

Conditions of Purchase

1. Definitions

1.1. Definitions

In these *Conditions*, unless otherwise indicated by the context:

Associated Company means an associated company as defined in the Companies Ordinance;

Authority means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) other person in charge of administration of a *Law*;

Background IP Rights means *IP Rights* of a *Party* or a third party which:

- (a) are already in existence prior to the date of this *Contract*; or
- (b) come into existence on or after the date of this *Contract* otherwise than in connection with this *Contract*;

Business Day means Monday through Friday (excluding public holidays in the jurisdiction where the *Work* is being carried out);

Claim means any demand, claim, action or legal proceeding of any nature:

- (a) arising out of or in relation to this *Contract* (including any direction by the *Purchaser* under it);
- (b) arising out of or in relation to the *Work*; or
- (c) arising otherwise at *Law* including:
 - (i) under statute or in equity;
 - (ii) in tort for negligence or otherwise (including negligent misrepresentation); and
 - (iii) for restitution (as a result of unjust enrichment or otherwise),

including any claim for an increase to the *Contract Price*, the payment of any money (including damages), an extension of time, or a change to a *Party's* obligations or rights;

Code of Conduct means the 'Code of Conduct for Yunex *Suppliers* and Third *Party* Intermediaries' set out in the Annexure to these *Conditions*;

Conditions means these conditions of purchase;

Confidential Information means all information regardless of form which is disclosed directly or indirectly by the *Disclosing Party* to the *Receiving Party* in connection with this *Contract* which is treated or designated as confidential by the *Disclosing Party* or which the *Receiving Party* ought to know is confidential and includes without limitation: (a) trade and business secrets; (b) information concerning customers, suppliers and *Associated Companies*; (c) product and pricing information; (d) samples, models and prototypes; (e) personal information (including information about the *Purchaser's Personnel*); and (f) all information, data and knowledge of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of the *Disclosing Party* or their *Associated Companies*;

Contract means the contract between the *Purchaser* and the *Supplier* for the supply of the *Products* and/or the *Services* set out in one or multiple *Purchase Orders*, consisting of one or multiple *Purchase Orders*, these *Conditions*, special conditions and all documents which both *Parties* agree to form part of the *Contract*;

Contract Price means the amount(s) payable by the *Purchaser* for the *Work* as agreed by the *Parties* in writing;

Date for Delivery means the date by which a *Delivery* must be achieved as required under this *Contract* (as may be extended in accordance with this *Contract*);

Date of Delivery means the date upon which a *Delivery* is achieved;

Date of Final Completion means the date that *Final Completion* is achieved as confirmed in writing by the *Purchaser* under clause 15.15;

Defect means any defect, deficiency, fault, error or omission in any part of the *Products* or the *Services*, or any part of the *Products* or the *Services* which is not in accordance with the requirements of this *Contract*;

Defects Liability Period means a period of 18 months commencing upon the *Date of Delivery* of that the entire *Work* (as may be extended in accordance with clause 15.10) or such other period as agreed between the *Parties* in writing;

Delivery means:

- (a) in respect of the *Products*, when the *Products* have been delivered to *Site* in accordance with the requirements of this *Contract* and all associated *Supplier's Documents* and other information required to be provided by the *Supplier* under this *Contract* have been received by the *Purchaser*; and

- (b) in respect of the *Services*, when the *Services* have been performed in accordance with the requirements of this *Contract* and all associated *Supplier's Documents* and other information required to be provided by the *Supplier* under this *Contract* have been received by the *Purchaser*;

Disclosing Party means the *Party* indirectly or directly disclosing its *Confidential Information*;

Dispute has the meaning given in clause 25;

Final Completion means when all *Defects Liability Periods* have expired and the *Purchaser* is satisfied that all of the *Supplier's* obligations under this *Contract* have been fulfilled;

Force Majeure Event means an exceptional event or circumstance which is beyond a *Party's* control including:

- (a) state, province or nation wide industrial disputes (which are not specific to that *Party* or that *Party's* employees, officers, agents and *Subcontractors*);
- (b) Acts of God, epidemics and natural disasters (excluding inclement weather that is usual for that time of year);
- (c) war, civil unrest, terrorism; and
- (d) delays or disruption by *Authorities*,

provided that such events are unforeseeable, unavoidable and will prevent or delay the performance of a *Party's* obligations under this *Contract*;

Foreign Trade Regulations means import and export control, customs and foreign trade regulations;

GS1 Identification Standard means the Identification of Components and Parts in the Rail Industry - Application Standard as issued by GS1 AISBL from time to time;

Hazardous Substance means any dangerous goods or hazardous substance;

Incoterms Rule means a rule under Incoterms® 2020 published by the International Chamber of Commerce;

IP Rights means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered or registrable and including all applications for registration) in relation to inventions (including patents), trade marks, trade and business names, designs, copyright, circuit layout rights, trade secrets, know-how, moral rights and confidential information and all other rights of a proprietary nature created in any part of the world as a result of intellectual activity in the industrial, scientific, literary and artistic fields;

Key Supplier Personnel has the meaning given to in clause 16.1;

Latent Defect means any Defect which could not reasonably have been detected prior to the expiry of the *Defects Liability Period*;

Law means any applicable:

- (a) statutes, rules, regulations, by-laws, orders, codes, standards, ordinances and proclamations of the jurisdiction where the *Work* is being carried out;
- (b) principles of common law and equity;
- (c) authorisations and requirements of *Authorities* or organisations having jurisdiction where the *Work* is being carried out; and
- (d) fees, charges, taxes, tariffs and duties payable in connection with the foregoing;

Loss means any cost, expense, liability, loss or damage and in relation to a *Claim*, Loss includes amounts payable on the *Claim* and (whether or not the *Claim* is successful), legal costs and disbursements on a full indemnity basis;

Notice has the meaning given to it in 31.1;

Open Source Software means computer software that is released under a license in which the copyright holder grants users the rights to use, study, change, and distribute the software and its source code to anyone and for any purpose;

Party means the *Purchaser* or the *Supplier* and "**Parties**" means both of them;

Personnel means the employees, officers, agents and *Subcontractors* of a *Party*;

Policies means the *Purchaser's* written guidelines, policies, principles, procedures, requirements and rules including the *Purchaser's* or third party customer induction policies and *Site* policies which will be presented or made available to the *Supplier* upon written request to the *Purchaser*;

Privacy Laws means the Personal Data (Privacy) Ordinance (Cap. 486) and any other *Laws* relating to the collection, use, storage or granting of access rights to personal information;

Products means the whole or any part of the goods supplied or to be supplied by the *Supplier* under this *Contract* including those which are the output of any *Services* to be provided by the *Supplier*;

Purchase Order means the document titled '*Purchase Order*' in or to which these *Conditions* are referred or attached and which is deemed to incorporate the terms of these *Conditions*;

Purchaser means Yuttraffic Limited (CR No. 3055470) of 801A & 808B, 8/F, Tower A, Manulife Financial Centre, 223-231 Wai Yip Street, Kwun Tong, Kowloon, Hong Kong SAR;

Purchaser's Material has the meaning given to it in clause 18.1;

Purchaser's Representative means the person nominated as such by the *Purchaser*, details of whom are specified in this *Contract* or notified by the *Purchaser* to the *Supplier* in writing from time to time;

Receiving Party means the *Party* receiving the *Confidential Information* of the *Disclosing Party*.

Security has the meaning given to it in clause 9.1;

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day to day trading and a deposit of money by way of security;

Serial Defect means a Defect that occurs in at least 20% of the same model of *Products* supplied by the *Supplier* if the cause of such Defect is the same or similar;

Services means the whole or any part of the services provided or to be provided by the *Supplier* under this *Contract*;

Site means the site of the *Purchaser* or third party to which *Products* are to be delivered or at which *Services* are to be performed (but excludes the *Supplier's Facilities*);

Subcontractor means a contractor, subcontractor, consultant or supplier of a *Party*;

Supplier means the person or other entity named in the *Purchase Order* as the supplier or vendor of the *Products* and/or the *Services*;

Supplier's Conditions means the terms and conditions for supply of its products and/or services contained in or referred to in any documents provided by the *Supplier*.

Supplier's Facilities means the *Supplier's* sites used for manufacturing, storage or otherwise in connection with the *Work*;

Supplier's Documents means all drawings, calculations, technical information, samples, specifications, test reports, software, operating and maintenance manuals and other technical information and particulars submitted (or to be submitted) by the *Supplier*, regardless of the form in which it is made available and irrespective of the medium in which it is embedded;

Supplier's Representative means the person nominated as such by *Supplier* pursuant to clause 3(o) or any other person nominated in writing by the *Supplier* as a replacement details of whom are notified to the *Purchaser's* Representative;

Work means the supply of the *Products* and *Services* and the associated work, or any part thereof; and

Work Programme means the programme for the execution of the *Work* showing the dates by which, or the times within which, any milestones, stages or portions of the *Work* are to be carried out or completed, and (where possible) including a critical path analysis which indicated the sequence of activities which constitute the critical path.

1.2. Interpretation

In these *Conditions*, unless otherwise agreed by the *Parties* or required by the context:

- (a) a reference to this *Contract* or any other document or agreement includes any variation, replacement or novation of them;
- (b) the use of the word "includes" or "including" shall be interpreted to mean "includes without limitation" or "including without limitation";
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a gender includes all genders;
- (f) a reference to "\$" or "dollars" is to Hong Kong dollars;
- (g) a reference to a party to this *Contract* or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);

- (h) a person includes a body corporate;
- (i) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;
- (j) a reference to all or any part of a *Law* includes that *Law* as amended, consolidated, re-enacted or replaced from time to time;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (m) references to clauses and schedules are to clauses in and schedules to this *Contract*; and
- (n) references to "day", "month" or "year" shall mean a calendar day and a calendar year respectively.

