICATION OF CHANGE**

- 7.1. **Warranties.** Without limiting the rights that Buyer may otherwise have under Applicable Law and Regulations, Supplier represents and warrants that Products and Services:
  - 7.1.1. shall conform with: (i) technical and professional specifications attached to the Order and technical information mutually agreed in writing as applicable to the Order after its execution or issuance, (ii) plans and/or drawings and/or scope of work documents approved in writing by Buyer, and (iii) Supplier's catalog description, publicly available technical information and standard specifications but only to the extent that they do not contradict or derogate from such Order;
  - 7.1.2. will be of best quality, merchantable, representing Supplier's latest model, and new (not reprocessed or refurbished) unless otherwise stated in the Order;
  - 7.1.3. shall comply with all formal standards and GEP (Good Engineering Practice) rules, and shall conform to the highest engineering and workmanship standards of the relevant industry known at the time of manufacture, and be free of any defects or deficiencies in material or workmanship;
  - 7.1.4. will be made or performed by qualified personnel, and will be free of any defects or deficiencies;
  - 7.1.5. will be made or performed by professional and field staff personnel of Supplier and its subcontractors having the highest qualifications, experience and expertise for the type of work performed by such personnel and holding all required licenses, certificates and permits (including without limitation a working permit, if required);



- 7.1.6. shall be fit for their intended purpose;
- 7.1.7. shall meet the highest health, safety and quality standards established and promulgated under Applicable Laws and Regulations, including without limitation, applicable environmental regulations. If Supplier does not conduct business in the place for Delivery or performance, Buyer shall notify Supplier of the requirements under such standards in Buyer's technical specifications for the Products or otherwise;
- 7.1.8. shall be Delivered to Buyer free and clear of all liens, taxes, rights of third parties and/or encumbrances; and
- 7.1.9. will not infringe any patent, copyright, industrial design, any other intellectual property right relating to the Products or Services or their intended use, trade secrets or any other intellectual property rights of third parties.
- 7.2. **Defect or Deficiency Warranty and Remedy.** Without derogating from any of Buyer's rights under any Applicable Law and Regulations, if at any time before the expiration of the later of: (i) the warranty period under Supplier's express warranty; (ii) twelve (12) months after the date of Delivery; or (iii) twelve (12) months after the date of the completion of the Services or installation of the Products to the satisfaction of Buyer, Buyer discovers any defect, deficiency or nonconformity with Supplier's warranties hereunder, Buyer shall notify Supplier and Buyer shall have the option (i) to allow Supplier, at its sole expense, to promptly repair such Products, or re-perform the Services, or (ii) to allow Supplier, at its sole expense to replace such Products with conforming Products, re-perform Services within the time frame set by Buyer in a written notification, or (iii) to return any such Products at Supplier's expense or refuse re-performance of any Services, and Supplier shall refund to Buyer any payment made by Buyer for such returned Products or Services, including documented shipping costs and all applicable taxes, fees, duties, and other related costs and any associated markup. Supplier shall be solely liable for all damages and claims arising out of the supply of defective or non-conforming Products or Work Products, regardless of whether Buyer has accepted, used or made payment for such Products.
- 7.3. **Warranty Extension.** Any Product repaired or replaced or Services re-performed under this Section shall be warranted on the same basis as provided in Section 7.2. Buyer may, at its discretion, repair any Product at the cost of Supplier or complete or re-perform any Services by itself or through third parties. Supplier shall promptly reimburse Buyer for any cost in connection with same and shall not be relieved of its warranties herein. These Conditions do not limit the rights of Buyer with respect to latent defects.
- 7.4. **Prohibition of Change or Substitution.** Supplier shall not deliver any substitutions or equivalent products of any Products and Supplier shall not modify, in a material fashion, the production process of Products without Buyer's prior written consent. This includes modifications of raw materials, process and production and/or manufacturing or packaging location, construction materials or components of equipment, quality control and

analytical methods, final Product specifications or packaging. In case the Supplier is a distributor of a third party manufacturer, the above shall also apply to the change of manufacturer, and the Supplier shall not change such manufacturer without the Buyer's prior written consent, and shall be responsible to ensure the manufacturer is also bounded by the same obligations and undertakings as included in this sub-section.

