



# MHWirth General Terms & Conditions for Purchasing – Long Form

(Rev. 3 / November 2020)

## General Terms and Conditions for Purchasing

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## 1. Definitions

The following definitions apply unless the context requires otherwise:

### ■ AFFILIATE

A company which directly or indirectly controls or is controlled by a PARTY; or a company which directly or indirectly controls or is controlled by or under common control of a company which directly or indirectly controls or is controlled by or under common control of a PARTY. For the purposes of the definition of "AFFILIATE", control means either ownership by one company of the majority of the voting interests of the other company, or control of the board of directors by virtue of any contractual arrangements or otherwise, and the term "controlled" shall have a corresponding meaning.

### ■ ANNEX

A document named as such and setting out certain special terms attached to the PURCHASE ORDER.

### ■ ARTICLE

A section of these CONDITIONS.

### ■ BUYER

The company stated as such in the PURCHASE ORDER or its successors or permitted assignees.

### ■ BUYER INFORMATION

Drawings, documents, specifications, technical information, computer programs and other information owned by BUYER and/or provided by BUYER to SELLER for performance of WORK under a PURCHASE ORDER.

### ■ CLIENT

A third party with whom BUYER has a contract with to provide the WORK.

### ■ COMPLETION

The date of issue of BUYER's written acceptance of the WORK, in which BUYER confirms that all and any WORK is complete and in accordance with the requirements of the PURCHASE ORDER.

### ■ CONDITIONS

These General Terms and Conditions for Purchases of Goods.

### ■ CONTRACT

The agreement between BUYER and SELLER for the delivery of WORK together with any PURCHASE ORDER issued thereunder, any SPECIAL CONDITIONS, these CONDITIONS and any attachments thereto and any signed amendments and variations to said documents.

### ■ DELIVERY

The delivery of and transfer of risk for the GOODS to BUYER as set out in the PURCHASE ORDER and further defined in the agreed INCOTERMS.

### ■ DELIVERY DATE(S)

The date of SELLER's DELIVERY and / or performance of the WORK as stated in the PURCHASE ORDER.

### ■ DOCUMENTS

Engineering, drawings, documentation, calculations, certificates, manuals, datasheets and all other technical, commercial or other documentation and data to be supplied by SELLER under the PURCHASE ORDER on media specified therein and / or to which BUYER obtains ownership according to ARTICLE 14.

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- **FORCE MAJEURE**  
Defined in ARTICLE 19.
- **FREE ISSUED MATERIALS (FIM)**  
Materials provided free of charge by BUYER to SELLER to be incorporated into the WORK as further defined in ARTICLE 14.
- **GOODS**  
All equipment, items and materials to be delivered by SELLER pursuant to / described in a PURCHASE ORDER other than the DOCUMENTS as part of the WORK.
- **GROUP**  
Either PARTY and its parents, subsidiaries and AFFILIATES, other suppliers and contractors of any tier, to the extent they are involved in the project to which the PURCHASE ORDER relates, CLIENT, and their respective officers, directors, employees, agents, and representatives.
- **INCOTERMS**  
The International Chamber of Commerce (ICC) Rules for the Use of Domestic and International Trade Terms, i.e. INCOTERMS 2010 (or latest edition), as issued by the ICC.
- **INTELLECTUAL PROPERTY**  
Any invention, patent or application for a patent, design (registered or unregistered), trademark (registered or unregistered), copyright, design right, trade secret, know-how, proprietary information or other intellectual property right in respect of any information, process, work, material or method.
- **PARTY/PARTIES**  
SELLER and BUYER or either of them as the context requires.
- **PURCHASE ORDER**  
The separate contract document describing the WORK issued under the CONTRACT together any attachments thereto and any signed amendments and variations.
- **PURCHASE ORDER PRICE**  
The total price and currency specified in the PURCHASE ORDER, including any additional costs for VARIATIONS.
- **SELLER**  
The company or person stated as such in the PURCHASE ORDER or its successors or permitted assignees.
- **SERVICES**  
All activities that SELLER is required to carry out and/or deliver under a PURCHASE ORDER as part of the WORK which are not GOODS or DOCUMENTS.
- **SPECIAL CONDITIONS**  
The document reflecting any deviation from the CONDITIONS agreed between and signed by the PARTIES.
- **TAXES**  
Includes all compulsory charges imposed pursuant to the authority of a country, or political subdivision thereof, to levy taxes or fees on an entity or activity. Taxes include, but are not limited to, income taxes, employment taxes, franchise taxes, sales and use taxes, value added taxes ("VAT"), VAT applicable to non-residents, industry and commerce tax, property, ad valorem and excise taxes. Taxes do not include import/ export customs duties or fees and stamp duties unless specifically provided for.
- **WARRANTY PERIOD**  
The period set out in the PURCHASE ORDER. If no such period is set out in the PURCHASE ORDER

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such period shall be 24 months from the date the WORK is taken into use for its intended purpose. However, such period shall in no event exceed 48 months from COMPLETION of the WORK.

■ WORK

All activities that SELLER is required to carry out under a PURCHASE ORDER including provision of the SERVICES, GOODS and DOCUMENTS as well as everything necessary for the provision of such in accordance with the PURCHASE ORDER.

■ VARIATION(S)

A change to the WORK documented in a VARIATION ORDER and including but not limited to an increase or decrease in the quantity, character, quality, kind of execution of the WORK as well as variations to the DELIVERY DATE(S) and PURCHASE ORDER PRICE.

■ VARIATION ORDER

The document describing a VARIATION to the WORK under a PURCHASE ORDER signed by authorized representative of the PARTIES.

## 2. Interpretation

2.1 The CONDITIONS shall be applicable to all purchase activities and related documents by BUYER and shall form an integral part of the CONTRACT between BUYER and SELLER, including any amendments, variations etc. of the CONTRACT. No sales conditions or objections of SELLER shall be applicable or shall set aside these CONDITIONS unless expressly agreed by BUYER in writing.

2.2 In the event of any conflicting provisions in any applicable document of the CONTRACT, the order of precedence shall be:

- (a) the PURCHASE ORDER including its ANNEXES in the order they are listed
- (b) any Frame Agreement between the PARTIES including its ANNEXES and amendments in the order they are listed
- (c) any SPECIAL CONDITIONS agreed between the PARTIES in writing
- (d) these CONDITIONS;
- (e) the INCOTERMS

2.3 The CONTRACT including all documents forming a part thereof shall be drawn up, construed and interpreted in English. Similarly, all DOCUMENTS supplied to BUYER by SELLER and all correspondence shall be in English.

2.4 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and conversely and a gender includes all genders.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) The meaning of general words is not limited by specific examples introduced by including or for example.
- (d) Words referring to persons shall mean and include not only natural persons, but also any corporate body or partnership.
- (e) A reference to use in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivate works, developing, modifying, disclosing and communications.
- (f) Where it is provided that the SELLER will perform any act or provide anything at its cost, this means the SELLER will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the PURCHASE ORDER PRICE.

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(g) A reference to days, months, or years, shall be a reference to calendar days, months or years, as the case may be.