2. Acceptance of Purchase Order

- 2.1. A *Purchase Order* placed by the *Purchaser* shall only be considered accepted if the Seller has confirmed acceptance of the *Purchase Order* in writing within 5 days of receipt of the *Purchase Order* or any other timeline set out or agreed upon by the *Purchaser*. If the *Supplier* commences *Work* the *Supplier* shall be deemed to have accepted the *Purchase Order* notwithstanding any failure to provide written acceptance unless the *Purchaser* has, within 30 days after issuance of the *Purchase Order*, cancelled the *Purchase Order* in the absence of written acceptance by the *Supplier*. A *Purchase Order* may be modified or cancelled by the *Purchaser* at any time prior to its receipt of the written acceptance of the *Purchase Order* by the *Supplier*.
- 2.2. Upon acceptance of the *Purchase Order*, the *Supplier* will be bound to supply the ordered *Products* and/or *Services* in accordance with the requirements of this *Contract*. If the quantities of the ordered *Products* and/or *Services* are not set out in the *Purchase Order*, the *Purchaser* may subsequently advise the *Supplier* of the quantities.
- 2.3. The *Supplier* shall inspect each *Purchase Order* and all associated documents provided by the *Purchaser* to the *Supplier* and shall immediately request clarification from the *Purchaser* if anything is unclear or if any information appears to be ambiguous, inadequate or missing.

3. Supplier's General Obligations and Warranties

Without limiting any other obligation of the *Supplier* under this *Contract*, the *Supplier*:

- (a) shall ensure that the *Products* and *Services* comply with and are completed in accordance with all requirements set out or referred to in this *Contract* (including all specifications);
- (b) shall be responsible for any discrepancies, errors or omissions in the *Supplier's Documents* and shall carefully check information of any kind provided to it by the *Purchaser*;
- (c) shall comply with all *Privacy Laws*;
- (d) shall comply with all packaging, marking and labelling requirements of the *Purchaser* that are communicated to the *Supplier* (whereby the *Supplier* acknowledges that changes to the packaging, marking and labelling requirements may be made by the *Purchaser* as required by *Law* or to meet the *Purchaser's* reasonable requirements such as to prevent the *Products* from being damaged in transit, to meet its customer requirements or to minimise harm to the environment);
- (e) shall ensure that it and its *Personnel* comply with all *Laws* including:
 - (i) any applicable anti-corruption and anti-bribery *Laws* including the Prevention of Bribery Ordinance, anti-money laundering *Laws* and the relevant criminal *Laws*;
 - (ii) taxation *Laws*;
 - (iii) *Laws* relating to employees including those governing freedom of association; employment conditions, remuneration and entitlements; minimum working age; equal opportunity and discrimination;
 - (iv) competition *Laws* including the Competition Ordinance;
 - (v) *Laws* governing occupational health and safety and environmental protection; and prohibited imports (including asbestos); and
 - (vi) road and transport *Laws*;
- (f) must at all times co-operate with the *Purchaser* and the *Purchaser's Personnel* (including the *Purchaser's* other *Subcontractors*) in order to allow, and not to disrupt, the proper performance of the *Work*;
- (g) shall ensure that if the *Supplier* is required to provide the *Purchaser* with any *Supplier's Documents* under this *Contract*, the *Purchaser* is given ownership of such *Supplier's Documents* or the *Purchaser* is granted a perpetual, transferable and royalty-free licence to use,

duplicate and alter the *Supplier's Documents* (and associated technical data) to meet the *Purchaser's* requirements;

- (h) shall ensure that it has not relied upon information provided by or on behalf of the *Purchaser* without independently verifying that information and satisfying itself of the accuracy, adequacy and correctness of that information;
- (i) shall ensure that in carrying out the *Work*, the *Supplier* exercises the degree of skill, diligence and prudence which would reasonably be expected from a skilled and experienced *Supplier* engaged in the same type of work under the same or similar circumstances;
- (j) shall not change the *Supplier's Facilities* unless agreed in writing by the *Purchaser* acting reasonably;
- (k) if requested to do so, the *Supplier* shall:
 - (i) support the *Purchaser's* e-business strategies, including electronic procurement activities, data management, performance monitoring, electronic order processing and other process optimization measures; and
 - (ii) perform the registration and qualification process with *Purchaser's* supplier online platform, keep its registration details up to date and remain so qualified while it has obligations under this *Contract*;
- (l) shall at its own costs, obtain all the permits, approvals and authorization as required for the performance of the *Work*, and pay all the taxes which are related to the *Work*;
- (m) warrants, without limiting any other provisions of this *Contract*, that:
 - (i) all *Products* will:
 - (1) be new, of merchantable quality, and be fit for their intended purpose;
 - (2) provide the full functionality and performance claimed for the *Products*;
 - (3) be free from Defects;
 - (4) comply with all requirements of this *Contract* including the specifications and with generally accepted engineering, manufacturing and industry standards;
 - (5) not contain any type of asbestos so that all *Products* have nil asbestos content; and
 - (6) in the case of software and hardware, when in operation calculate dates correctly for the period of the useful life of the *Products*;
 - (ii) the *Supplier* has independently examined and verified all information made available by the *Purchaser* to the *Supplier* and has considered and evaluated all other information and matters relevant to the risks, contingencies and other circumstances relating to the *Work* (including the *Site* and all requirements relevant to the *Work*) and is satisfied that the *Contract Price* includes due allowance for all such matters and things necessary for the proper performance and completion of the *Work* and for fulfilling all of the *Supplier's* obligations under this *Contract*; and
 - (iii) the *Supplier* has fully checked and clarified the requirements of this *Contract* and will not request any adjustment to the *Contract Price* or any extension of time arising out of any errors, omissions, ambiguities or discrepancies in respect of this *Contract*;
- (n) represents and warrants that it did not and shall not either directly or indirectly provide to any officer, employee or agent of the *Purchaser* any benefit which might reasonably be construed as an inducement for such person to show favour to the *Supplier*;
- (o) shall ensure that at all times a *Supplier's Representative* is appointed by the *Supplier* who is authorised to represent and bind the *Supplier* in all matters relating to this *Contract*. The *Supplier* shall ensure that the *Purchaser's Representative* is provided at all times with the current contact details for the *Supplier's Representative*. The *Supplier* shall not change the *Supplier's Representative* without giving prior written notice to the *Purchaser*. All matters notified by the *Purchaser* to the *Supplier's Representative* or otherwise within the knowledge of the *Supplier's Representative* will be deemed to have been notified to the *Supplier* and within the *Supplier's* knowledge. The *Supplier's Representative* shall promptly respond to requests and queries of the *Purchaser's Representative* and shall meet and liaise with the *Purchaser's Representative* at such times and intervals as deemed necessary by the *Purchaser*. Nothing in this clause shall prevent the *Purchaser* from giving notices, instructions or other correspondence with any person(s) which the *Purchaser* may reasonably consider to have authority to receive such notices, instructions or correspondence on behalf of the *Supplier*;
- (p) shall provide satisfactory evidence to the *Purchaser* upon request of the *Supplier's* compliance with any obligations under this *Contract*; and

- (q) shall provide the *Purchaser* with all necessary information to enable the *Purchaser* to answer any enquiries made by the *Authorities* in relation to this *Contract*.

4. Site and Access

If this *Contract* requires the *Supplier* to perform any *Work* on *Site*:

- (a) the *Supplier* is responsible for inspecting the *Site* and surrounding areas where the *Work* will be performed and for ensuring that it is familiar with all *Site* conditions, including access, soil and subsoil conditions, asbestos and all other *Site* conditions relevant to the performance of the *Work* (including all applicable *Laws*) and for making all reasonable enquiries and investigations that may affect the cost and expense of performing the *Services*;
- (b) the *Supplier* shall access to the *Site* only at agreed times;
- (c) the *Supplier's Personnel* shall attend all required *Site* induction sessions before commencement of work on any *Site* and the *Supplier* shall comply with and shall ensure that when on *Site*, the *Supplier's Personnel* comply with all *Policies* and *Laws* applicable to the *Site*;
- (d) unless otherwise agreed by both *Parties* in writing the *Supplier* shall provide at its expense all facilities, constructional plant and other amenities as may be required for the performance of the *Work* at the *Site*;
- (e) the *Supplier* shall, at all time, keep the *Site* free from accumulations of waste materials or rubbish created in the process of carrying out any work and upon the completion of the work, immediately remove its tools, equipment, scaffold and remaining materials, and ensure the *Site* is cleaned up before it leaves;
- (f) the *Supplier* acknowledges and agrees that there may be other contractors on or around the *Site* and it may not be given exclusive access to the *Site* and agrees that the *Contract Price* includes all of the *Supplier's* costs and expenses associated with managing the *Supplier's* interface and co-ordination of the *Works* with the works of such other contractors.