- 7.5. **Product Discount.** If any Product contains a defect, deficiency or nonconformance, Buyer may, in its sole discretion, accept such Product and negotiate with Supplier a discount to the price set forth in the Order. Supplier shall reimburse to Buyer any payment made by Buyer in excess of the revised price pursuant to the discount set forth herein. Acceptance of such Product shall in no event be deemed a waiver of any warranty by Supplier.

8. **INDEPENDENT CONTRACTOR STATUS.**

The Supplier is an independent contractor. Nothing in this Contract shall be construed to create relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship between Supplier and any of its employees, agents, on anyone on their behalf, and Buyer. Supplier shall have no authority to act as agent for, or on behalf of, the Buyer, or to represent the Buyer, or bind the Buyer in any manner.

9. **INDEMNIFICATION:**

Supplier shall defend, indemnify and hold Buyer, its Affiliates and their respective employees, agents and representatives, harmless against any and all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including litigation costs and attorneys' fees) ("**Claims**"), including without limitation, Claims for personal or bodily injury or death of a person or damage to property in any way related to the performance of this Contract, arising out of or in connection with: (i) any breach of Supplier's representations, warranties or covenants made pursuant to the Contract, (ii) the supply of defective Products, including any Products having a latent defect; (iii) any actual or alleged infringement of any third party's rights including copyright, patent, trademark or any other intellectual property rights, in connection with the Product or the known use thereof or the Services; (iv) injury to person (including death) or damage to property in any way arising out of performance of the Order, including claims brought by any employee of Buyer or Supplier or involving the presence of any person upon Buyer's premises, unless such injury results solely from the gross negligence or willful misconduct of Buyer or such Affiliate; or (v) any incident in connection with the performance of the Contract involving bodily injury, death or property damage, or any violation or alleged violation of any Applicable Law or Regulations, including without limitation, any pollution damage whatsoever, unless any incident, spill or pollution and associated cleanup results solely from the gross negligence or willful misconduct of Buyer.

10 **INSURANCE**

- 10.1 Supplier shall maintain, during the period of the Order and at all relevant times thereafter during which Supplier may be liable for damages, sufficient insurance in types and amounts customary for the type of business it conducts, and, in any event, reasonably adequate to cover any liabilities arising out of its

obligations under the Contract or under Applicable Law and Regulations. Without derogating from the above, the Supplier shall ensure sufficient insurance for all the risks associated with the Services performed under this agreement, including among others employers' liabilities, and with respect to Product/s, Supplier shall insure the Product/s for its account, in its name, and at its expense until the delivery point. Furthermore, Supplier shall remain liable for loss of or damage to the Product should it do, omit to do, permit or suffer to be done anything that in any way vitiates or renders such policies void or voidable. Upon Buyer's request and to Buyer's satisfaction, the Supplier shall furnish the Buyer with appropriate Certificate of Insurance for the above insurance policies.

- 10.2 Any agreed INCOTERM will add and not derogate from Supplier's insurance obligations under this clause unless specifically agreed otherwise and stipulated in writing in the applicable Order.

## **11. CONFIDENTIAL INFORMATION**

- 11.1 **Obligation of Confidentiality.** Supplier shall keep and cause its employees to keep confidential and not to disclose, and except for the purpose of providing the Products or Services, not to use any technical information, data and information concerning the business, research plans or activities of Buyer, its Affiliates, or third parties or the premises of any them which are made available (whether in writing or orally or by observation) to Supplier and its employees by Buyer or its Affiliates or which result from the Products or Services under any Order (hereinafter, "**Confidential Information**"). Supplier agrees not to make any unauthorized disclosure of any similar information of third parties to Buyer or its Affiliates. If Supplier is obliged to disclose Confidential Information under applicable law, Supplier shall deliver promptly to Buyer a prior written notice of such required disclosure and shall not disclose such before reasonable time is provided to Buyer to reject to such disclosure.
- 11.2 **Exceptions to Confidential Information.** "Confidential Information" shall not include information which Supplier can prove (a) is in the public domain at the time of disclosure hereunder and was not previously disclosed by Supplier; or (b) becomes part of the public domain through no fault of Supplier; or (c) is received by Supplier from a third party without restriction and without breach of any agreement between Supplier and such third party, provided that such information was not obtained by said third party directly or indirectly from Buyer; or (d) is in the possession of Supplier at the time of disclosure and which was not acquired directly or indirectly under obligations of confidentiality to Buyer.
- 11.3 **Limited Disclosure.** Supplier shall limit disclosure of the Confidential Information only to those of its employees, officers, consultants and/or affiliates or subcontractors ("Permitted Recipients") who have been informed of the confidential nature of the information and have agreed prior to disclosure to comply with Supplier's obligations hereunder and shall be permitted to be disclosed to such Permitted Recipients only to the extent necessary required for such Permitted Recipient to complete its assigned task. Supplier hereby assumes full responsibility for the preservation of the Confidential Information by all such Permitted Recipients.