### 3. General Obligations of SELLER

3.1 SELLER shall have and comply with a certified quality system as defined in the ISO 9000 series of standards, or a system of equal standard approved by BUYER which is suitable for the WORK to be performed.

SELLER shall have a documented, implemented and auditable Health, Safety, Security and Environment (HSSE) management system for the SERVICES ensuring safe performance according to applicable laws and regulations at any location where the SERVICES are performed.

BUYER shall have the right to perform audits of the SELLER's quality management system and / or SELLER's HSSE management system.

Any additional quality and / or HSSE requirements specified in the PURCHASE ORDER shall be complied with by SELLER.

3.2 With regard to the GOODS supplied to BUYER, SELLER undertakes to inform and keep informed BUYER for the lifetime of the GOODS of (a) any modification, change of specification, or (b) any other circumstance that (i) may impact the operational safety within SELLER's or SELLER's CLIENT's operations, and / or (ii) may impact the ability to use the GOODS in the manner provided for in the CONTRACT (and absent any explicit contractual agreement in the manner such GOODS are ordinarily used). Information shall be issued to BUYER on following address: [bulletins@mhwirth.com](mailto:bulletins@mhwirth.com).

3.3 SELLER shall comply with and shall ensure SELLER GROUP complies with all applicable laws, rules and regulations of any governmental, judicial or regulatory body having jurisdiction over the WORK or any site where the WORK is performed, including without limitation laws, rules and regulations pertaining to health, safety and the environment, non-discrimination of the workforce, organization of labor, engineering codes and standards. SELLER shall defend, indemnify and hold BUYER GROUP harmless from and against all claims, losses, damages, costs and expenses (including legal fees) arising out of SELLER's or SELLER GROUP's failure to comply with the aforesaid laws, rules and regulations.

3.4 In performing the WORK and other obligations under this PURCHASE ORDER, SELLER shall be an independent contractor and not the agent or employee of BUYER. The relationship of employer and employee shall not exist between BUYER and SELLER or any of their employees. SELLER shall have no authority to make statements, representations or commitments of any kind or take any other action binding on BUYER. It is expressly agreed that it is not the purpose or intention of the PURCHASE ORDER to create, nor shall the same be construed as creating, any partnership or joint operation between BUYER and SELLER.

### 4. Performance of Work

4.1 SELLER represents and warrants it has examined the PURCHASE ORDER and will examine other BUYER INFORMATION supplied by BUYER from time to time as to all conditions and circumstances of whatsoever nature and howsoever arising and which may have affected the WORK, including but not limited to the DELIVERY DATE(S) and / or the PURCHASE ORDER PRICE.

It is hereby understood and agreed that SELLER shall not be entitled to claim any increase in the PURCHASE ORDER PRICE caused by circumstances not taken into account by SELLER.

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4.2 SELLER shall search for defects, discrepancies and inconsistencies (“Errors”) in the PURCHASE ORDER and in the BUYER INFORMATION provided by BUYER from time to time. SELLER shall without undue delay notify BUYER of any such errors discovered.

If SELLER does not notify BUYER of any errors that SELLER has discovered, or ought to have discovered acting reasonably diligent, by such search and as a result BUYER incurs additional costs or is prejudiced as regards to warranties, guarantees or other rights, then all such costs incurred shall be borne by SELLER.

4.3. No actions taken by BUYER in checking, verifying, reviewing, consenting to, approving, testing, inspecting the WORK, or any acknowledgement hereof shall in any way relieve SELLER from its obligations or liabilities as stated in the PURCHASE ORDER.

4.4 SELLER shall ensure that the WORK is performed in accordance with:

- (a) the terms of the PURCHASE ORDER
- (b) the DOCUMENTS furnished by SELLER and accepted by BUYER as detailed in the PURCHASE ORDER
- (c) good workmanship, high standards of engineering practice and the PURCHASE ORDER specifications or, if none are specified, in accordance with the latest applicable standards and codes of practice of the industry concerned.

4.5 SELLER shall exercise all diligence to conduct its operations in a manner that will prevent pollution. No trash, waste oil, bilge water, fuel, or other pollutants, contaminants nor any object or piece of equipment shall be discharged, disposed of, dumped, or allowed to escape from SELLER GROUP’s equipment or property. SELLER shall indemnify and hold BUYER GROUP harmless against any claims which arise as a result of a breach of this ARTICLE.

## 5. Inspection/Testing

5.1 All WORK shall be subject to quality control and assurance by SELLER, the quality control system shall be subject to monitoring to the satisfaction of BUYER.

5.2. BUYER / CLIENT or their representative(s) shall be entitled to inspect, expedite, examine and test the WORK (including but not limited to materials and workmanship of GOODS being manufactured and/or assembled) and shall have access at all reasonable times to the SELLER’s premises or any Sub-supplier of the SELLER to carry out such inspection and expediting activities.

5.3 SELLER shall carry out all tests and inspections in accordance with BUYER’s procedures and reasonable requirements, as detailed in the PURCHASE ORDER. If BUYER so requires, SELLER shall at its own cost inspect, test, or retest pursuant to any agreed test requirements, any materials or equipment included in the WORK in order to confirm that the requirements of the PURCHASE ORDER are met. The costs of any test or inspections not detailed in the PURCHASE ORDER shall be borne by BUYER unless deficiencies in the WORK are revealed thereby in which case they shall be borne by SELLER. BUYER or CLIENT has the right, but not the obligation, to witness any test or inspection carried out by SELLER. SELLER shall notify BUYER of any test or inspection four (4) weeks in advance in order for BUYER to be able to exercise this right.

5.4 Unless otherwise required by BUYER, SELLER shall furnish to BUYER every four weeks a progress report which shall detail the progress against the planned activities (i.e. engineering, materials and fabrication) and include advice of any matter that may affect the DELIVERY DATE(S).

5.5 Any inspection by BUYER or the issue of a document signifying COMPLETION in respect of quality, quantity, workmanship and/or completeness shall not relieve SELLER of its obligations

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and/or liabilities under the PURCHASE ORDER, should it be found at a later date that the WORK is not in accordance with the PURCHASE ORDER, fair wear excepted as reasonably determined by BUYER.

## 6. Variations

- 6.1 BUYER may order VARIATIONS to the WORK as in BUYER's opinion are desirable at any time. VARIATIONS to the WORK shall be ordered through VARIATION ORDERS. VARIATIONS must be approved by BUYER by means of a written VARIATION ORDER before SELLER initiates the VARIATION work.
- 6.2 When BUYER requests a VARIATION or prior to issuing a written VARIATION ORDER requests SELLER to provide an estimate of the effects of such VARIATION, SELLER shall as soon as possible and at the latest within 5 days following BUYER's request submit a written confirmation or estimate containing a description of the effects the VARIATION will have on the execution of the WORK (including the PURCHASE ORDER PRICE and DELIVERY DATE(S)). If SELLER fails to do so within the aforesaid time limit, the VARIATION shall be deemed not to have any effect on the PURCHASE ORDER.
- 6.3 If SELLER is of the opinion that it is entitled to a VARIATION ORDER, then SELLER shall issue a written request for a VARIATION ORDER without delay and at the latest within 10 days after SELLER became aware or ought to have become aware of such situation. If SELLER has not presented a request for a VARIATION ORDER without delay, or at the latest within 10 days after SELLER became aware or ought to have become aware such situation has occurred, then SELLER shall lose the right to a VARIATION ORDER.
- 6.4 Any possible adjustment to the rates, costs and prices due to VARIATION ORDERS shall be determined either by using the rates, cost or prices described in the PURCHASE ORDER, or if no comparable rates, costs or prices have been set, the PARTIES shall agree on a fair valuation that reflects the general level of pricing described in the PURCHASE ORDER. If a variation entails cost saving for SELLER, BUYER shall be credited accordingly.
- 6.5 A VARIATION ORDER shall not be allowed when the variation, revision, act of BUYER or occurrence is attributable to SELLER's breach of its performance obligations herein, or if minor revisions are required for recently completed WORK or WORK in progress.
- 6.6 Disagreement as to effects with regards to a VARIATION ORDER shall not entitle SELLER to delay performance of the WORK or withhold DELIVERY and in such cases SELLER shall implement the VARIATION without awaiting the final outcome of the dispute.