5. Delivery of Products

- 5.1. The *Supplier* shall deliver the *Products* in accordance with the relevant *Incoterms Rule* specified in this *Contract*, or, if no *Incoterms Rule* is so specified, without additional charge to the *Purchaser*, DDP to the *Site* for delivery stated in this *Contract* with insurance for the *Products* to be effected by the *Supplier*, by the *Date for Delivery*. The *Purchaser* may instruct to postpone delivery of *Products* and the *Supplier* shall comply with any such instruction.
- 5.2. Without limiting any other provision of this *Contract* or any *Law*, the *Supplier* shall ensure that, in delivering the *Products* and when using vehicles, machinery and equipment in connection with the *Work*, the *Supplier* and its *Personnel* shall:
 - (a) comply with all mass, dimension and load restraint requirements for vehicles and the carriage of goods;
 - (b) comply with all driving hours, speed and traffic requirements;
 - (c) comply with all relevant requirements in relation to container weight declarations;
 - (d) manage all transport and journey documentation, including consignment notes, declarations, manifests and log books;
 - (e) provide the *Purchaser*, upon request, with all information and documentation reasonably required by the *Purchaser* (or a relevant *Authority*) to monitor or audit compliance with this clause (including permitting inspections of transport and journey documentation and vehicles);
 - (f) notify the *Purchaser* upon becoming aware of any breach by the *Supplier* or its *Personnel* of this clause;
 - (g) be responsible for the safe transportation of the *Products* and any equipment necessary for performance of the *Work* to, from and on the *Site* in accordance with the *Work Programme*;
 - (h) investigate the route for transport of the *Products* and be responsible for any extra works in relation to the roads that are necessary to ensure the suitability of the route;
 - (i) obtain any necessary permits relating to the movement of its loads to, from and on the *Site*;
 - (j) comply with all regulations regarding traffic, transit or access of labour, goods, equipment and materials, to, from and on the *Site* and must also comply with all *Laws* applicable to the use of existing public and private roads;
 - (k) develop a detailed traffic management and transportation plan for the *Work*, and produce a copy upon request to the *Purchaser*;

- (l) ensure that the *Supplier* and the *Supplier's Personnel* exercise due care in using the transport routes so as not to cause damage to any of the roads or bridges;
 - (m) ensure that:
 - (i) appropriate vehicles, machinery and equipment are available to transport the *Products* and that such vehicles, machinery and equipment are in good working and maintained condition; comply with all *Laws*; have been inspected and passed as ready and safe for operation in accordance with such *Laws*; are suitable for the *Work* and meet all requirements of this *Contract*, are equipped with sufficient means for securing and protecting the *Products* and are equipped with fully operational communication systems;
 - (ii) operators and drivers are available at all times necessary to operate vehicles, machinery and equipment in order to support the proper sequence, performance and completion of the *Work*; and
 - (iii) all operators and drivers are capable, experienced, sufficiently qualified, certified and suitable to perform the *Work* in accordance with the *Law* and are trained in occupational health and safety and instructed to stop *Work* whenever they consider it likely that the *Work* does not comply with occupational health, safety or environmental regulations and to inform the *Purchaser* accordingly; and
 - (n) if any part of the transportation is carried out by the *Purchaser*, advise the *Purchaser* in advance of the requirements of the vehicles, machinery and equipment for transportation of the *Products*.
- 5.3. The *Supplier* shall bear all the risk of delays including waiting time during transportation unless such delay is caused by the *Purchaser*.
- 5.4. The *Supplier* shall ensure that prior to the delivery or use of any *Hazardous Substance*, the *Supplier*:
- (a) applies appropriate labelling;
 - (b) provides the *Purchaser* with a copy of the current Material Safety Data Sheet for such *Hazardous Substance* that complies with the relevant regulations; and
 - (c) provides the *Purchaser* with a completed risk assessment, if the *Work* includes the use of such *Hazardous Substances*.
- 5.5. Unless otherwise agreed between the *Parties* in writing the *Supplier* shall ensure that all *Products* are adequately insured, packaged and protected, loaded and transported to ensure safe delivery to the *Site* by the *Date for Delivery*.
- 5.6. The *Supplier* shall ensure that *Products* are accompanied by the requisite delivery documents (including any shipping and customs documents) at no additional cost to the *Purchaser* and that a delivery note excluding the price is supplied with each delivery and shall provide the *Purchaser* with copies of all transport related permits and any other transport documents promptly upon request or at the times set out in this *Contract*.
- 5.7. *Delivery* notes must include all information requested by the *Purchaser* and the *Supplier* must obtain the signature of an authorised representative of the *Purchaser* on the delivery note evidencing goods receipt. The signing of the delivery note or the passing of title to the *Purchaser* will not constitute approval by the *Purchaser* of the *Supplier's* performance of its obligations, nor be taken as an admission or evidence that any of the *Products* comply with the requirements of this *Contract* nor prejudice any rights of the *Purchaser* in any way.
- 5.8. Partial, advance, excess or short deliveries may only be made with the prior written consent of the *Purchaser's* Representative.
- 5.9. The *Supplier* must ensure that all *Products* supplied to the *Purchaser* in accordance with this *Contract* have been marked, identified and barcode in accordance with *GS1 Identification Standard* and applicable legislations and any marking, identifiers or barcode applied to the *Products* are:
- (a) of the direct marking type, as provided in clause 3.5 of the *GS1 Identification Standard*;
 - (b) of a reasonable durable quality so that it is capable of withstanding frequent exposure to weather and reasonable wear and tear; and
 - (c) attached securely to the *Products*.
- 6. Title, Property and Risk**
- 6.1. Unless otherwise agreed between the *Parties*, title to and property in the *Products* passes to the *Purchaser* upon payment or delivery, whichever occurs first. Risk in the *Products* shall pass to the *Purchaser* based on the relevant *Incoterms Rule* specified in this *Contract* (or if no *Incoterms Rule* is so specified, upon delivery of the *Products* to the nominated *Site* for delivery specified in this *Contract*).
- 6.2. For each *Product*, the *Supplier* warrants that at the time of delivery of the *Product* to *Site*:
- (a) the *Supplier* has complete ownership of the *Product* free of any liens, charges, *Security Interests* and encumbrances and provides the *Product* to the *Purchaser* on that basis; and
 - (b) the *Purchaser* is entitled to clear, complete and quiet possession of the *Product*.
- 7. Import and Export Control and Foreign Trade Regulations**
- 7.1. The *Supplier* shall comply with all applicable *Foreign Trade Regulations* and shall obtain all necessary import and export licenses.
- 7.2. The *Supplier* shall advise the *Purchaser* in writing as early as possible but not later than 14 days after receipt of the *Purchase Order* (and promptly in case of changes) of any information and data required by the *Purchaser* to comply with all *Foreign Trade Regulations* in the case of export and import as well as re-export, including:
- (a) all applicable import and export list numbers, including the Import and Export Control Classification Number;
 - (b) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
 - (c) the country of origin.
- 7.3. The *Purchaser* shall not be obligated to fulfil this *Contract* if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargos or other sanctions.
- 8. Price & Payment**
- 8.1. The *Supplier* agrees that subject to its other entitlement expressly provided for in this *Contract*, the *Contract Price* is fixed and is the full consideration for the *Supplier's* performance of all its obligations under this *Contract* and that the *Supplier* is not entitled to payment of any amount for the performance of any of its obligations under this *Contract* (whether express or implied) other than the *Contract Price* and any other amount to which the *Supplier* is entitled as expressly provided for under this *Contract*.
- 8.2. The *Supplier* shall only invoice the *Purchaser* in respect of any *Products* or *Services* after *Delivery* of such *Products* or *Services* in accordance with this *Contract* or at such other times as otherwise agreed between the *Parties*. Subject to any contrary term of this *Contract* and the *Purchaser's* rights under this *Contract*, unless otherwise specified in the *Purchase Order* the *Purchaser* shall pay the *Supplier* no later than 90 days after the *Supplier's* correctly rendered invoice is received.
- 8.3. Unless otherwise specified in this *Contract*, the *Contract Price*:
- (a) may not be varied without the prior written consent of the *Purchaser*, and
 - (b) includes all Government taxes, duties, excises, tariffs and charges.
- 8.4. The *Purchaser* shall not be required to pay any invoice (or any part of the invoice) or reimburse the *Supplier* for any approved expenses if the *Purchaser* does not receive a correctly rendered invoice. An invoice will be correctly rendered if:
- (a) the *Work* to which the invoice relates has been provided in accordance with the requirements of this *Contract*;
 - (b) the specified amount is correctly calculated and due for payment;
 - (c) the invoice specifies the *Purchase Order* number, *Product* item number (if applicable) and all other relevant details requested by the *Purchaser* and the invoice is set out in a manner that enables the *Purchaser* to ascertain the *Work* to which the invoice relates and the amount payable in respect of such *Work*;
 - (d) the invoice is accompanied (where necessary or where reasonably requested by the *Purchaser*) by verifying documentation;
 - (e) the invoice reflects the *Contract Price* or expenses which have been previously approved by the *Purchaser*;
 - (f) not used;
 - (g) the invoice is forwarded to the correct addresses (including email addresses) of the *Purchaser* specified in the *Purchase Order*; and
 - (h) the invoice is accompanied by a *declaration* in accordance with clause 8.9.
- 8.5. The *Purchaser* shall not be required to pay the *Contract Price* (or any part of the *Contract Price*) for the *Work* or reimburse the *Supplier* for any agreed expenses if the *Supplier* has not provided the *Purchaser* with:
- (a) all required bank details to enable the electronic transfer of the *Contract Price*;
 - (b) *Security* (if required) in accordance with this *Contract*;
 - (c) evidence that all insurance required to be effected by the *Supplier* under this *Contract* has been effected; and
 - (d) the warranty required under this *Contract*.