- 11.4 **Supplier's Information.** Buyer shall have no obligation of confidence with respect to any information disclosed to it by Supplier unless specifically provided for in a separate, written confidentiality agreement.
- 11.5 **Return of Confidential Information.** Upon completion of the Contract or at any time at the request of Buyer, Supplier shall promptly return to Buyer any Confidential Information which is in its or its Permitted Recipients possession, including all copies and abstracts thereof and shall destroy all media containing any portion of Confidential Information.
- 11.6 **Consequences of Breach.** Supplier acknowledges that any breach of the obligations in this Section 11 will result in irreparable harm for which Buyer shall have no adequate remedy at law. Accordingly, upon a breach or threatened breach of the confidentiality obligations herein, Buyer shall be entitled, without showing or proving any actual damage sustained, to a temporary restraining order, preliminary injunction, permanent injunction, order compelling specific performance, or other appropriate remedies to prevent the breach or threatened breach of such obligations. In the event of any successful action or proceeding arising out of these Conditions, whether for declaratory remedy or other remedy, Buyer shall be entitled to its reasonable costs and attorneys' fees.
- 11.7 **Insider Trading.** Supplier shall keep Buyer's company information, as defined in any applicable securities law, confidential and shall not use such information for its own or any third parties' benefit.

## **12 OWNERSHIP OF MATERIALS, DOCUMENTS, DRAWINGS AND SPECIFICATIONS**

- 12.1 **Ownership of Materials.** Any and all materials and/or items provided by Buyer to Supplier in connection with the Order shall remain, at all times, the property of Buyer. All such property shall be identified and marked by Supplier as Buyer's property, used by Supplier only for the Order and adequately insured for Buyer's protection. Supplier shall assume all liability for the utilization of the Buyer's property in accordance with the provisions of the Order. If such property is to be returned to Buyer, it shall be returned in good condition, save reasonable "wear-and-tear". Supplier shall pay Buyer for any of Buyer's property damaged or otherwise not returned or accounted for by Supplier, and the value of the property shall be as determined by Buyer in good faith based upon supporting documentation to be provided by Buyer upon Supplier's request. Supplier shall furnish a written receipt for such items to Buyer but failure to do so shall not prejudice the provisions hereof. Buyer shall have the right to remove such property from Supplier's facility at any time and without giving reason for such removal. Supplier shall not sell, consign, deliver or otherwise alienate such property, or any part thereof, to any third party without prior written consent of Buyer.
- 12.2 **Limited License.** Supplier grants to Buyer and its Affiliates, hereby, a limited license, royalty free to use all drawings, field notes, specifications, software, and any other documents and materials, whether written, audio, or video or in any other media, which have been provided by Supplier to Buyer under the Order.

12.3 **Notice of Loss.** Supplier hereby undertakes to promptly inform Buyer in writing of any loss or damages to any materials, items or documents supplied by Buyer.

### **13 PUBLIC ANNOUNCEMENTS; USE OF BUYER'S TRADEMARK**

Supplier shall not issue any press releases or announcements or post on any website or otherwise advertise its business with Buyer without the prior written approval of Buyer which shall not be unreasonably withheld when required by Applicable Laws and Regulations or by the rules of the stock exchange on which its or its Affiliates shares are traded. Supplier shall not, without the prior written consent of Buyer, use the name or any trade name or trademark of Buyer or its Affiliates in any advertising or communications to the public in any format except as necessary to supply Products in accordance with the Contract.