The disagreement shall be documented in writing and confirmed by both PARTIES prior to SELLER's execution of the VARIATION and be settled by the PARTIES in accordance with the Dispute Resolution set out in ARTICLE 30.

## 7. Audit Rights

- 7.1 Upon request, BUYER shall be entitled to promptly obtain all necessary information from SELLER which BUYER considers relevant to the PURCHASE ORDER, including but not limited to information which BUYER considers relevant for compliance with applicable laws and regulations, satisfactory progress reports, information relating to SELLER GROUP and quality control reports.
- 7.2 SELLER shall maintain a true, correct, and complete set of records, including books and accounts, relating to the costs and, if reimbursable, expenses for which SELLER seeks compensation or reimbursement under each PURCHASE ORDER, including time expended by SELLER and payments to any subcontractor. Such records shall be made available to audit and copy by BUYER

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or its representatives upon 24 hours' prior notice and during normal business hours wherever the records are kept for a period of five (5) years following the end of the year of COMPLETION or the earlier termination of a PURCHASE ORDER.

- 7.3 SELLER shall cooperate with BUYER GROUP and CLIENT in all matters relating to the PURCHASE ORDER.
- 7.4 SELLER shall permit BUYER GROUP and CLIENT to carry out such audits as BUYER deems to be necessary including review of all data and records in connection with the WORK and all transactions related thereto and BUYER and/or its CLIENT shall have access to all information relating to the rates and prices as may reasonably be required to verify payments made to or by SELLER under or pursuant to the PURCHASE ORDER. SELLER shall ensure that BUYER shall have similar rights to audit and inspect SELLER's subcontractors.
- 7.5 BUYER GROUP is entitled to perform such audit during the period of the PURCHASE ORDER and for up to 5 years after the end of the year of COMPLETION or the earlier termination of a PURCHASE ORDER. However, all records pertaining to tax claims asserted on SELLER for which BUYER can be made jointly responsible shall be eligible for BUYER's audit until the particular claim can be declared finally resolved. No payment from BUYER shall affect BUYER's right to audit and inspect pursuant to this ARTICLE. If payments are proven incorrect, SELLER shall promptly submit the corrected invoice.

## 8. Pricing & Terms of Payment

- 8.1 The PURCHASE ORDER PRICE shall be considered as fixed and firm and shall constitute the full compensation to SELLER for the WORK including but not limited to all costs (e.g. currency fluctuations and other financial costs), expenses, taxes (including VAT), duties, fees or charges of any kind incurred by or levied on SELLER and SELLER GROUP related to the performance of the PURCHASE ORDER and the provision by SELLER of the WORK.
- 8.2 Payment terms (including payment schedule) and invoicing requirements shall be specified in the PURCHASE ORDER, subject to any deductions imposed by law or in terms of these CONDITIONS. As a general rule BUYER shall make payment within 60 days following the receipt of a correctly rendered invoice, provided that SELLER's obligations under the PURCHASE ORDER have been fulfilled and complied with the requirements for payment security in ARTICLE 9.
- BUYER may withhold payment of any disputed or insufficiently documented amounts.
- 8.3 SELLER shall submit a final invoice within 45 days of COMPLETION. The final invoice shall include all claims, fees, and sums owed pursuant to the PURCHASE ORDER.
- 8.4 No payment of, or on account of the PURCHASE ORDER PRICE shall constitute any admission by BUYER as to the performance by SELLER under the PURCHASE ORDER and shall not prejudice any rights or remedies of BUYER in contract or otherwise in law.
- 8.5 BUYER may deduct from or set-off against any payment due to SELLER all costs, charges, damages, liquidated sums, expenses and other moneys which are payable by or to be reimbursed by SELLER to BUYER under any provision of the PURCHASE ORDER or otherwise.

## 9. Security

- 9.1 If advance payments are agreed upon, SELLER shall, at its own cost, provide an on demand advance payment guarantee issued by a bank and in a format acceptable to BUYER for a corresponding amount valid until COMPLETION. The advance payment guarantee shall be provided at the time of signing the PURCHASE ORDER form.

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- 9.2 If requested by BUYER, SELLER shall, at its own cost, provide a performance guarantee from a bank and in a format acceptable to BUYER or such other guarantee approved by BUYER. The performance guarantee shall be provided to BUYER prior to submission of the first invoice from SELLER and shall be in an amount of 10% of the PURCHASE ORDER PRICE. This guarantee shall be valid for its full amount until the expiry of the WARRANTY PERIOD.
- 9.3 If SELLER is a subsidiary of another company, SELLER shall, if requested by BUYER, at its own cost, provide a parent company guarantee in a format acceptable to BUYER from its ultimate parent company guaranteeing SELLER'S performance under the PURCHASE ORDER. The parent company guarantee shall be provided at the same time of signing of the PURCHASE ORDER FORM and be valid until expiry of the WARRANTY PERIOD.
- 9.4 BUYER has no obligation to make any payment to SELLER, until SELLER has submitted the bank guarantee(s) as requested by BUYER in accordance with this ARTICLE.

## 10. Taxes

- 10.1 Unless expressly agreed otherwise in the PURCHASE ORDER, the PURCHASE ORDER PRICE shall constitute the full compensation to SELLER for the WORK, including all taxes, duties, fees, VAT/GST or similar indirect taxes of any kind incurred by or levied on SELLER related to the performance of the PURCHASE ORDER and the provision by SELLER of the WORK.
- 10.2 SELLER and BUYER shall defend, indemnify, and hold each other harmless from liability to any competent authority resulting from the failure by SELLER GROUP or BUYER GROUP to pay taxes incurred with respect to the WORK or the PURCHASE ORDER. This indemnity shall include all penalties and interest imposed in addition to the taxes due as a result of the failure of any member of SELLER GROUP or BUYER GROUP or their respective employees to comply with reporting, filing, payment, or procedural requirements.
- 10.3 All records pertaining to tax claims asserted on SELLER for which BUYER can be made jointly responsible shall be eligible for BUYER'S audit until the particular claim can be declared finally resolved.
- 10.4 Any potential withholding tax/VAT/service tax obligation according to domestic rules is of the responsibility of the SELLER and the SELLER should gross up the PURCHASE ORDER PRICE accordingly. The BUYER agrees to withhold and produce any documentation in this respect, for the SELLER to be able to claim a potential credit for the foreign tax cost.