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- 8.6. The *Supplier* acknowledges and agrees that the *Purchaser* may withhold from the *Contract Price* otherwise payable to the *Supplier* any amounts required to be withheld or remitted by the *Purchaser* to relevant *Authorities* under any applicable *Laws*.
- 8.7. Not used.
- 8.8. Without prejudice to any other rights or remedies available to the *Purchaser*, the *Purchaser* may set-off, deduct or withhold from any amount due by the *Purchaser* to the *Supplier* any amount which the *Supplier* is or may be liable to pay to the *Purchaser* however or whenever incurred (including under an indemnity).
- 8.9. To the extent permitted by *Law*, the *Purchaser* has no obligation to make any payment in respect of any *Supplier* invoice if the *Supplier* has not given to the *Purchaser* a declaration for the month to which the *Supplier's* invoice relates, declaring that, in respect of the invoiced *Work*, all of the *Supplier's* *Personnel* have been paid all monies due and payable to them (including mandatory provident fund and other entitlements) and all taxes have been paid in respect of them.
- 8.10. If the *Purchaser* becomes liable to pay any amount to any third party by reason of the *Supplier's* failure to provide the documentary evidence required under clause 8.9, then clause 8.8 applies and the *Purchaser* may pay such amount and may also have recourse to any *Security* it may be holding from the *Supplier* to pay any such liability.
- 8.11. Payment by the *Purchaser* to the *Supplier* shall not:
- constitute approval or acceptance of the *Work* or prejudice any rights of the *Purchaser*;
 - constitute evidence of the value of any *Work*; or
 - be construed to mean that the *Work* has been supplied in accordance with this *Contract* and shall not relieve the *Supplier* from any of the *Supplier's* obligations and responsibilities under this *Contract*.
- 8.12. The *Supplier* must notify the *Purchaser* in writing if any of its *Subcontractors* is or may be entitled to exercise a right to suspend work under a relevant agreement or subcontract pursuant to any applicable security of payment legislation in force (if any). In the circumstances:
- the *Purchaser* is entitled (but is not obliged) to provide a form of security to or to pay that *Subcontractor* to avoid suspension of work by that *Subcontractor* and the amount of that security or payment plus any associated costs to the *Purchaser* arising from a call on that security or provision of that security, will be a debt due by the *Supplier* to the *Purchaser*; and
 - the *Supplier* indemnifies the *Purchaser* for any Loss or damage (direct or indirect) that the *Purchaser* may suffer as a result of a suspension by any of the *Supplier's* *Subcontractor*, unless and to the extent that such suspension is caused by the acts of the *Purchaser* or the *Purchaser's* *Personnel* (other than the *Supplier*).
- 9. Security**
- 9.1. The *Purchaser* may deduct retention monies equal to 5% (or such other percentage as agreed between the *Parties* in writing) of the value of each invoice due and payable to the *Supplier* to secure the proper performance of the *Supplier's* obligations under this *Contract* ("Security"). The *Supplier* may at any time provide an unconditional bankers' undertaking in a form reasonably approved by the *Purchaser* in lieu of retention monies.
- 9.2. The *Purchaser* may have recourse to the *Security* if the *Purchaser* suffers or may suffer any Loss or *Claims* due to any act, default, negligence or omission of the *Supplier* or the *Supplier's* *Personnel* or the *Supplier* fails to pay any amount due and payable to the *Purchaser* and the *Supplier* must not take any steps to injunct or otherwise restrain:
- any issuer of such *Security* from paying the *Purchaser* pursuant to the terms of the *Security*;
 - the *Purchaser* from taking any steps for the purposes of making a demand under any such *Security* or receiving any payment under any such *Security*; or
 - the *Purchaser* using the *Security* proceeds.
- 9.3. The *Purchaser*:
- is not obliged to pay the *Supplier* interest in connection with any *Security* or the proceeds of any *Security* converted into cash; and
 - does not hold any *Security* proceeds on trust for the *Supplier*.
- 9.4. Subject to any recourse, the amount of the *Security* shall be reduced by 50% within 14 *Business Days* after the *Date of Delivery* of the entire *Work* and the remainder shall be released within 14 *Business Days* after the *Date of Final Completion*.
- 10. Time**
- 10.1. Time is of the essence in respect of the *Delivery*. The *Supplier* shall perform the *Work* competently, with due expedition and without delay and unless an extension of time is granted in accordance with clause 11, must achieve *Delivery* by the *Date for Delivery*.
- 10.2. The *Supplier* shall take all reasonable steps to avoid delay and shall notify the *Purchaser* immediately if a delay to the *Work Programme* or the *Date for Delivery* is expected to occur. The *Supplier* shall bear all costs of any express shipments required to enable the *Supplier* to meet the applicable *Date for Delivery*.
- 10.3. The *Supplier* shall submit a *Work Programme* within 5 *Business Day* after the date of this *Contract* and an updated *Work Programme* from time to time whenever an update is needed. The *Supplier* shall not, without reasonable cause, depart from a *Work Programme*.
- 10.4. The *Supplier* shall ensure that progress (including against the *Work Programme*) is monitored at all times and shall update the *Purchaser* of this progress at the intervals requested by the *Purchaser*.
- 10.5. Review of, comments on or approval of, or any failure to review or comment on, any *Work Programme* by the *Purchaser* will not:
- relieve the *Supplier* from, or alter, the *Supplier's* liabilities or obligations under this *Contract*;
 - evidence or constitute the granting of an extension of time or a direction by the *Purchaser* to accelerate, disrupt, prolong or vary any *Work*; or
 - affect the time for carrying out the *Work*.
- 10.6. The *Supplier* shall ensure that any *Work* performed on a *Site* of the *Purchaser* or the *Purchaser's* customer is performed during the hours advised of by the *Purchaser*.
- 10.7. If the *Supplier* does not achieve a *Delivery* by the *Date for Delivery*, the *Supplier* shall pay to the *Purchaser* (and the *Purchaser* may deduct from payment to the *Supplier*) liquidated damages equal to 1% of the value of the subject work of that *Delivery* for each day of delay (or such other liquidated damages amount and cap as may be agreed between the *Parties* in writing). Liquidated damages shall be applied from the *Date for Delivery* up until the *Date of Delivery*.
- 10.8. The *Supplier* acknowledges that the liquidated damages set out in this *Contract* are a genuine pre-estimate of Loss suffered by the *Purchaser* resulting from the failure by the *Supplier* in achieving *Delivery* by the *Date for Delivery* (excluding the *Purchaser's* liability to its customer), and not a penalty and are without prejudice to any other rights or remedies of the *Purchaser* under this *Contract*. The obligation to pay or payment of such liquidated damages by the *Supplier* shall not affect any other obligations and liabilities of the *Supplier* under this *Contract*.
- 11. Extensions of Time**
- 11.1. The *Supplier* may claim an extension of time for *Delivery* if the *Supplier* has been or will be delayed *Delivery* by the *Date for Delivery* due to:
- a breach of contract by the *Purchaser*;
 - postponement under clause 5.1 unless the instruction was due to any act, default, negligence or omission by the *Supplier* or the *Supplier's* *Personnel*;
 - variations directed in writing by the *Purchaser* under clause 12 (unless such variation has been requested due to any act, default, negligence or omission by the *Supplier* or the *Supplier's* *Personnel*);
 - suspension under clause 13.2 (unless the suspension was due to any act, default, negligence or omission of the *Supplier* or the *Supplier's* *Personnel*); or
 - a *Force Majeure Event*, however neither parties' rights under clause 30.4 are limited under this clause.
- 11.2. The *Supplier* shall not be granted an extension of time if the delay for which the extension is claimed is not on the critical path of the *Work Programme* or has not affected or will not affect the *Supplier's* ability to meet the *Date for Delivery*. Where any delay is concurrently attributable to both a cause set out in clause 11.1 and a cause not set out clause 11.1, the *Supplier* shall not be entitled to claim an extension of time for the period of the concurrent delay.
- 11.3. As a condition precedent to being granted an extension of time, the *Supplier* must:
- notify the *Purchaser* in writing of the likelihood of the delay, as soon as becoming aware of the likelihood of the delay;
 - take all reasonable steps possible to prevent the cause of the delay and to mitigate the extent and consequences of the delay;
 - within 3 days after the occurrence of the cause of any delay, notify the *Purchaser* in writing of the *Supplier's* intention to apply for an extension of time, specifying the cause of the delay, an estimated duration of the delay and the steps that the *Supplier* will take to mitigate the delay; and
 - within 7 days after the occurrence of the cause of any delay, give the *Purchaser* a written claim for an extension of time, which claim shall state all the facts upon which the claim is based and the extension

period claimed, show and justify any effect the extension of time shall have on the *Work Programme* and the *Date for Delivery*, and be accompanied by a *Work Programme* to show the direct impact of the delay and the revised *Date for Delivery*.

- 11.4. Notwithstanding that the *Supplier* is not entitled to or has not claimed an extension of time, the *Purchaser* may, but not obliged to, at any time and from time to time before *Final Completion* direct an extension of time.
- 11.5. Where the *Supplier* has been granted an extension of time under this clause 11 for a delay caused by a breach of contract by the *Purchaser*, the *Purchaser* shall pay to the *Supplier* such extra costs as are necessarily and actually incurred by the *Supplier* as a direct result of the delay, subject to a maximum daily rate of 0.1% of the *Contract Price*. The extension of time (if applicable) under this clause 11 and the *Supplier's* entitlement under this clause 11.5 are the *Supplier's* sole remedy for delay and/or disruption in the *Work* for whatever causes.

12. Variations

- 12.1. The *Purchaser* may direct the *Supplier* to vary the *Work* including by increasing, decreasing, or omitting any part of the *Work*. The *Supplier* shall promptly implement variations to the *Work* requested by the *Purchaser*. The *Supplier* shall not vary the *Work* except as directed in writing by the *Purchaser*.
- 12.2. The *Supplier* shall immediately (at any case not later than 3 days after a variation is directed) notify the *Purchaser* if the *Supplier* considers that it is not possible for the *Supplier* to comply with a variation direction and provide written reasons for not being able to do so to the satisfaction of the *Purchaser*, failing which the *Supplier* is deemed to have accepted the direction of variation.
- 12.3. If the *Supplier* considers that any instruction of the *Purchaser* constitutes a variation to the *Work*, it shall notify the *Purchaser* of the variation within 3 days after receipt of such instruction.
- 12.4. If the *Supplier* considers that the variation will have an effect on the *Contract Price*, the *Supplier* shall:
- within 3 days after a variation is directed, notify *Purchaser* of the approximate value of the difference in *Contract Price* as a result of the directed variation; and
 - within 7 days after a variation is directed (or any other timeline set out by the *Purchaser*), submit to the *Purchaser* a detailed statement of the cost of the variation which statement shall set out all adjustments to the *Contract Price* and other amounts claimed by the *Supplier* arising out of or in relation to the applicable variation request (on the basis that all other adjustments and/or amounts not included in the detailed statement arising out of or in relation to such variation shall be deemed to have been waived by the *Supplier*).
- 12.5. The *Supplier* shall not be entitled to claim any payment for any variation:
- if the *Purchaser* has not directed the *Supplier* in writing to execute the variation or the *Supplier* has not strictly complied with this clause 12; or
 - if the variation was directed by the *Purchaser* due to any act, default, negligence or omission of the *Supplier* or the *Supplier's Personnel*.
- 12.6. No variation shall invalidate this *Contract* and the *Supplier* agrees that the *Purchaser* may engage others to carry out any parts of the *Work* which the *Purchaser* directs the *Supplier* to omit. Any direction to omit *Work* will not constitute a repudiation of this *Contract* regardless of the extent or timing of that direction.