### **14 AUDIT**

14.1 **Maintenance of Books and Records.** Supplier shall maintain and preserve, consistent with generally accepted accounting procedures, documentation and data (including but not limited to written and electronic records, books of account, correspondence, plans, memoranda, receipts, and documentation of related systems and controls) pertaining to the supply of Products or performance of Services and Supplier's other obligations under this Contract.

14.2 **Audit.** At all reasonable times, Supplier shall permit employees and agents of Buyer, at no additional cost to Buyer, to examine and/or reproduce such documentation and data and to interview Supplier's personnel in connection therewith, as necessary for Buyer to monitor and/or verify compliance with the Contract.

14.3 **Term.** The provisions of this Article 14 shall be applicable during the fulfillment of the Order and thereafter for a period of three (3) years or such longer time as required by Applicable Law and Regulations. If errors or deficiencies are identified by an audit or otherwise, Supplier shall take prompt corrective action and advise Buyer thereof.

### **15 RIGHTS AND REMEDIES**

15.1 **Remedies Cumulative.** The remedies of Buyer, provided for in these Conditions are cumulative and shall be in addition to other remedies available to Buyer under the Contract or at law.

15.2 **Payment.** Any amount due to Buyer from Supplier hereunder shall be payable to Buyer within seven (7) days from the occurrence of circumstances which creates any right for payment to Buyer by Supplier.

15.3 **Set Off.** Buyer may withhold or setoff from any future payment to Supplier, any sum paid to Supplier in excess of the amount due to Supplier or any amount due to Buyer from Supplier hereunder or for any other reason.

15.4 **Irrevocable Instructions to Affiliates of Buyer.** In the event that Supplier owes any amount to Buyer under the Contract, Supplier hereby assigns to Buyer the receivables Supplier will be entitled to receive from Affiliates of Buyer at the time such amount becomes due and payable. Such assignment shall not exceed the total amount owed by Supplier to Buyer at the time Buyer demands payment from its relevant Affiliates. No further instrument

or notice shall be required in order to exercise this assignment to Buyer and Supplier hereby releases the Affiliates of Buyer from any claim with respect to such receivables.

- 15.5 **Interest Upon Default.** Any and all amounts due to Buyer from Supplier shall accrue interest at an annual rate of LIBOR plus five percent (+5%), accrued on a monthly basis, from the date such payment is due until full payment.
- 15.6 **Infringement Claims of Third Parties.** If Supplier believes that the sale or use of any Product or Work Product or the performance of Services required by an Order may infringe the intellectual property rights of third parties, Supplier shall, at its own expense, either (i) obtain for Buyer and its customers, the right to continue using such Product or Work Product, (ii) replace such Product or Work Product with a substantially identical product that is functionally equivalent and non-infringing, (iii) modify the Product or Work Product (if possible) so that it becomes non-infringing, provided no loss of anticipated benefit is received by Buyer, or (iv) modify the method of performance of Services to a non-infringing method, or (v) remove or not provide such Product or Work Product and refund to Buyer the full price, including transportation and installation costs (where applicable), of any such Product or Work Product; provided, however, if any of the foregoing are proposed by Supplier as a means of settling an infringement action against Buyer for which Supplier is providing a defense, Buyer shall have the right to approve any settlement prior to it becoming final; and provided further that Supplier shall have received Buyer's prior written approval of the remedies described in clauses (ii) through (iv) above.

## 16 GOVERNING LAW AND DISPUTE RESOLUTION

- 16.1 **Governing Law and Waiver of Sovereign Immunity.** The validity, interpretation and construction of the Contract and the rights and obligations of the parties shall be governed by and construed in accordance with the law of the state or country where Buyer's principal place of business is located, without reference to its principles of conflicts laws. Buyer and Supplier agree that the UN Convention on Contracts for the International Sale of Goods does not apply.
- 16.2 **Internal Resolution.** Supplier and Buyer shall use reasonable efforts to resolve any dispute which may arise under these Conditions through good faith negotiations. Each party shall nominate a senior representative of its management to meet at any mutually agreed location to resolve a dispute. In the event that negotiations do not result in a mutually acceptable resolution, the dispute shall be handled in accordance with Section [16.3](#).
- 16.3 **Exclusive Jurisdiction.** Supplier and Buyer hereby acknowledge and submit to the sole and exclusive jurisdiction of the competent court in the city and state or country where the principal offices of Buyer are situated at the time of dispute.
- 16.4 In the event of any dispute, Supplier shall not suspend the supply of Products or performance of Services, unless otherwise decided by a competent court.