## 11. Delivery

- 11.1 DELIVERY of the WORK shall take place according to the agreed terms of DELIVERY and on the agreed DELIVERY DATE(S) contained in the PURCHASE ORDER. The provisions of INCOTERMS shall apply as the agreed terms of DELIVERY to the extent that they do not conflict with the terms of the PURCHASE ORDER.
- 11.2 Partial deliveries shall not be accepted and cannot be considered as a partial fulfilment of SELLER'S obligations unless set out otherwise in the PURCHASE ORDER or agreed to in a VARIATION ORDER.
- 11.3 SELLER shall notify BUYER when the WORK is ready for DELIVERY in good time prior to dispatch.
- 11.4 SELLER shall provide BUYER with DOCUMENTS as required in terms of the PURCHASE ORDER.

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Such DOCUMENTS shall comprise but not be limited to operating and maintenance instructions, drawings of the GOODS, as complete as necessary (in sufficient detail to enable BUYER to maintain, dismantle, reassemble and adjust all parts of the goods) and spare parts lists and any other documentation as required by BUYER in connection with the WORK.

- 11.5 The DOCUMENTS shall be presented to BUYER by SELLER in the form and manner detailed in the PURCHASE ORDER and shall be of a quality similar in all respects to that being provided by other SELLERS in the industry.
- 11.6 SELLER shall be responsible for all discrepancies, errors, or omissions including faulty design and/or detailing in any documentation whether or not such documentation has been approved by BUYER, provided that such discrepancies, errors or omissions including faulty design and/or detailing are not due to discrepancies, errors or omissions in the BUYER INFORMATION.
- 11.7 BUYER shall be entitled to instruct SELLER to store the GOODS for a period of up to 3 calendar months commencing upon DELIVERY at no charge for BUYER. For periods of storage longer than 3 calendar months, BUYER shall compensate SELLER at reasonable agreed rates. In all events, risk of loss and damage to the GOODS will first pass to BUYER at the end of the storage period and SELLER shall be responsible for protecting, preserving, maintaining and insuring the GOODS during any period of storage.

## 12. Delay in Delivery

12.1 As soon as SELLER believes, or has grounds for believing, that the DELIVERY of the WORK or any part thereof will be delayed past the DELIVERY DATE(S), SELLER shall without undue delay notify BUYER in writing of the delay, the cause thereof and the measures SELLER will initiate at its own cost in order to minimize the delay. SELLER shall implement all necessary actions and bear all costs incurred to minimize the delay (including additional costs for accelerated transportation as the case may be), unless the delay is mainly caused by BUYER.

12.2 If SELLER's DELIVERY is delayed and deviates from any of the DELIVERY DATE(S), BUYER is entitled to liquidated damages amounting to 0.5% of the total PURCHASE ORDER PRICE, per commenced calendar day. The liquidated damages shall not exceed 20% of the total PURCHASE ORDER PRICE.

BUYER and SELLER hereby agree that the liquidated damages are a genuine reasonable pre-estimate of the losses which may be sustained by BUYER in the event that SELLER fails in its obligations under the CONTRACT and shall not be claimed or construed as a penalty or other unenforceable sum.

12.3 BUYER may, without prejudice to any other method of recovery, deduct the liquidated damage amount so calculated from monies due or becoming due to SELLER. The payment or deduction of such liquidated damage amount shall not relieve the SELLER from its obligation to deliver the WORK or any other liability or obligation in terms of the CONTRACT.

## 13. Packing Lists, Certificate of Origin and Customs Invoice

13.1 Packing lists/advice, notes/invoices and the like shall only relate to one PURCHASE ORDER and shall be duly marked with a PURCHASE ORDER number and item number(s), tag number and other information required by the PURCHASE ORDER. Packing lists/advice notes and invoices shall be completed so that each item corresponds to the PURCHASE ORDER with respect to item number, part number, tag number, GOODS description and specification.

13.2 SELLER shall ensure that all packings and coverings shall be adequate for the safe loading, transportation, off-loading and storage of the GOODS according to INCOTERMS. All packing cases

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and packing materials shall become the property of BUYER, and the costs thereof are included in the PURCHASE ORDER PRICE.

- 13.3 SELLER shall identify each and every package, bundle, bag, carton, container or article, by means of either suitable labels securely attached thereto or indelible paint thereon, with the following information:
- (a) description of the GOODS
  - (b) name of SELLER
  - (c) PURCHASE ORDER number
  - (d) project number.
- 13.4 All costs incurred by BUYER as a result of SELLER's failure to comply with the above instruction shall be for the account of and be payable by SELLER.
- 13.5 All GOODS shall be duly marked with BUYER specified tag number and in accordance with packing lists and instructions stated in the PURCHASE ORDER or in writing by BUYER. If the consignment consists of more than one package, each package shall contain a detailed list of contents and shall be duly marked with the gross weight and dimension and the net and gross weight of each item being delivered.
- 13.6 SELLER shall comply with all applicable legislation and regulations regarding the marking of hazardous material. GOODS supplied under the PURCHASE ORDER, which are contaminated beyond use at the time of DELIVERY, shall be replaced or disposed of by SELLER. SELLER shall bear all expenses for the said processes.
- 13.7 Any certificates and other documents specified in the PURCHASE ORDER shall, unless otherwise specified in the PURCHASE ORDER, be delivered together with the GOODS with copies to BUYER as stated in the PURCHASE ORDER. This documentation is considered to be a part of the DELIVERY and invoices shall not be paid until it has been received and confirmed complete by BUYER.
- 13.8 BUYER, or any third party specified by BUYER, shall upon request by BUYER be supplied with a certificate of origin and customs invoices for the WORK. Costs incurred by BUYER due to lack of or incompleteness of certificate of origin or customs invoices shall be charged to SELLER and deducted from the PURCHASE ORDER PRICE.

## 14. Transfer of Title & Risk

14.1 SELLER represents and warrants that

- (a) it owns all rights, title and interest in the WORK provided under the PURCHASE ORDER and that it has the legal authority to sell, license, or otherwise transfer the right to use, sell or otherwise benefit from the WORK to BUYER.
- (b) it shall not permit the creation of and shall promptly discharge any lien, charge or other encumbrance created in or over the WORK, property of BUYER GROUP or property of CLIENT and shall not enter into any agreement with any third party which shall prevent BUYER acquiring clean, full and unrestricted title in accordance with this ARTICLE.

14.2 SELLER shall indemnify BUYER against any costs and expenses (including legal fees) incurred by it as a result of any breach of this ARTICLE by SELLER or SELLER GROUP and shall take all steps necessary to allow BUYER to acquire title to the WORK in accordance with this ARTICLE.