13. Suspension

- 13.1. The *Supplier* shall not suspend the performance of the *Work* without a written request from the *Purchaser*.
- 13.2. The *Purchaser* may at any time request that the progress of the whole or part of the *Work* be suspended for such period as the *Purchaser* deems necessary, and the *Supplier* shall cease to perform the applicable *Work* accordingly. If during a suspension period, the *Purchaser* instructs the *Supplier* to resume the *Work*, the *Supplier* shall promptly recommence execution of the *Work*.

14. Notification of Claims

To the extent permitted by *Law*, the *Purchaser* shall not be liable in respect of any *Claim* arising out of or in relation to this *Contract* or the *Work* if the *Supplier* fails to comply with the following requirements:

- the *Supplier* must give the *Purchaser* notice in writing within 3 days of first becoming aware of the event or circumstances on which the *Claim* is based; and
- within 7 days of the occurrence of the events or circumstances on which the *Claim* is based, the *Supplier* must provide the *Purchaser* with a *Claim* together with supporting documents.

15. Quality Assurance & Defects

- 15.1. The *Supplier* undertakes and warrants to the *Purchaser* that the *Work* (including all process for carrying out the *Work*):
- are of good quality and free of Defects; and of all burdens and restrictions;
 - comply in all respects with all applicable requirements imposed by the applicable *Law* of the *Site* and other relevant jurisdictions in terms of statutes and/or other conditions prescribed by government bodies in force on the *Date of Delivery*;
 - comply with the agreed specifications and characteristics;
 - are suitable for the purpose for which they are intended; and
 - conform to the requirements set out in this *Contract* in all other respects, at any time and all times until the expiry of the later of:
 - the *Defects Liability Period*;
 - the warranty period set out in this *Contract*;
 - the statutory warranty period (if applicable); and
 - 36 months after the *Date of Delivery*,
and will comply with the requirement of design life set out in this *Contract*.
- 15.2. The *Supplier* shall plan, establish and maintain a quality system which ensures conformance of the *Work* with the requirements of this *Contract*. The *Supplier* shall provide the *Purchaser* with access to the quality systems of the *Supplier* and the *Supplier's Personnel* upon request by the *Purchaser* to enable the *Purchaser* to inspect, test and monitor the *Supplier's* compliance with the requirements of this *Contract*. Without limiting any other provision of this *Contract*, the *Supplier* shall comply with any specific quality management requirements of the *Purchaser* which are notified to it by the *Purchaser* from time to time.
- 15.3. The *Purchaser* and third parties authorised by the *Purchaser*, may upon giving the *Supplier* reasonable notice, inspect the *Work* being carried out by the *Supplier* or the *Supplier's Personnel* (at any stage of progress) at the *Site* and at the *Supplier's Facilities*. As part of such inspections the *Purchaser* may (amongst other things):
- monitor compliance with applicable *Laws*;
 - review, inspect, examine and witness any scheduled testing of the *Products*;
 - review the *Supplier's* progress against the *Work Programme* and the *Supplier's* ability to meet the *Date for Delivery*;
 - inspect any test equipment used in measuring or testing *Products* at the scheduled time of testing for such *Products*; and
 - examine the production status and test the quality of the *Products*.
- 15.4. The *Supplier* shall conduct all tests for the *Work* and provide test reports as required under the *Contract*.
- 15.5. The *Supplier* shall not be released from any of the *Supplier's* obligations arising out of or in relation to this *Contract* by the fact that the *Purchaser* or third parties authorised by the *Purchaser* perform any quality reviews.
- 15.6. The *Supplier* shall agree the same quality assurance measures as set out in clauses 15.1 through 15.3 above with its *Subcontractors* and shall ensure that its *Subcontractors* grant corresponding access, inspection, testing and monitoring rights to the *Purchaser* and third parties authorised by the *Purchaser*.
- 15.7. The *Purchaser* shall not be deemed to have accepted any *Work* even if it has signed a delivery receipt or made any payment. The *Purchaser* may perform extra tests other than those required under this *Contract*. If such tests show that the *Work* does not conform to the requirements of this *Contract*, the *Purchaser* reasonable costs of such testing shall be a debt due and owing by the *Supplier* to the *Purchaser*.
- 15.8. As directed by the *Purchaser*, the *Supplier* shall, within a specific time, rectify any Defects which occur during the *Defects Liability Period* by (at the *Purchaser's* option):
- repairing or replacing the defective *Products* and re-supplying the defective *Services* (or paying for the cost of the *Products* to be repaired or replaced or *Services* to be re-supplied) and correcting and supplying the *Purchaser* with all associated updated *Supplier's Documents*; and/or
 - providing the *Purchaser* with any materials, parts, drawings, *Supplier's Documents* and instructions necessary to rectify the Defects.
- 15.9. If the *Purchaser* makes a direction to rectify any Defects, the *Supplier* shall (without prejudice to any of the *Purchaser's* other rights and remedies) promptly:
- carry out the rectification to the *Purchaser's* satisfaction at times and in a manner causing as little inconvenience to the *Purchaser* and its customer as is reasonably possible;