## 17 MISCELLANEOUS

- 17.1 **Entire Order.** Each Order and these Conditions constitute the entire Contract between Supplier and Buyer for the purchase of Products and/or Services under the Order, and supersedes all prior negotiations, representations or other agreements, either oral or written related to the subject matter hereof.
- 17.2 **Order Assignment.** Supplier will not assign, pledge or transfer to any third party, by operation of law or otherwise, any rights or obligations hereunder without the prior written approval of Buyer. Any such assignment, pledge and/or transfer to a third party without Buyer's prior written approval will be voidable at the option of Buyer. Buyer may assign this Order or any of its rights or obligations hereunder to any of its Affiliates.
- 17.3 **Headings.** The headings and subheadings of articles and clauses of these Conditions or any Order, are used for convenience, ease of reference only, and shall not be used to construe or interpret the provisions of these Conditions or any Order.
- 17.4 **Severability.** If any provision or portion of these Conditions or any Order incorporating these Conditions shall be adjudged invalid, illegal or unenforceable by a court of competent jurisdiction or by operation of any applicable law, that provision or portion of these Conditions or the Order shall be deemed omitted and the remaining provisions shall remain in full force and effect.
- 17.5 **Waiver.** No waiver by a party of a right or default under these Conditions permitting Buyer to obtain Products through the issuance of Orders or the Contract formed by each Order shall be effective unless in writing. No such waiver shall be deemed a waiver of any subsequent right or default of a similar nature or otherwise.
- 17.6 **Further Assurance.** Supplier undertakes at the request of Buyer to do all such acts and to execute all such documents as Buyer may from time to time require in order to allow Buyer to carry out the provisions of these Conditions or any Order, or to bring them into full force and effect.
- 17.7 **Notices.** All notices and other communications required or permitted hereunder to be given to Buyer or Supplier shall be in writing and include the applicable Order number together with Buyer's material symbols or other code numbers when furnished by Buyer and shall be delivered by email, fax or mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, to the relevant party's address set forth above or such other address with respect to a party as such party shall notify each other party in writing as above provided. Any notice sent in accordance with this Section 17.7 shall be effective (i) if airmailed, five (5) days after mailing, (ii) if sent by messenger, upon delivery, and (iii) if sent via Facsimile or E-Mail, upon transmission of electronic confirmation of receipt or (if transmitted and received on a non-business day) on the first business day following transmission of electronic confirmation of receipt.
- 17.8 **Priority of Documents.** The Order shall be construed as complementary of these Conditions and any technical or other document by Buyer, however, in the event of any discrepancy, the documents shall be construed in the following order where the first document prevails over the document

following it and so forth: (i) in the event that the parties to the Order have entered into a specific written contract pursuant to which the Order is issued, the terms of such contract shall prevail, (ii) the Order, (iii) these Conditions, (iv) the definitions in the INCOTERMS, (v) other documents descriptive of the Product or Services to be provided incorporated into the Contract by reference in the Order, provided such other documents are technical and do not change the rights or obligations of the parties. If Supplier becomes aware of any ambiguities, issues or discrepancies between this Order and any specification, design or other technical requirement applicable to this Order, Supplier will immediately submit the matter to Buyer for resolution.

17.9 **Survival.** Any termination or expiration of this Contract for any reason shall not limit Supplier's warranties, obligations or liabilities given or arising prior to such termination or cancellation. For the avoidance of doubt, except as otherwise expressly provided, termination or expiration of this Contract, irrespective of the cause, shall not affect any rights or obligations which, from the context thereof, are intended to survive termination or expiration of this Contract.

17.10 **English Language.** The English version of this Contract shall be the official version of this Contract and any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.