14.3 Title to and ownership of the WORK (including but not limited to SERVICES, GOODS, DOCUMENTS and all materials intended for incorporation into the GOODS etc.) free from any encumbrance, lien or charge of whatever nature, shall pass to BUYER as soon as such

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SERVICES, GOODS or any materials or DOCUMENTS have been created, procured, incorporated into or used in the performance of the WORK, or when paid for by BUYER, whichever occurs first. SELLER shall store all of WORK separately from all other goods and materials in SELLER's premises and shall mark and label them as the property of BUYER. SELLER shall insure all WORK while they are in SELLER's custody and care and shall maintain WORK in good order and condition and in accordance with applicable preservation requirements.

14.4 If BUYER issues FIM to the SELLER, such materials shall remain the property of BUYER at all times. SELLER shall store all FIM separately from all other goods and materials in SELLER's premises and shall mark and label them as the property of BUYER. SELLER shall insure all FIM while they are in SELLER's custody and care and shall maintain FIM in good order and condition and in accordance with applicable preservation requirements. SELLER shall use FIM solely in connection with the PURCHASE ORDER. SELLER shall be responsible for all storage costs and any other costs related to the care and maintenance of FIM. Loss, waste of, or damage to FIM while they are in the care of SELLER shall promptly be made good by SELLER, BUYER, or a third party at BUYER's option and at SELLER's cost, as directed by BUYER. SELLER shall have the risk of loss or damage to the FIM from the delivery of such until DELIVERY of the GOODS to BUYER as set out in this ARTICLE.

Upon receipt of FIM from BUYER, SELLER shall confirm such receipt within 24 hours by submitting a copy of the packing list to BUYER. Upon receipt of FIM, SELLER shall without undue delay perform a visual examination and thereafter, not later than one week after receipt, shall perform a detailed inspection. SELLER shall, immediately notify BUYER of any errors (as defined in ARTICLE 4.2) discovered by such examination. If SELLER does not notify BUYER without undue delay of an error that SELLER has discovered, or reasonably ought to have discovered, and as a result, BUYER incurs direct additional costs, or loses rights, warranties or guarantees, then all such costs or losses shall be borne by SELLER

14.5 Notwithstanding the foregoing, SELLER shall be responsible for and shall bear any and all risk of loss, damage or depreciation to any WORK until the DELIVERY thereof to BUYER in accordance with the provisions of the PURCHASE ORDER and the agreed INCOTERMS. Upon such DELIVERY, risk of loss or damage shall pass to BUYER.

## 15. Warranty and Guarantee

15.1 The warranties provided herein are to the exclusion of all other warranties, guarantees, representations, conditions and terms implied by law, statute, equity or otherwise and are the SELLER'S sole liabilities and BUYER'S sole remedies in the event of any defect in the WORK.

15.2 SELLER warrants and guarantees that the WORK,

- (a) is performed in accordance with the provisions of the PURCHASE ORDER;
- (b) is free from any defects in design, material and workmanship;
- (c) is capable of achieving the performance standards set forth in the PURCHASE ORDER.

15.3 In the event that within the WARRANTY PERIOD the WORK is found to be defective, inadequate or otherwise fails to meet the requirements of the PURCHASE ORDER, then SELLER shall forthwith, on written notice from the BUYER, rectify or (at the option of BUYER acting reasonably) replace the WORK and carry out all necessary work associated with such rectification or replacement at SELLER's cost.

15.4 If SELLER makes rectifications according to this ARTICLE 15, the provisions of this ARTICLE 15 shall then apply to said corrections for the greater of a period of twenty four (24) months from the

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completion of such corrections or the end of the basic WARRANTY PERIOD, whichever is later in time.

- 15.5 In the event that, after BUYER has provided notice as stated this ARTICLE 15, SELLER (i) has expressly or through its actions refused or (ii) has failed to correct the deficiencies within the time stated in such notice, BUYER may, at its option and without prejudice to any other rights or remedies it may have under the PURCHASE ORDER, undertake such rectification itself or procure a third party to undertake such rectification. In such case SELLER shall bear the BUYER's documented costs of such rectification of the WORK.
- 15.6 BUYER is entitled to claim compensation for any costs, damages and losses suffered due to defects in the WORK arising after COMPLETION, including but not limited to transportation costs of SELLER's personnel and GOODS from and to the CLIENT's nearest onshore site. However, such compensation shall be limited to the PURCHASE ORDER PRICE.
- 15.7 Notwithstanding the foregoing, SELLER shall however have no responsibility for costs relating to:
- (a) dismantling, disconnection, removal and reconnection of objects other than the GOODS;
  - (b) board or lodging offshore;
  - (c) transportation of personnel and the GOODS to and from the CLIENT's offshore location where the GOODS are in operation;
  - (d) heavy lift operations offshore; or
  - (e) extra costs associated with guarantee work performed below the water line.

## 16. Suspension

- 16.1 BUYER may instruct SELLER to suspend the WORK or parts thereof by written notification to SELLER and SELLER shall comply with such direction without undue delay or as directed. SELLER shall, without undue delay, inform BUYER of the effects the suspension will have on the performance of the WORK and confirm suspension to BUYER in writing. SELLER shall resume the WORK without undue delay after notification by BUYER.
- 16.2 During the suspension period, SELLER shall maintain, store and protect the WORK and shall be entitled to compensation only for documented and necessary expenses in connection with demobilization and mobilization of personnel and for other substantiated costs reasonably incurred by SELLER as a direct consequence of the suspension.
- 16.3 SELLER has no right to suspend the WORK or its performance except where ordered by BUYER or in the event of FORCE MAJEURE.

## 17. Termination

- 17.1 BUYER may terminate any PURCHASE ORDER or portions thereof under a CONTRACT (if any) for any reason and at any time by written notification to SELLER and SELLER shall comply with such direction without undue delay or as directed. Such termination shall be regarded as termination for BUYER's convenience.

### 17.2 SELLER's Default

An "Event of Default" shall occur when SELLER

- (a) fails in any way to fulfil its obligations pursuant to the PURCHASE ORDER, and has not cured such failure in accordance with ARTICLE 17.3
- (b) is liable for the maximum liquidated damages set out in ARTICLE 12;
- (c) is liable for the maximum of any limitation of liability hereunder
- (d) becomes insolvent or otherwise stops its payments.

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17.3 If an Event of Default occurs, BUYER may give SELLER written notice to remedy such default.

Failure by SELLER to remedy the failure or default within a period of ten (10) calendar days of the date of said notice, shall entitle BUYER, without prejudice to any other rights and remedies it may have in terms of the CONTRACT or at law, to terminate the PURCHASE ORDER without notice and choose one or more of the following alternatives specified in ARTICLE 18.

## 18. Consequences of Termination

18.1 Upon termination of the CONTRACT by BUYER as provided for in ARTICLE 17, SELLER shall without undue delay upon receipt of the said notice of cancellation or on such later date as may be specified in the said notice:

- (a) Stop all WORK and shall instruct SELLER GROUP to do the same;
- (b) Maintain, store and protect the WORK until BUYER provides further instruction;
- (c) Demand DELIVERY of the wholly or partially completed WORK, including all BUYER INFORMATION;
- (d) Upon request, transfer all subcontracts to BUYER or BUYER's nominee or negotiate acceptable cancellation terms to BUYER, as directed by BUYER.