- (b) commence and complete the rectification of Defects by the dates specified by the *Purchaser*, or if no timetable is provided by the *Purchaser* as soon as practicable after notification of the Defects by the *Purchaser*; and
- (c) dispose of rejected *Products* (or parts thereof) (if requested to do so by the *Purchaser*).
- 15.10. There shall be an extended *Defects Liability Period* for the rectified *Work* equal in length to the original *Defects Liability Period* (unless otherwise agreed between the *Parties* in writing) which shall commence upon the date of completion of the rectification.
- 15.11. If the rectification is not commenced or completed by any dates specified by the *Purchaser* or otherwise in accordance with this clause 15, or if the *Purchaser* reasonably considers that the Defects are incapable of being rectified by the *Supplier* within the required time frame or at all, the *Purchaser* may at the *Purchaser's* option (without prejudice to any of the *Purchaser's* other rights and remedies):
- rectify the Defect or have the rectification carried out by others at the *Supplier's* cost; or
 - reject all or part of the *Product* or *Services* in which case:
 - the *Supplier* shall refund to the *Purchaser* any payments made by the *Purchaser* in respect of such rejected *Product* and *Services*;
 - the *Supplier* shall arrange for the removal of rejected *Product* at its cost within the reasonable period of time specified by the *Purchaser*; and
 - title and risk in rejected *Product* shall revert to the *Supplier* upon receipt by the *Purchaser* of the refund.
- 15.12. If the *Purchaser* exercises its right under this clause 15 to carry out or have others carry out any rectification work, the *Supplier* shall remain responsible for the *Work* in accordance with this *Contract*.
- 15.13. Until the Defects are rectified in full, the *Supplier* shall bear the risk of accidental loss, destruction or deterioration to such defective *Work*.
- 15.14. If a *Serial Defect* is identified the *Supplier* shall, at the *Purchaser's* request, check all the *Products* potentially affected by the *Serial Defect* and rectify the *Serial Defect* therein in accordance with the defect provisions contained in this clause 15 (irrespective of whether the *Serial Defect* has manifested itself in all of the individual *Products*).
- 15.15. Within 42 days after the expiry of the last *Defects Liability Period*, the *Purchaser* shall notify the *Supplier* of the *Date of Final Completion*. The issue of such notice shall not prejudice any rights of the *Purchaser* or relieve the *Supplier* from any of its unfulfilled obligations or responsibilities including with respect to *Latent Defects* and *Serial Defects*.
- 16. Personnel and subcontracting**
- 16.1. If requested to do so by the *Purchaser*, the *Supplier* shall provide the *Purchaser* with an up-to-date, detailed organisational chart showing the positions of key *Supplier Personnel* associated with the provision of the *Work* ("**Key Supplier Personnel**").
- 16.2. The *Supplier* shall ensure that the *Work* is provided by particular *Key Supplier Personnel*. The *Purchaser* may require the *Supplier* to immediately replace any of the *Key Supplier Personnel* on reasonable grounds.
- 16.3. The *Supplier* shall use its best endeavours to:
- supply and retain the *Key Supplier Personnel*;
 - promptly inform the *Purchaser* if any of the *Key Supplier Personnel* cease or give notice of an intention to cease being engaged by the *Supplier*;
 - promptly replace any *Key Supplier Personnel* who cease being engaged by the *Supplier* with a person having the necessary skill, experience, expertise and qualifications to perform the *Work*;
 - ensure that appropriate *Key Supplier Personnel* attend meetings if requested to do so by the *Purchaser*.
- 16.4. The *Supplier* is responsible for supervising the *Supplier's Personnel* and bears the risk of any dispute, delay, disruption or inefficiency connected with or relating to any industrial action, of any of the *Supplier's Personnel* whether that action arises out of or in connection the *Work*.
- 16.5. The *Supplier* shall not subcontract the whole or any part of the *Work* without obtaining the prior written consent of the *Purchaser* and shall remain responsible for all acts, defaults, negligence and omissions of its *Subcontractors* at all times irrespective of whether the *Purchaser* has given consent.
- 17. Relationship between the Parties**
- 17.1. Nothing in this *Contract* is intended to:
- create an agency, partnership, joint venture or fiduciary relationship between the *Purchaser* and the *Supplier*; or
 - have the effect of making any of the *Supplier's Personnel* the employees of the *Purchaser*.
- 17.2. The *Supplier* shall pay all applicable salaries, leave entitlements, taxes, Mandatory Provident Fund and employees' compensation insurance for the *Supplier's* employees.
- 18. The Purchaser's property**
- 18.1. The *Purchaser* may from time to time supply goods and materials ("**Purchaser's Material**") to the *Supplier* to be incorporated into the *Work*. Legal title to and property in all *Purchaser's Material* supplied by the *Purchaser* for the *Work* shall remain with the *Purchaser* and shall not pass to the *Supplier* under any circumstances. The *Supplier* shall only use the *Purchaser's Material* to perform the *Work* and for no other purpose and bears the risk of loss, damage or deterioration to it. The *Supplier* shall store and take appropriate care of the *Purchaser's Material* and compensate the *Purchaser* for all Loss sustained by the *Purchaser* if any *Purchaser's Material* is lost or damaged or deteriorates. The *Supplier* must deliver the *Purchaser's Material* to the *Purchaser* upon request by the *Purchaser*.
- 18.2. All drawings, specifications, information and samples provided by the *Purchaser* shall remain the *Purchaser's* sole and exclusive property and is deemed to be *Confidential Information*. The *Purchaser* makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information or samples.
- 19. Not Used**
- 20. Confidentiality**
- 20.1. Both parties shall:
- keep confidential, and not use, access, copy or disclose any *Confidential Information* except as permitted by this clause 20 or otherwise consented to by the *Disclosing Party* in writing; and
 - immediately notify the *Disclosing Party* if the *Receiving Party* becomes aware of any loss or unauthorised use, access, copying, disclosure or publication of any *Confidential Information*.
- 20.2. Both parties may, to the extent necessary, use *Confidential Information* for the purposes of performing its obligations or exercising its rights arising under this *Contract*.
- 20.3. The *Supplier* may disclose *Confidential Information* to the *Supplier's Personnel* who have a specific need to access that *Confidential Information* for the purposes of enabling the *Supplier* to perform its obligations or exercise its rights arising under this *Contract* provided that:
- the *Supplier's Personnel* have first been made aware of the terms upon which the *Confidential Information* has been disclosed to the *Supplier* and a duty to handle such *Confidential Information* in confidence is imposed upon the *Supplier's Personnel*;
 - the *Supplier* ensures that the *Supplier's Personnel* comply with the terms of this clause 20 as if they were parties to this *Contract*; and
 - any breaches of this clause 20 by the *Supplier's Personnel* shall be deemed to be breaches by the *Supplier*.
- 20.4. The *Purchaser* may disclose the *Confidential Information* to the *Purchaser's Personnel*, its *Associated Companies* and its *Associated Companies' personnel* as it deems reasonably necessary.
- 20.5. The confidentiality obligations in this clause 20 do not apply to *Confidential Information* which:
- is or becomes public knowledge other than as a result of a breach of confidence;
 - is lawfully obtained by the *Receiving Party* from a third party without any confidentiality obligation (other than as a result of a breach of confidence);
 - is independently developed by the *Receiving Party* without reference to any obtained *Confidential Information*; or
 - the *Receiving Party* is required to disclose to comply with any applicable *Law*, legally binding court order, request by a governmental agency or under the rules of a stock exchange.
- 20.6. If any *Laws* require that *Confidential Information* be passed on to public bodies for the purpose of obtaining approvals and permits, the *Receiving Party* shall do everything reasonably within the *Receiving Party's* power to ensure that such *Confidential Information* is also treated confidentially by such public bodies.
- 20.7. The *Purchaser* may at any time request the *Supplier* to either destroy or return to the *Purchaser* all *Confidential Information* received from the *Purchaser*. The *Supplier* shall destroy or return the *Confidential Information* (and all copies of such *Confidential Information*) to the *Purchaser* within 14 days after receipt of the *Purchaser's* request.
- 20.8. The obligations in relation to *Confidential Information* shall survive the expiration or earlier termination of this *Contract*.

21. IP Rights

- 21.1. Except to the extent otherwise agreed between the *Purchaser* and the *Supplier* in writing, nothing in this *Contract* operates to transfer ownership of any *Background IP Rights* from either *Party* or any third party to the other *Party*. All such *Background IP Rights* are and remain owned by the relevant *Party* or third party. The *Supplier* grants the *Purchaser* an irrevocable, non-exclusive, perpetual, transferable, worldwide royalty-free licence to use *Background IP Rights* in connection with the *Work* and for the use, repair, maintenance, upgrade or modification of the *Products*.
- 21.2. Unless otherwise agreed by the *Parties* in writing and subject to clause 21.1, the *Supplier*:
- assigns to the *Purchaser* free from all encumbrances all *IP Rights* specifically created by the *Supplier* or the *Supplier's Personnel* for the *Purchaser* in connection with the *Work*; and
 - acknowledges that by virtue of this clause 21.2 all such *IP Rights* vest in the *Purchaser* upon their creation, and the *Supplier* shall, at its cost, do all things reasonably requested by the *Purchaser* to enable the *Purchaser* to assure further the rights assigned under this clause 21.2, including executing (and procuring the *Supplier's Personnel* to execute) any formal assignment or other documents required to give effect to this clause 21.2 and to provide all reasonable assistance to the *Purchaser* to protect the *Purchaser's* interests.
- 21.3. The *Supplier* must disclose to the *Purchaser* any significant material which the *Supplier* and/or the *Supplier's Personnel* create in the course of performing the *Work* at the time of its creation.
- 21.4. The *Supplier* represents and warrants that the *Products* do not contain any *Open Source Software* other than as disclosed by the *Supplier* to the *Purchaser* in accordance with this clause 21.4. If any *Products* contain *Open Source Software*, the *Supplier* shall deliver to the *Purchaser*:
- a list of all *Open Source Software* to be provided by the *Supplier* (indicating the correct version number) and the relevant *Open Licence Terms*;
 - a complete copy of all *Open Licence Terms*; and
 - the source code and build scripts for each version of the relevant *Open Source Software*.
- 21.5. Where the *Work* consists of any software component, the *Supplier* undertakes to supply the *Purchaser* with all future updates of the software and allow the *Purchaser* to copy them to those of its customers who hold an original version. The *Supplier* shall provide the *Purchaser* with such technical advice, assistance, data and documentation, including source code where necessary, to enable the *Purchaser* to maintain the software if it so wishes.
- 21.6. The *Purchaser's* use of material provided by the *Supplier* under this *Contract* includes the *Purchaser's* right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the materials (or any part):
- with or without attribution of authorship;
 - in any medium; and
 - in any context and in any way it deems fit.
- 21.7. The *Supplier* warrants that:
- the *Supplier* is authorized to grant the rights granted under this clause 21 to its customers; and
 - the possession and use of the *Products* by the *Purchaser* and/or its customer in accordance with this *Contract* will not infringe any third party's *IP Rights* (including any author's moral rights under the Copyright Ordinance) and will not result in any royalties fees or other amounts (not agreed to by the *Purchaser*) becoming payable for or relating to the use of such *IP Rights*.
- 21.8. The *Supplier* shall at the *Purchaser's* option and at the *Supplier's* expense either replace any infringing *Product* with a non-infringing *Product*, or modify such *Product* so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for the *Purchaser* the right to use such *Product*.

22. Indemnity and Liability

- 22.1. The *Supplier* indemnifies and keep indemnified the *Purchaser* and the *Purchaser's Personnel* from and against all Loss and Claims, suffered or incurred by the *Purchaser* and the *Purchaser's Personnel* to the extent caused or contributed to by:
- the performance or non-performance of the *Work* or any act, omission or negligence by the *Supplier* or the *Supplier's Personnel*; or
 - any Claim by a third party and/or Loss otherwise suffered by the *Purchaser* and the *Purchaser's Personnel* arising out of or in connection with the performance or non-performance of the *Work* or any act, omission or negligence by the *Supplier* or the *Supplier's Personnel* including any Loss or Claim arising out of:

- breach of contract or warranty;
- breach of any Laws;
- personal injury, disease, illness and/or death;
- loss of or damage to property;
- tort (including negligence), fraudulent or wilful misconduct; or
- breach of confidentiality, infringement of third party *IP Rights* or infringement of any author's moral rights but the indemnity shall be reduced proportionately to the extent that the Loss or Claim by the *Supplier* or the *Supplier's Personnel* was caused by the negligence of the *Purchaser* and the *Purchaser's Personnel*.

22.2. The indemnity under clause 22.1 shall survive the expiration or earlier termination of this *Contract*.

22.3. Except to the extent that liability cannot be legally limited or excluded:

- the *Purchaser's* total liability arising out of or in relation to this *Contract* shall not exceed the *Contract Price*; and
- the *Purchaser* shall not be liable for indirect or consequential Loss or damage, economic loss, loss of profit, loss of revenue, loss of contract, loss of production or production stoppage, or loss of data,

and this limitation and exclusion of liability applies whether the liability Claim is based upon breach of contract, tort (including negligence), under a warranty or an indemnity, under statute, in equity or otherwise.

23. Insurance

23.1. Before commencing any *Work*, the *Supplier* shall effect with a reputable insurer all insurances to adequately cover the *Supplier* and the *Supplier's Personnel* under this *Contract*, including:

- a public and products liability policy which provides coverage for an amount of not less than \$10 million per occurrence or such other amount as agreed in writing between the *Parties*;
- (if any construction work will be performed on *Site* by the *Supplier*) a contract works insurance policy covering loss of or damage to the *Work*;
- (if the *Work* includes any consulting or design) a professional indemnity insurance policy for an amount of not less than \$5 million per occurrence, to be maintained for 6 years following the *Date of Final Completion* or such other amount and time period as may be agreed in writing between the *Parties*;
- comprehensive motor vehicle insurance in respect of any vehicle used by the *Supplier* and the *Supplier's Personnel* in performing the *Work*;
- workers' compensation insurance to cover the *Supplier's* statutory and common law liability to persons engaged by the *Supplier* to perform the *Work* which insurance policy will comply with the Laws applicable in the location where the *Work* is to be performed; and
- any other insurance which is required by Law to be effected.

