

MHWirth General Terms & Conditions for Purchasing – Short Form

(Rev. 3 / November 2020)

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General Terms and Conditions for Purchasing - short form

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.
- **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.
- **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 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
- 2.4 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.

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.
- 3.2 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

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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.

- 3.3 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.

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 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.

- 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. 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.

- 3.5 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 which may have affected the WORK, including but not limited to the DELIVERY DATE(S) and / or the PURCHASE ORDER PRICE.

- 3.6 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.

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

- (a) the terms of the PURCHASE ORDER
- (b) 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.

- 3.8 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.

4. Variations

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.

5. Pricing & Terms of Payment

- 5.1 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, expenses, taxes (including VAT/GST or similar indirect taxes), duties, fees or charges of any kind incurred by or levied on SELLER and SELLER GROUP related to the performance of the PURCHASE ORDER, unless expressly agreed otherwise in the PURCHASE ORDER.
- 5.2 Unless agreed otherwise in the PURCHASE ORDER, the PURCHASE ORDER PRICE shall be inclusive of transport packaging, preservation.
- 5.3 Payment terms 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. BUYER may withhold payment of any disputed or insufficiently documented amounts.
- 5.4 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.
- 5.5 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.

6. Taxes

- 6.1 SELLER shall defend, indemnify, and hold BUYER GROUP harmless from liability to any competent authority resulting from the failure by SELLER 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 their respective employees to comply with reporting, filing, payment, or procedural requirements.

7. Delivery

- 7.1 DELIVERY of the WORK shall take place as specified 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.
- 7.2 Partial deliveries and Transshipment are not allowed, unless approved by BUYER in writing.
- 7.3 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.

8. Delay in Delivery

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 The payment or deduction of liquidated damages shall not relieve the SELLER from its obligation to deliver the WORK or any other liability or obligation in terms of the CONTRACT.

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9. Transfer of Title & Risk

- 9.1 Title to and ownership of the WORK free from any encumbrance, lien or charge of whatever nature, shall pass to BUYER upon DELIVERY, or when paid for by BUYER, whichever occurs first.
- 9.2 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.
- 9.3 The risk of loss, damage or depreciation to any WORK shall pass to BUYER in accordance with the provisions of the PURCHASE ORDER and the agreed INCOTERMS.

10. Warranty and Guarantee

- 10.1 SELLER warrants and guarantees that the WORK is performed in accordance with the provisions of the PURCHASE ORDER to the full satisfaction of BUYER and that the WORK is free from any defects in design, material, workmanship and fit for its intended purpose;
- 10.2 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.
- 10.3 If SELLER makes rectifications during the WARRANTY PERIOD, the provisions of this ARTICLE 10 shall then apply to said corrections for the greater of a period of twenty four (24) months from the completion of such corrections or the end of the basic WARRANTY PERIOD, whichever is later in time.
- 10.4 In the event that, after BUYER has provided notice as stated in this ARTICLE 10, 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.

11. Suspension

- 11.1 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.
- 11.2 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.
- 11.3 SELLER has no right to suspend the WORK or its performance except where ordered by BUYER or in the event of FORCE MAJEURE.

12. Termination

- 12.1 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.
- 12.2 An "Event of Default" shall occur when SELLER
- fails in any way to fulfil its obligations pursuant to the PURCHASE ORDER, and has not cured such failure in accordance with ARTICLE 12.3
 - is liable for the maximum liquidated damages set out in ARTICLE 8;
 - is liable for the maximum of any limitation of liability hereunder
 - becomes insolvent or otherwise stops its payments.
- 12.3 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 13.

13. Consequences of Termination

- 13.1 Upon termination of the CONTRACT by BUYER as provided for in ARTICLE 12, 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:
- Stop all WORK and shall instruct SELLER GROUP to do the same;
 - Maintain, store and protect the WORK until BUYER provides further instruction;
 - Effect DELIVERY of the wholly or partially completed WORK, including all BUYER INFORMATION;
 - Upon request, transfer all subcontracts to BUYER or BUYER's nominee or negotiate acceptable cancellation terms to BUYER, as directed by BUYER.
- 13.2 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 18. In addition BUYER may take possession of the WORK or any portion of the WORK that is terminated.
- 13.3 In the event of termination at BUYER's convenience as provided for in ARTICLE 12.1, 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.
- 13.4 Where the PURCHASE ORDER is terminated for an Event of Default as provided for in ARTICLE 12.2 hereof BUYER may choose one or more of the following alternatives:
- 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.
 - Demand new performance of the WORK or of a part thereof
 - Demand a reduction of the PURCHASE ORDER PRICE.
 - Claim compensation for losses directly related to the Event of Default, including all costs to complete the WORK and related to any termination.
- 13.5 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 of this ARTICLE has been ascertained.
- 13.6 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.