All WORK completed or commenced by SELLER at the date of termination by BUYER, shall be the property of BUYER. All intellectual property in respect of such WORK shall likewise be the property of the BUYER as set out in ARTICLE 23. In addition BUYER may take possession of the WORK or any portion of the WORK that is terminated.

18.2 In the event of termination at BUYER's convenience as provided for in ARTICLE 17.1, BUYER will pay to SELLER compensation for the WORK up to the date of termination and shall cover substantiated costs reasonably incurred by SELLER as a direct consequence of the termination. SELLER shall not be entitled to any further payment in the event of termination under this ARTICLE.

18.3 Where the PURCHASE ORDER is terminated for an Event of Default as provided for in ARTICLE 17.2 hereof BUYER may choose one or more of the following alternatives:

- (a) Demand DELIVERY of the wholly or partially completed WORK and have it completed, at option of BUYER, by SELLER or a third party nominated by BUYER, at SELLER's sole cost; or purchase the equivalent of the WORK or part thereof from other sources.
- (b) Demand new performance of the WORK or of a part thereof
- (c) Demand a reduction of the PURCHASE ORDER PRICE.
- (d) Claim compensation for losses directly related to the Event of Default, including all costs to complete the WORK and related to any termination.

Subject to the provisions set out in this ARTICLE, any sum of money that may be due and payable by BUYER to SELLER for all expenditure and liabilities properly incurred by the SELLER in terms of the contract will be paid by BUYER to SELLER or to the SELLER's trustee or liquidator or such other person in whom SELLER's right to payment may become vested, when the liability of SELLER in terms this ARTICLE has been ascertained.

The amount by which the costs and expenses reasonably incurred by BUYER in completing the WORK exceeds the amount which BUYER would have paid to the SELLER to complete the same had termination not have occurred, together with any additional expense incurred by BUYER in carrying out such action, shall be recoverable in full from the SELLER and (without prejudice to any other right of BUYER) will be set off against any sum which may be due or become due to SELLER in terms of this ARTICLE hereof.

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## 19. FORCE MAJEURE

19.1 Neither of the parties shall be considered to be in default in performance of their obligations to the extent it can be proved that such performance has been prevented by FORCE MAJEURE.

19.2 FORCE MAJEURE means an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen the occurrence at the time of entering into the CONTRACT, or could not reasonably have avoided or overcome it or its consequences, such as:

- (a) Riot, war, invasion, acts of foreign enemies, acts of terrorism, acts of piracy, civil war, rebellion, revolution, insurrection of military or usurped power,
- (b) Acts, restrictions, change of federal, state or other laws, rules and regulations or measures of any kind on the part of any governmental, parliamentary or local authorities acts, restrictions, regulations,
- (c) Import or export regulations or embargoes by any governmental authorities having jurisdiction over the Parties' premises or of any other group, organization or informal association (whether or not formally recognized as a government) beyond the control of either Party
- (d) Ionizing radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component hereof,
- (e) Unusually severe natural physical disasters that could not be reasonably anticipated, including epidemic or pandemic diseases, earthquakes, floods, fires, explosions, hurricanes, typhoons, but excluding weather conditions less severe than the aforementioned,

19.3 The PARTY invoking FORCE MAJEURE shall, as soon as possible, notify the other PARTY in writing of the FORCE MAJEURE situation, the cause of delay and the presumed duration thereof.

19.4 Each PARTY is entitled to terminate the PURCHASE ORDER by written notice to the other PARTY if the FORCE MAJEURE situation continues, or it is obvious that it will continue, for more than 60 days. In such case BUYER may require the WORK to be delivered in the condition it is in at the date of termination upon paying a pro rata part of the PURCHASE ORDER PRICE. SELLER is entitled to the unpaid balance due to SELLER for that part of the WORK already performed prior to the occurrence of the FORCE MAJEURE situation and SELLER shall ensure that BUYER has full unrestricted title for the same.

19.5 In the case of FORCE MAJEURE, each PARTY shall cover its own costs resulting from the FORCE MAJEURE situation.

## 20. Indemnification

20.1 SELLER shall defend, indemnify and hold BUYER GROUP harmless from and against any claim, howsoever arising, concerning:

- (a) Personal injury to or loss of life of any member of SELLER GROUP,
- (b) Loss of or damage to the WORK or FIM prior to the passing of risk therein to the BUYER, and loss or damage to the WORK, BUYER GROUP property or CLIENT property occurring thereafter to the extent attributable to the acts or omissions of the SELLER GROUP, and/or
- (c) Loss of or damage to any property of SELLER GROUP.

This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of BUYER GROUP.

20.2 BUYER shall defend, indemnify and hold SELLER GROUP harmless from and against any claim concerning:

- (a) Personal injury to or loss of life of any member of BUYER GROUP, and

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- (b) Loss of or damage to any property of BUYER GROUP except as otherwise provided in ARTICLE 20.1 b) arising in connection with the PURCHASE ORDER.

This applies regardless of any form of liability whether strict or by negligence, in whatever form, on the part of SELLER GROUP.

- 20.3 SELLER shall defend, indemnify, and hold BUYER harmless from any and all liability, claims, losses, damages, costs and expenses (including legal fees) arising from death, disease or injury to any third party and loss of or damage to any third party property which arise out of the WORK due to an act, omission, fault or negligence of SELLER GROUP.
- 20.4 SELLER and its GROUP, and BUYER and its GROUP fully release, protect, defend, indemnify, and hold each other and the other's respective GROUP harmless from any and all liability for death, disease or injury to any third party and loss of or damage to any third party property and against all claims, losses, damages, costs and expenses (including legal fees) resulting therefrom, arising out of the WORK.
- 20.5 Notwithstanding anything else to the contrary set forth in the PURCHASE ORDER, BUYER shall save, indemnify, defend and hold harmless SELLER GROUP from and against any claims of whatsoever nature arising from pollution or contamination, including but not limited to pollution or contamination emanating from the property of BUYER GROUP or from the well or reservoir and any costs or damages arising from the control of or damage to a well or loss or damage to any reservoir which arise from the WORK.
- 20.6 The indemnities herein shall apply regardless of cause, and regardless of negligence of any kind by the indemnified PARTY.

## 21. Limitation of Liability

- 21.1 Notwithstanding anything herein to the contrary, BUYER shall defend, indemnify and hold SELLER GROUP harmless from BUYER GROUP's own Indirect Loss, and SELLER shall defend, indemnify and hold BUYER GROUP harmless from SELLER GROUP's own Indirect Loss. This applies regardless of any liability, whether strict or by negligence, in whatever form, on the part of either PARTY.

Indirect Losses are defined herein as any indirect or consequential loss, including but not limited to any loss of production, loss of product, loss of use, loss of revenue, loss of profit or anticipated profit, and similar losses and damages, regardless of whether such losses or damages were reasonably foreseeable at the time of entering into the PURCHASE ORDER.

- 21.2 The maximum aggregate liability of the SELLER to BUYER, under or in connection with a PURCHASE ORDER shall not exceed the PURCHASE ORDER PRICE. BUYER shall indemnify and hold SELLER harmless from any liability in excess of this limitation.
- 21.3 This ARTICLE 21 shall not apply with respect to:
- (a) any Party's liability for criminal acts, fraud, willful misconduct or gross negligence;
  - (b) SELLER's liability to BUYER to pay Liquidated Damages pursuant to ARTICLE 12;
  - (c) proceeds actually recovered from the relevant insurances pursuant to ARTICLE 22;
  - (d) ARTICLE 3.2 Compliance with Laws and Regulations; ARTICLE 10 Taxes, ARTICLE 20 Indemnities and ARTICLE 23 Intellectual Property Rights.