23.2. The public and products liability policy and the contract works policy (if any) must name the *Purchaser* as an additional insured and include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured.

23.3. All insurance policies shall be on terms and with an insurer reasonably acceptable to the *Purchaser*. The *Supplier* shall provide the *Purchaser* with certificates of currency evidencing the above insurance requirements and details of the insurance cover before commencing any *Work* and at other times within 5 *Business Days* after receiving a request from the *Purchaser* to do so.

23.4. Without prejudice to any other rights or remedies, if the *Supplier* fails to take out and maintain the required insurances, the *Purchaser* may effect them and the cost of such insurance shall become a debt due and payable from the *Supplier* to the *Purchaser*. The *Purchaser* may withhold any payment until evidence of insurance is provided by the *Supplier* in accordance with this clause 23.

24. Termination

24.1. If the *Supplier*:

- breaches clause 3(e) or clause 3(n);
- commits an irremediable breach and/or any persistent breach of this *Contract*;
- does not remedy any other breach of this *Contract* within 14 days of receiving a notice of breach requesting remedy of same;
- fails or is reasonably foreseen to fail to achieve any *Delivery* within 7 days after the relevant *Date for Delivery*;
- becomes unable to pay the *Supplier's* debts as and when they fall due, becomes bankrupt or has an administrator, controller, liquidator, provisional liquidator, mortgagee in possession, receiver, receiver and manager or other like officer appointed to it or over some or all of its

assets or undertaking or experiences any analogous event having a substantially similar effect; or

- (f) experiences a substantial change to its legal or financial status, ownership structure, shareholders or management (which in the *Purchaser's* reasonable opinion makes it unreasonable to expect the *Purchaser* to remain bound by this *Contract*),

then the *Purchaser* may, at its option and without prejudice to any other rights it may have, by notice in writing terminate this *Contract* in whole or part with immediate effect and retain or have recourse to any *Security*. The *Purchaser* may apply such *Security* to any Loss incurred by the *Purchaser* arising out of or in relation to such termination. The *Supplier* shall immediately refund any amounts paid by the *Purchaser* in respect of *Work* not yet performed under this *Contract* and, if requested to do so by the *Purchaser*, shall deliver to the *Purchaser* any *Work* completed in accordance with this *Contract*, as at the date of termination (subject only to payment of agreed costs, or failing agreement, direct costs and normal overheads for such *Work*).

- 24.2. The *Purchaser* may terminate this *Contract* at any time, for convenience, in whole or part, by providing at least 14 days' written notice to the *Supplier* and may thereafter either by itself or by a third party complete the uncompleted part of the *Work*. In the event of termination for convenience under this clause 24.2, the *Supplier* shall be entitled to payment of the following amounts, as its sole entitlement for compensation arising out of or in relation to such termination:

- (a) the unpaid value of *Work* completed in accordance with this *Contract* prior to the date of termination;
- (b) any pre-approved expenses already incurred by the *Supplier* prior to the date of receipt of the notice of termination;
- (c) the cost of goods or materials reasonably ordered by the *Supplier* for the *Work* for which the *Supplier* is legally bound to accept and pay (subject to clear title and possession of such goods and materials being transferred to the *Purchaser* upon payment); and
- (d) the costs of demobilisation of the plant and equipment set up for the *Work*,

provided that such costs are unavoidable, substantiated to the *Purchaser* (in a written form reasonably requested by the *Purchaser*) and only to the extent that the *Supplier* cannot recover or mitigate such costs, but in no event shall such amounts exceed the *Contract Price* that would have otherwise been paid to the *Supplier* under this *Contract* but for the *Purchaser's* termination and the *Purchaser* shall have no further liability to the *Supplier* in respect of the termination.

- 24.3. If this *Contract* is terminated by the *Purchaser* in accordance with this clause 24:

- (a) the *Supplier* must immediately return all of the *Purchaser's* *Material* and the *Purchaser's* *Confidential Information* to the *Purchaser*; and
- (b) any *Security* held by the *Purchaser* under this *Contract* may be retained by the *Purchaser* until all of the *Supplier's* obligations are fulfilled and may also be applied against any Loss suffered by the *Purchaser* as a result of a breach by the *Supplier*.

25. Dispute Resolution

- 25.1. If any dispute or difference occurs between the *Parties* arising out of or in relation to this *Contract* ("*Dispute*"), either *Party* may give written notice of that *Dispute* to the other *Party*, giving details of the subject-matter of the *Dispute* ("*Notice of Dispute*").

- 25.2. Upon the giving of a *Notice of Dispute*, the following shall apply:

- (a) both *Parties* shall attempt to resolve the *Dispute* by negotiation;
- (b) if a *Dispute* is not resolved within 42 days of the giving of the *Notice of Dispute*, either *Party* may submit the *Dispute* to arbitration in accordance with the Expedited Procedure under the Arbitration Rules of Hong Kong International Arbitration Centre, with the seat of arbitration to be Hong Kong and the language of arbitration to be English. The award of the arbitration shall be final and binding on both *Parties*.

- 25.3. A reference to arbitration under this clause 25 shall not relieve the *Supplier* of any obligations under this *Contract*, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of this *Contract* will be maintained.

- 25.4. Nothing in this clause 25 shall prejudice the right of a *Party* to seek urgent injunctive or declaratory relief in respect of a *Dispute* under this clause 25 or any matter arising out of or in connection with this *Contract*.

26. Occupational Health, Safety and the Environment

- 26.1. The *Supplier* is responsible for the management of health, safety and environmental issues during its performance of this *Contract*. The *Supplier* shall take all reasonable precautions to protect persons and the

environment and without limiting the foregoing shall comply with and ensure that the *Supplier's* *Personnel* comply with all applicable *Laws* and *Policies* relating to health, safety and the environment.

- 26.2. Without limiting any other provision or obligation under this *Contract*, the *Supplier* shall use its best endeavours to ensure that workplaces (including the *Supplier's* *Facilities*) used to perform any part of the *Work* are safe, adequately managed and to the extent reasonably practicable, are free from risks to health, safety and the environment. In doing so, the *Supplier* shall ensure that:

- (a) it has implemented a safety and environmental management system complying with ISO14001 (or an equivalent standard);
- (b) it prepares all applicable safe work method statements for the *Work* which describe how the *Work* is to be performed and equipment used and which identify: (i) the activities assessed as having safety and environmental risks and the control measures that will be applied to such risks; (ii) the standards or codes to be complied with; (iii) the qualifications of the *Supplier's* *Personnel* required to do the *Work*; and (iv) the training required to do the *Work*;
- (c) the *Work* is adequately supervised at all times to ensure workplace health and safety and protection of the environment;
- (d) all of the *Supplier's* *Personnel* under the *Supplier's* control are qualified, have undertaken the relevant training for the *Work* and hold relevant current qualifications, licences, permits, authorisations, competencies and certifications in accordance with applicable *Laws*;
- (e) all *Supplier* *Personnel* are provided with all relevant information, tools, plant, equipment and instruction to ensure safe performance of the *Work*;
- (f) all plant, equipment and substances used in performing the *Work* are safe and limit, as far as reasonably practicable, risks to health, safety and the environment (when properly used);
- (g) it conducts its operations in a manner that protects the environment and prevents pollution;
- (h) to the extent reasonably practicable, it avoids the use of environmentally harmful materials or substances (and if such use is unavoidable, it stores, uses and disposes of the same in accordance with the *Law*); and
- (i) it notifies the *Purchaser* if the *Supplier* considers that more environmentally friendly materials, packaging or methods of manufacture exist.

- 26.3. The *Purchaser* may, upon reasonable notice to the *Supplier*, review the *Supplier's* compliance with this clause 26 and the *Supplier* shall co-operate with any reasonable requests of the *Purchaser* in connection with such review.

- 26.4. If the *Supplier* is supplying any *Products*, with any components listed in the "List of Declarable Substances" published in the website <https://echa.europa.eu> currently valid at the time of the order or which are subject to substance restrictions and/or information requirements imposed by applicable *Law* (e.g. REACH, RoHS), the *Supplier* shall declare such substances in accordance with the applicable *Law* and in the IntegrityNext website (<http://integritynext.com>) (or any other website or platform as may be specified by the *Purchaser*) together with the required information before the *Date of Delivery* of such *Products*.

- 26.5. If requested by the *Purchaser* acting reasonably, the *Supplier* shall act as the principal contractor (as that term or its equivalent is used in the relevant work health and safety *Laws* in Hong Kong), at a *Site* in which case the *Supplier* must comply with the following:

- (a) complete all forms and attend to all statutory requirements;
- (b) pay all fees and charges payable under the applicable health and safety *Laws* in connection with the execution and performance of the *Work*;
- (c) comply with its obligations as principal contractor at the *Supplier's* own cost; and
- (d) accept that it is the person responsible for the *Work* and is doing or causing to be done, all of the *Work* at the *Site* for the purposes of the applicable health and safety *Laws*.

27. Corporate Responsibility in the Supply Chain

- 27.1. The *Supplier* shall comply with the principles and requirements of the *Code of Conduct*.

- 27.2. The *Purchaser* and its authorised agents and representatives and/ or a third party appointed by the *Purchaser* and reasonably acceptable to the *Supplier* may conduct inspections (including at the *Supplier's* *Facilities*) in order to verify the *Supplier's* compliance with the *Code of Conduct*. The *Supplier* shall reasonably co-operate in any inspections conducted. Each *Party* shall each bear its own expenses in connection with such inspections.