14. Force Majeure

- 14.1 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.
- 14.2 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, including but not limited to
- Riot, war, invasion, acts of foreign enemies, acts of terrorism, acts of piracy, civil war, rebellion, revolution, insurrection of military or usurped power,
 - 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,
 - 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

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- (d) Natural catastrophes, such as epidemic or pandemic diseases, earthquakes, floods, fires, explosions, hurricanes, typhoons, but excluding weather conditions less severe than the aforementioned,
- 14.3 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.
- 14.4 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 and 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, provided SELLER ensures that BUYER has full and unrestricted title for the same.
- 14.5 In the case of FORCE MAJEURE, each PARTY shall cover its own costs resulting from the FORCE MAJEURE situation.
- 15. Indemnification**
- 15.1 SELLER shall defend, indemnify and hold BUYER GROUP harmless from and against any claim, howsoever arising, concerning (i) Personal injury to or loss of life of any member of SELLER GROUP, and/or (ii) Loss of or damage to the WORK prior to the passing of risk therein to the BUYER, and loss or damage to the WORK and / or BUYER GROUP property occurring thereafter to the extent attributable to the acts or omissions of the SELLER GROUP, and/or (iii) 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.
- 15.2 BUYER shall defend, indemnify and hold SELLER GROUP harmless from and against any claim concerning (i) Personal injury to or loss of life of any member of BUYER GROUP, and/or (ii) Loss of or damage to any property of BUYER GROUP except as otherwise provided in ARTICLE 15.1 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.
- 15.3 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.
- 15.4 To the extent permitted by law the indemnities herein shall apply regardless of cause, and regardless of negligence of any kind by the indemnified PARTY.
- 16. Limitation of Liability**
- 16.1 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. For the purpose of this ARTICLE Indirect loss shall mean: (i) any indirect, special, punitive or consequential loss under the applicable law as set out in ARTICLE 24; and (ii) 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 or not such losses or damages are included in the provisions of (i) above and regardless of whether or not such losses or damages were reasonably foreseeable at the time of entering into the PURCHASE ORDER.
- 16.2 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
- 16.3 This ARTICLE 16 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 8.;
- (c) proceeds actually recovered from the relevant insurances pursuant to ARTICLE 17;
- (d) SELLER's liabilities to BUYER for which SELLER is required to be, but is not, insured under an insurance policy pursuant to ARTICLE 17.
- (e) ARTICLE 3.2 Compliance with Laws and Regulations; ARTICLE 6 Taxes, ARTICLE 15 Indemnities and ARTICLE 18 Intellectual Property Rights.
- 17. Insurance**
- 17.1 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.
- 18. Intellectual Property Rights**
- 18.1 The SELLER represents and warrants that INTELLECTUAL PROPERTY in and related to the WORK, the WORK itself or the use thereof by BUYER will not infringe the INTELLECTUAL PROPERTY of any third party.
- 18.2 SELLER shall at its sole cost 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.
- 19. Confidentiality**
- 19.1 The parties agree that all information exchanged between the parties shall be treated as confidential and shall not be disclosed to a third party without the other party's written permission, unless such information (i) is already known to the party in question at the time the information was received; (ii) is or becomes part of the public domain; (iii) is rightfully received from a third party, without an obligation of confidentiality; (iv) is required to be disclosed by law; (v) is independently developed by the party in question.
- 19.2 Either PARTY shall be entitled to disclose the confidential information described in this ARTICLE to their respective GROUP to the extent necessary for the purpose of fulfilling its obligations under the PURCHASE ORDER and/or CONTRACT, provided that such disclosure is made under a separate confidentiality and non-disclosure agreement no less stringent than this ARTICLE..
- 20. Data protection**
- 20.1 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.
- 20.2 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..
- 21. Export Controls & Economic Sanctions**
- 21.1 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").
- 21.2 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.
- 21.3 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.

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22. Assignment and Subcontracting

- 22.1 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.
- 22.2 SELLER may not assign its rights and obligations under any PURCHASE ORDER or the CONTRACT or subcontract whole or portions of a PURCHASE ORDER without BUYER's prior written consent which shall not be unreasonably withheld.
- 22.3 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.

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.

- 25.2 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

23. Corporate Social Responsibility, Anti-Corruption and Fair Competition

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 Each PARTY agrees to act in a fair and ethically justifiable manner in accordance with applicable competition rules.
- 23.5 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.

24. Miscellaneous

- 24.1 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.
- 24.2 Except as expressly provided for in this Agreement a person who is not a party to this Agreement shall have no right to rely upon or enforce any term of this Agreement 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.
- 24.3 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.
- 24.4 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 a PURCHASE ORDER, the CONTRACT or by COMPLETION of the WORKS.

25. Governing Law & Dispute Resolution

- 25.1 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

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