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## 22. Insurance

22.1 SELLER shall procure and maintain at SELLER's expense, and for the duration of the PURCHASE ORDER until the end of the WARRANTY PERIOD, all necessary insurances required for and adapted to the operations for the performance of the WORK.

SELLER shall maintain at a minimum the insurances listed below. The amounts are minimum requirements and not limits of liability and they are not to be construed as BUYER's consent to substitute its financial liability in excess of the amounts set forth except as otherwise agreed in the CONTRACT:

- (a) Workers compensation and/or employer's liability insurance covering personal injury to or death of personnel of SELLER GROUP to the minimum value required by applicable laws or, if greater in sum, US Dollars two millions (US\$ 2,000,000) per occurrence, including extended cover for working offshore in accordance with project requirements.
- (b) General third party and product liability insurance covering all liabilities in respect of property damage and personal injury arising from the activities of SELLER GROUP in relation to the CONTRACT, with a minimum limit of not less than US Dollars five millions (US\$ 5,000,000) per occurrence and in the aggregate for products liability.
- (c) Motor liability insurance in compliance with statutory requirements for not less than the amount required by any applicable legislation or, if greater in sum, US Dollars one million (US\$ 1,000,000) per occurrence.
- (d) If not arranged by CLIENT, All Risk Insurance covering physical loss or damage to (i) the WORK, in part or in whole, while in progress until DELIVERY and the FREE ISSUED MATERIALS or other property of BUYER GROUP while in the care and custody of SELLER

22.2 All insurances shall be placed with reputable insurers, acceptable to BUYER, and shall for all insurances (other than Employers Liability Insurance/Workmen's Compensation, if applicable) to the extent of the liabilities assumed by SELLER under the PURCHASE ORDER, include BUYER GROUP as additional insured.

22.3 All insurances shall be endorsed to provide that underwriters waive any rights of subrogation against BUYER GROUP to the extent of the liabilities assumed by SELLER under the PURCHASE ORDER.

22.4 Such insurances shall also where possible, provide that BUYER shall be given not less than thirty (30) calendar days prior written notice of cancellation of or material change to the insurance cover.

22.5 Within fifteen (15) calendar days of the date when both PARTIES have signed the PURCHASE ORDER, SELLER shall provide BUYER with insurance certificates, and thereafter renewals thereof, documenting that the relevant insurance requirements are procured and shall be maintained in accordance with this ARTICLE 22. The provision of the insurance certificates to BUYER shall not fix BUYER with the content thereof and shall not be a defense to any claim by BUYER against SELLER.

22.6 In the event that SELLER fails to provide any of its insurance set forth in this ARTICLE 22 or should any insurance be cancelled, terminated, BUYER may consider this an Event of Default and terminate the PURCHASE ORDER or have the right (not the obligation) procure the requisite insurance at SELLER's own cost.

22.7 The provisions of ARTICLE 22 shall in no way limit the liability of SELLER under the PURCHASE ORDER.

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22.8 For the sake of clarity and the purpose of this ARTICLE 22, BUYER GROUP and SELLER GROUP shall also include the employees and agents of the companies included within BUYER GROUP and SELLER GROUP.

## 23. Intellectual Property Rights

23.1 The PARTIES agree that all INTELLECTUAL PROPERTY owned by a PARTY prior to entering into the PURCHASE ORDER will remain the property of that PARTY. (“BACKGROUND IP”)

23.2 All INTELLECTUAL PROPERTY in BUYER INFORMATION shall remain at all times the property of BUYER or CLIENT. BUYER INFORMATION shall not be used by SELLER other than for the purpose of the WORK and shall, upon written request by BUYER, be returned to BUYER when the WORK is completed.

23.3 All INTELLECTUAL PROPERTY in and related to the WORK, including the DOCUMENTS, which is developed by SELLER GROUP in connection with the WORK or otherwise arising out of the WORK shall be the property of BUYER.

23.4 SELLER shall maintain ownership of inventions, developments and enhancements of SELLER INTELLECTUAL PROPERTY, in addition to INTELLECTUAL PROPERTY produced independently of the PURCHASE ORDER, unless any of such are based in whole or in part on BUYER INFORMATION, in which event they shall be owned by BUYER.

23.5 SELLER shall notify BUYER of any INTELLECTUAL PROPERTY which BUYER shall obtain ownership of, or rights to, hereunder, and SELLER shall provide the necessary assistance to enable BUYER to acquire such rights. BUYER shall pay SELLER for all reasonable costs in connection with such assistance in accordance with applicable law.

23.6 SELLER shall provide and grant to BUYER and CLIENT and to anyone authorized by BUYER and CLIENT an irrevocable, perpetual, transferable, royalty-free, world-wide, non-exclusive license to all INTELLECTUAL PROPERTY owned by SELLER hereunder to the extent necessary for BUYER, CLIENT or their transferees to utilize the WORK and the DOCUMENTS, including the engineering, procurement, construction, installation, operation, maintenance, modification, adaptation and repair of such. Said license may be freely assigned to any end user of the WORK.

23.7 The SELLER represents and warrants that:

- (a) as at the date of this CONTRACT, it is entitled to grant the rights granted under this ARTICLE 23; and
- (b) use of the SELLER’s BACKGROUND IP, the INTELLECTUAL PROPERTY in and related to the WORK and the WORK itself will not infringe the Intellectual Property Rights of any third party.

23.8 SELLER shall indemnify and hold harmless BUYER GROUP against any actual or alleged claims and proceedings, including legal fees, by BUYER GROUP or third parties with regard to infringement or violation of any INTELLECTUAL PROPERTY rights, in any jurisdiction, in connection with the WORK.

## 24. Confidentiality

24.1 SELLER shall keep confidential all BUYER INFORMATION and all information arising out of the PURCHASE ORDER, including the terms of the PURCHASE ORDER, and shall only use BUYER

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INFORMATION for the purpose of the performance of the WORK. SELLER shall not divulge to a third party the said information without the written consent of BUYER, unless such information:

- (a) Is already known to SELLER at the time the information was received, and/or
- (b) Is or becomes part of the public domain (except by default of SELLER or its personnel), and/or
- (c) Is rightfully received from a third party without an obligation of confidentiality, and/or
- (d) Is required to be disclosed by law or any stock exchange rule.

24.2 SELLER shall be entitled to disclose the confidential information described in ARTICLE 24.1 to SELLER GROUP to the extent necessary for the purpose of fulfilling its obligations under the PURCHASE ORDER, provided that such disclosure is made under a separate confidentiality and non-disclosure agreement no less stringent than this ARTICLE.

24.3 BUYER shall keep confidential all information disclosed by SELLER and designated in writing by SELLER as SELLER's confidential information unless such information:

- (a) Is already known to BUYER at the time the information was received, and/or
- (b) Is or becomes part of the public domain (except by default of BUYER or its personnel), and/or
- (c) Is rightfully received from a third party without an obligation of confidentiality, or
- (d) Is required to be disclosed by law.