- 27.3. The *Supplier* undertakes to comply with all applicable provisions of the modern slavery legislation. If requested by the *Purchaser*, the *Supplier* shall provide the *Purchaser* with any information that is required to enable the *Purchaser* to make annual public reports on its actions to assess and address modern slavery risks in its operations and supply chains.
- 28. Security in the Supply Chain**
- 28.1. The *Supplier* shall take all necessary measures to ensure security in the supply chain in accordance with the requirements of internationally recognised initiatives based on the WCO SAFE Framework of Standards (eg AEO, C-TPAT) (including implementing measures to ensure the security of: (a) all premises used in connection with the *Work*; (b) packaging; (c) transportation; (d) information; and (e) the *Supplier's Personnel*).
- 28.2. The *Supplier* shall protect the *Products* to be supplied under this *Contract* against unauthorised access and manipulation.
- 28.3. The *Supplier* shall only engage reliable *Personnel* to perform the *Work* and shall ensure that all of the *Supplier's Personnel* effect equivalent security measures.
- 29. Cybersecurity**
- 29.1. The *Supplier* shall take appropriate organisational and technical measures to ensure the confidentiality, authenticity and integrity of *Supplier's* operations in accordance with good industry practice and shall implement an appropriate information security management system.
- 29.2. Should the *Products* or the *Services* contain software, firmware, or chipsets, the *Supplier* shall:
- implement appropriate standards, processes and methods to prevent, identify, evaluate and repair any vulnerabilities, malicious code, and security incidents in the *Products* and the *Services*;
 - continue to support and provide services to repair, update, upgrade and maintain the *Products* and *Services* including the provision of patches to the *Purchaser* remedying vulnerabilities for the reasonable lifetime of the *Products* and the *Services*;
 - provide to the *Purchaser* a bill of materials identifying all third party software components contained in the *Products* and the *Services* and third party software shall be up-to-date at the time of *Delivery*;
 - grant to the *Purchaser* the right, but the *Purchaser* shall not be obliged, to test or have tested the *Products* for malicious code and vulnerabilities at any time, and shall adequately support the *Purchaser*; and
 - provide the *Purchaser* with a contact for all information security related issues (available during business hours).
- 29.3. The *Supplier* shall:
- promptly report to the *Purchaser* all relevant information security incidents occurred or suspected and vulnerabilities discovered in any *Supplier's* operations, if and to the extent the *Purchaser* is or is likely to be materially affected; and
 - take appropriate measures to achieve that its *Subcontractors* shall, within a reasonable time, be bound by obligations similar to the provisions of this clause 29.
- 29.4. Upon the *Purchaser's* request, the *Supplier* shall provide written evidence of its compliance with this clause 29 including generally accepted audit reports.
- 30. Force Majeure**
- 30.1. If a *Force Majeure Event* prevents a *Party* from complying with any of its obligations under this *Contract*, then it shall notify the other *Party* of that *Force Majeure Event* and shall specify the obligations which are or will be prevented from being performed. The notice shall be given within 14 days after the *Party* became aware (or should have become aware) of the *Force Majeure Event*.
- 30.2. Once a *Party* has notified the other *Party* in accordance with clause 30.1, it shall be excused from performing the affected obligations for so long as the *Force Majeure Event* prevents it from performing them.
- 30.3. Each *Party* shall:
- at all times use all reasonable endeavours to minimise any delay in the performance of this *Contract* arising as a result of a *Force Majeure Event*; and
 - notify the other *Party* when it ceases to be affected by a *Force Majeure Event*.
- 30.4. If a *Force Majeure Event* prevents a *Party* from complying with its obligations for more than 6 months, either *Party* may terminate this *Contract* by notice to the other *Party*. The accrued rights and remedies of each *Party* will not be affected by such termination.
- 31. Notices**
- 31.1. Any formal notice or demand ("*Notice*") to be given or made under this *Contract*:
- must refer to this *Contract* and state the clause under which the *Notice* is given; and
 - must be given in writing and be delivered to the intended recipient by pre-paid post or by hand to the registered address of the recipient (or to such other address as notified by a *Party* to the other *Party* in accordance with this clause) and in the case of *Notices* to the *Purchaser*, must be directed to the attention of the *Purchaser's* Representative. The *Purchaser* may also deliver a *Notice* to the *Supplier* by pre-paid post, email or hand delivery to the *Supplier's* Representative or any other *Personnel* of the *Supplier* whom the *Purchaser* reasonably considers to have authority to receive the *Notice* on behalf of the *Supplier*.
- 31.2. Day-to-day communications may be made between the *Purchaser* and the *Supplier* by email.
- 31.3. Any *Notice* will be deemed to be delivered:
- if delivered in person, at the time of delivery;
 - if delivered by pre-paid post, 2 *Business Days* after the date of posting (if posted to an address in the same country) or 7 *Business Days* after the date of posting (if posted to an address in another country); and
 - if delivered by email (where allowed), at the time of entering the information system of the recipient's official corporate email address.
- 31.4. If a *Notice* is delivered or deemed to have been delivered on a day which is not a *Business Day* in the place to which the *Notice* is sent or is later than 4.00 pm (local time), it will be taken to have been delivered at 9.00 am (local time) on the next *Business Day* in that place.
- 32. General**
- 32.1. This *Contract* may only be varied or amended in writing signed by both *Parties*.
- 32.2. If any part of this *Contract* is or becomes or is held to be illegal, invalid or unenforceable, then such part of the clauses of this *Contract* shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.
- 32.3. The *Supplier* shall not, without the prior written consent of the *Purchaser*, assign or otherwise transfer this *Contract* (or any part of it) to a third party. A change in control of the shareholding of the *Supplier* will be a deemed assignment for the purposes of this clause. The *Purchaser* may at any time assign or otherwise transfer this *Contract* (or any part of it) and must, within a reasonable time after such assignment or transfer notify the *Supplier*.
- 32.4. Unless otherwise agreed between the *Parties*, this *Contract* shall be governed by and construed in accordance with the *Laws* of Hong Kong.
- 32.5. Unless otherwise provided in this *Contract*, the rights, powers and remedies provided to the *Purchaser* under this *Contract* are cumulative with and not exclusive of the rights, powers or remedies independently provided by *Law*.
- 32.6. The provisions of this *Contract* (and to the extent permitted by *Law* each *Security Interest*) remaining to be performed or capable of having effect after termination or expiry remain in full force and effect notwithstanding such termination or expiry. Termination or expiry of this *Contract* (however occurring) shall be without prejudice to any rights or obligations of the *Parties* arising on or prior to the date of termination or expiry.
- 32.7. Any consent or approval by the *Purchaser* required under this *Contract* may be given or withheld by the *Purchaser* in its absolute discretion unless this *Contract* states otherwise. The *Purchaser* may impose conditions upon the grant of any such consent or approval.
- 32.8. This *Contract* constitutes the entire agreement between the *Parties* as to its subject matter and the *Parties* acknowledge that there are no other understandings, agreements, or representations whether express or implied in any way relating to its subject matter.
- 32.9. No right under this *Contract* shall be deemed to have been waived by the *Purchaser* unless the waiver is in writing. Any such waiver will not prejudice the *Purchaser's* rights in respect of any subsequent breach by the *Supplier*.
- 32.10. Subject to any contrary provisions in this *Contract*, this *Contract* shall be binding upon respective successors, substitutes and permitted assigns of the *Parties*.
- 32.11. The *Supplier* shall not make or cause to be made any public announcement or provide any information to the media of, or in relation to this *Contract* without the prior written consent of the *Purchaser* (except as required by *Law* or by the rules of any recognised stock exchange to which the *Supplier* or an *Associated Company* of the *Supplier* is subject, in which case the *Supplier* shall first give the *Purchaser* a reasonable opportunity to review such announcement or information). The *Supplier* shall notify the *Purchaser* immediately if the *Supplier* or any of the *Supplier's Personnel* are contacted by any media representative in relation to any aspect of this *Contract*.

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- 32.12. If a payment or any other act is required by this *Contract* to be made or done on a day which is not a *Business Day*, the payment or act shall be made or required to be made on the next *Business Day*.
- 32.13. Each *Party* shall pay its own legal costs of or incidental to the negotiation of this *Contract*.
- 32.14. This *Contract* may include or refer to special conditions. If there is any ambiguity or inconsistency between the terms of the *Purchase Order(s)*, these *Conditions* and/or the special conditions, the following order of precedence shall apply to resolve the ambiguity or inconsistency:
- (a) the special conditions ;
 - (b) the *Purchase Order(s)*;
 - (c) these *Conditions*.
- 32.15. Notwithstanding anything to the contrary in the *Supplier's Conditions*, any *Supplier's Conditions* are excluded in the *Contract* and do not bind the *Parties* unless to the extent that the *Purchaser* expressly agrees in writing to the variation of this clause 32.15 to that effect.
- 32.16. Each *Party* recognizes that the *Contract* (including these *Conditions*) is a legally binding contract and acknowledges that such *Party* has had the opportunity to consult with legal counsel of choice. In any construction of the terms of this *Contract*, the same shall not be construed against either *Party* because that *Party* is the drafter of such terms.
- 33. Application of proportionate liability legislation**
- 33.1. To the extent permitted by *Law*, the operation of Section 3 (Entitlement to contribution) of the Civil Liability (Contribution) Ordinance (and any equivalent statutory provision in any jurisdiction relating to proportionate liability that may apply in the jurisdiction in which the *Work* are being carried out) is excluded or waived in relation to all and any rights, obligations, or liabilities under this *Contract* whether such rights, obligations, or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
- 33.2. Without limiting the generality of clause 33.1 above, the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this *Contract* and not otherwise.