## ADDENDUM I

### **If the Product being purchased is a Special Ordered Product, the following Conditions apply in addition to the General Conditions set forth above:**

1. In the event that Buyer orders Special Ordered Products, Supplier shall deliver to Buyer, prior to manufacture, drawings and all other relevant information pertaining to the design of such Products utilizing the specifications provided by Buyer (hereinafter, the “**Design Documents**”). Such drawings and information shall be delivered to Buyer within the period set forth in the relevant Order. In the event that Buyer has comments to the Design Documents, Supplier and Buyer shall confer between them to revise the Design Documents until the Parties reach agreed upon Design Documents. Supplier shall manufacture the Special Ordered Products in accordance with the Design Documents as approved by Buyer in writing. Approval by Buyer of the Design Documents shall not relieve Supplier of its responsibilities, warranties and liability under the Contract or under Applicable Law and Regulations.
2. Notwithstanding anything to the contrary above, Buyer shall, at all times, exclusively own all intellectual property rights anywhere in the world with respect to, and Supplier hereby transfers to Buyer, any intellectual property right Supplier may have and hereby waives any moral rights regarding, all Design Documents, drawings, field notes, specifications, software, and any other document and material, whether written, audio, or video or in any other media, and all other intellectual property made or developed by Supplier as a result of performing under an Order but only to the extent (i) specifically described as a deliverable in such Order, (ii) resulting solely from performance of the Order or (iii) containing intellectual property or Confidential Information of Buyer, all of which shall collectively be deemed as “work made for hire”.
3. To the extent that Supplier creates or develops any inventions, discoveries or improvements, including without limitation, patents, industrial designs, technical information, know-how, processes of manufacture or other intellectual property (collectively, “**Inventions, Discoveries or Improvements**”) arising from Supplier’s use of Buyer’s Confidential Information in the performance of Supplier’s obligations under this Contract, Supplier shall: (i) assign to Buyer each such Inventions, Discoveries or Improvements (whether or not patentable) that is conceived or first reduced to practice by Supplier, or by any person employed by or working under the direction of Supplier, in connection with Supplier’s use of Buyer’s Confidential Information; and (ii) promptly disclose in an acceptable form to Buyer all such Inventions, Discoveries or Improvements and cause Supplier’s employees to sign any papers necessary to enable Buyer to obtain title to and to file applications for patents throughout the world. To the extent that any works of authorship (including, without limitation, software and computer programs) are created in the performance of Supplier’s obligations under this Contract arising from use of Buyer’s

Confidential Information, such works shall be considered “works made for hire”, and to the extent that such works do not qualify as “works made for hire”, Supplier hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

4. Buyer shall have the right to reject any manufacturing method or use of any equipment or materials in the manufacture of such Special Ordered Products. At the request of Buyer, Supplier shall use commercially reasonable efforts to expedite manufacture or assembly (as the case may be) of the Special Ordered Products or performance of Services.
5. If the Special Ordered Product includes equipment, Buyer will have the right, however not the obligation, to inspect any materials, protocols, manufacture, assembly and/or installation of any and all such equipment including in any place where work is being performed with respect to such Special Ordered Products.
6. Prior to completing the manufacture of any Special Ordered Product or component thereof which includes parts which are not visually accessible after completion of such manufacture, Supplier shall inform Buyer, in advance, to enable Buyer to inspect such parts or the method of their assembly. Buyer shall give Supplier a reasonable advance notice of such inspection. Such inspection may be performed by any person designated by Buyer and notified to Supplier.
7. In addition to other insurance required elsewhere in this Contract, Supplier shall procure, at a minimum, any statutory coverage including worker’s compensation (or equivalent) in accordance with the laws where the Product is produced, a primary third party commercial general liability policy, that includes coverage for blanket contractual liability assumed hereunder, in an amount which shall be of no less than US \$3,000,000 per event. This primary general liability policy limit may be satisfied by aggregating with an Umbrella Insurance policy that follows the form of the primary policy, but the primary general liability policy limit cannot be less than US \$1,000,000 per occurrence. All commercial general liability insurance policies carried by Supplier required hereunder shall name the Buyer as an additional insured and all workers compensation (or equivalent) and Employers Liability insurance policies shall include a waiver of subrogation (if allowable by law) against the Buyer. The policies required by the Supplier shall apply as primary and noncontributory with respect to any other insurance maintained by the Buyer. Supplier shall deliver to Buyer a certificate of insurance issued by its insurer evidencing the required coverage and meeting the conditions set forth in this Contract.