24.4 BUYER shall be entitled to disclose SELLER's confidential information described in ARTICLE 24.1 to the CLIENT to the extent necessary for the purpose of fulfilling its contractual obligations to the CLIENT provided that disclosure is made under confidentiality obligations no less stringent than this ARTICLE.

## 25. Data protection

The PARTIES shall, if not otherwise agreed by entering into a data processing agreement, be considered independent controllers with respect to the CONTRACT. If a data processing agreement is entered into between the PARTIES, the rest of this clause shall not apply.

Each PARTY shall comply with its obligations as a controller under applicable data protection law including ensuring a legal basis for processing of personal data, making sure relevant and sufficient security measures are in place and complying with transparency obligations. Each PARTY shall only process personal data received from the other PARTY to the extent necessary to fulfill the purpose of the CONTRACT. Personal data shall be deleted when no longer necessary for the stated purpose.

## 26. Export Controls & Economic Sanctions

26.1 GOODS, technology, software and/or SERVICES being part of the WORK provided by SELLER may be controlled for export under export controls and economic sanctions laws and regulations, including without limitation Norwegian laws, the European Union Dual Use Regulation (EC Regulation 428/2009), the European Union economic sanctions regulations, the United States Export Administration Regulations ("EAR"), the U.S. economic sanctions regulations maintained by the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC"), and the U.S. International Traffic in Arms Regulations ("ITAR").

26.2 SELLER shall not be required under this CONTRACT or any PURCHASE ORDER hereunder to perform any act that would subject it to potential liability under any applicable export controls or economic sanctions laws or regulations. To the extent export licenses or other authorizations are required in order for either PARTY to perform any act under this CONTRACT, the PARTY requiring the license shall take reasonable steps to apply for such licenses, and the other shall provide reasonable assistance in connection with such authorization requests.

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26.3 SELLER agrees that it will comply with all United States and European export controls and economic sanctions obligations in connection with any GOODS, SERVICES, technology or software provided pursuant to this CONTRACT. SELLER agrees to indemnify BUYER GROUP for any claims that may arise as a result of SELLER'S breach of this ARTICLE.

## 27. Assignment and Subcontracting

27.1 BUYER is entitled to assign, novate or otherwise transfer his rights and obligations under the PURCHASE ORDER or the CONTRACT, fully or partly, to any AFFILIATE or any third parties.

27.2 SELLER may not assign the CONTRACT or any part or any benefits or its rights and obligations under any PURCHASE ORDER pursuant to the CONTRACT without BUYER'S prior written consent.

27.3 SELLER shall not sub-contract the whole or portions of the PURCHASE ORDER without the prior written consent of BUYER which consent shall not be unreasonably withheld.

27.4 In any case of sub-contracting SELLER shall ensure that

- (a) all subcontractors involved in the performance of the WORK are bound by terms that are no less stringent to those set out in the PURCHASE ORDER.
- (b) all subcontracts entered into by SELLER contain a provision under which BUYER is entitled to call for the subcontract to be assigned to BUYER.

27.5 Without undue delay after placing any sub-order for major components of the GOODS, SELLER shall, if so requested, furnish BUYER with one unpriced copy of the sub-order showing sub-supplier's name, order number and promised shipping dates

## 28. Corporate Social Responsibility, Anti-Corruption and Fair Competition

28.1 Each PARTY shall uphold the highest standards of business ethics and corporate code of conduct in the performance of the PURCHASE ORDER. Furthermore, each PARTY by entering into the PURCHASE ORDER confirms that it will act in compliance with applicable labor standards, anti-discrimination rights and fundamental human rights norms as described in the United Nations' Universal Declaration of Human Rights.

28.2 Each PARTY agrees that they will not, directly or indirectly take part in any action that constitutes bribery, corruption or trading in influence pursuant to laws and regulations applicable to the PURCHASE ORDER or the BUYER GROUP or SELLER GROUP.

28.3 SELLER warrants and represents that, in connection with the WORK it has not made or offered and will not make or offer any payment, gift, promise or other advantage or anything of value, whether directly or through intermediaries, to or for the use of any public official, where such payment, gift, promise or advantage would violate the principles identified in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union, or that would violate any national anti-corruption laws that might apply to the PURCHASE ORDER, including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010, which includes bribery of private individuals.

28.4 Each PARTY agrees to act in a fair and ethically justifiable manner in accordance with applicable competition rules.

28.5 BUYER has prepared a Supplier and Subcontractor Declaration reflecting BUYER'S focus on ethics, human-rights and principles for anti-corruption. SELLER shall sign the Supplier and Subcontractor Declaration and undertakes to fulfil the requirements set out therein.

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## 29. Miscellaneous

- 29.1 The CONTRACT constitutes the entire agreement and understanding between the PARTIES in respect of the matters dealt with in it and supersedes all prior agreements, promises, correspondence, discussions, representations and understandings relating to the WORK, except those expressly set forth herein. Other conditions shall not apply to the PURCHASE ORDER unless BUYER has accepted these in writing.
- 29.2 The PARTIES acknowledge that it is their intention to extend to those persons and entities included in the definition of SELLER GROUP and BUYER GROUP certain liability protection pursuant to ARTICLES 20 and 21 (Liability). Except as expressly provided for in these CONDITIONS a person who is not a party to this CONTRACT shall have no right to rely upon or enforce any term of this CONTRACT provided that this does not affect any right or remedy of the third party which exists or is available through either the common law or statute.
- Notwithstanding the foregoing, the PARTIES may rescind and/or vary any of the terms of this CONTRACT (including in respect of any relief from liability, hold harmless, indemnity or benefit given to any third person) without the consent of any such third person acquiring rights under this sub-article.
- 29.3 No waiver by BUYER of any breach of any of the terms and conditions of the PURCHASE ORDER shall be construed as a waiver of any subsequent breach whether of the same or of any other term or condition hereof. No waiver shall be validly made unless made in writing.
- 29.4 Except as expressly otherwise provided in the CONTRACT, all covenants, indemnities, representations, acknowledgments and agreements contained herein shall survive and not be affected by termination of the CONTRACT or COMPLETION of the WORKS.

## 30. Governing Law & Dispute Resolution

- 30.1 The interpretation of this CONTRACT and any PURCHASE ORDER hereunder, the execution and performance hereof and the rights of all PARTIES hereunder shall be governed by the laws applicable at the domicile of BUYER, excepting any of its procedural laws and principles governing choice of law that may lead to the application of any other law
- 30.2 As the exclusive place of jurisdiction the PARTIES agree and unconditionally submit to the exclusive jurisdiction of the courts exercising authority for the domicile of the BUYER.
- 30.3 Notwithstanding the existence or presence of any dispute or difference, SELLER shall under no circumstances be entitled to go slow, suspend or stop the performance of the WORK or in its performance under this CONTRACT by reason of having any dispute or difference of any kind whatsoever with BUYER, or any other parties, but shall proceed diligently and expeditiously to complete the performance of the WORK under this CONTRACT.

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