## ADDENDUM II

**If the Order includes Services to be performed at a site owned or operated by Buyer or its Affiliate (“On Site Services”), the following Conditions shall apply in addition to the General Terms and Conditions:**

1. Supplier shall appoint a project manager whose contact details shall be delivered to Buyer in advance (“**Project Manager**”). The Project Manager shall be responsible for the performance of the On Site Services at the place owned or occupied by Buyer (“**Site**”) and for the fulfillment of all safety, environmental protection and all other Applicable Laws and Regulations by all of the personnel of Supplier present at the Site. Supplier shall not replace the Project Manager without the prior written consent of Buyer. The Project Manager shall be at the Site at all times when any On Site Services are performed at the Site.
2. In addition, Supplier shall employ all personnel required under Applicable Law and Regulations for the performance of On Site Services. Such personnel shall have all the qualifications, registrations, licenses and permits required by Applicable Law and Regulations.
3. Supplier shall, and shall cause its officers, employees and anyone on behalf of Supplier performing On Site Services to comply, at all times, with all of Buyer's requirements with respect to safety, security and environmental protection.
4. Upon request of Buyer, and at no cost or expense to Buyer, Supplier shall promptly remove from Buyer's premises any person performing On Site Services who violates any Applicable Law and Regulation, or requirements of Buyer regarding safety, health, environmental protection or the Code of Ethics or is otherwise objectionable to Buyer for any reason not otherwise prohibited by Applicable Law and Regulations.
5. Unless otherwise explicitly agreed by Buyer in writing, Buyer's operations will continue during the time when On Site Services are performed. Supplier shall take all the required measures not to damage such facilities in the performance of On Site Services and to protect persons from injury or death and property from damage during the performance of the On Site Services. Supplier hereby releases Buyer from any liability with respect to damages to equipment and materials of Supplier or of any third party acting on behalf of Supplier except to the extent arising out of Buyer's gross negligence or wilful misconduct.
6. Supplier shall not take pictures, film or make any recording in any way, of the premises of Buyer or any part thereof, of any equipment, facility or plant at the premises of Buyer or of any employees of Buyer without the prior written consent of Buyer. Supplier is responsible for ensuring that its employees, subcontractors and anyone acting on behalf of Supplier shall abide by the provisions of this Section 6.

7. In addition to other insurance required elsewhere in this Contract, Supplier shall procure, at a minimum, any statutory coverage including worker's compensation (or equivalent) in accordance with the laws where the Product is produced or the On Site Services are being performed, Employer's Liability Insurance with limits not less than US \$500,000 per occurrence, an automobile insurance policy with a US\$500,000 combined single limit per occurrence and a primary third party commercial general liability policy, that includes coverage for blanket contractual liability assumed hereunder, in an amount which shall be of no less than US \$3,000,000 per event. This primary general liability policy limit may be satisfied by aggregating with an Umbrella Insurance policy that follows the form of the primary policy, but the primary general liability policy limit cannot be less than US \$1,000,000 per occurrence. All automobile and commercial general liability insurance policies carried by Supplier required hereunder shall name the Buyer as an additional insured and all workers compensation (or equivalent) and Employers Liability insurance policies shall include a waiver of subrogation (if allowable by law) against the Buyer. The policies required by the Supplier shall apply as primary and noncontributory with respect to any other insurance maintained by the Buyer. Supplier shall deliver to Buyer a certificate of insurance issued by its insurer evidencing the required coverage and meeting the conditions set forth in this Contract.
8. Supplier agrees in its performance of On Site Services to cooperate with other contractors, suppliers and anyone acting on behalf of Buyer working or supervising at the premises where such On Site Services are performed.
9. In the event of Buyer cancels an Order due to a material breach by Supplier, Buyer shall have a lien on any and all equipment, materials and/or property owned by Supplier and located within Buyer's premises, which Buyer may use until completion of On Site Services or until repayment of Buyer's damages. If such damages are not paid to Buyer within thirty (30) days of Buyer issuing an invoice to Supplier, Buyer shall have the option of enforcing its lien by means of selling such equipment, materials and/or property, in whole or in part.