



TOP SPP COMPANY LIMITED

GENERAL TERMS AND CONDITIONS OF PURCHASE

**Equipment and Materials  
Surveillance Grades 1 and 2**

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**GENERAL TERMS AND CONDITIONS OF PURCHASE**

The **PURCHASE ORDER** is subject to the following terms and conditions and, by accepting the **PURCHASE ORDER**, the **VENDOR** agrees to supply the **GOODS** in compliance with them.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In the **PURCHASE ORDER**, the following definitions apply:

- **BUYER** means TOP SPP Company Limited, named in the **PURCHASE ORDER**, its legal successors in title and “**BUYER’S GROUP**” means **BUYER**, its subcontractors and vendors of any tier and any consultants or other company providing services to **BUYER**, together with their affiliate or associate companies and their employees, servants and agents or legal representatives, heirs or assigns of such employees, servants and agents.
- **DELIVERY DATE** means the date(s) specified in the **PURCHASE ORDER** for delivery of the **GOODS**.
- **FORCE MAJEURE** has the meaning given to it in Clause 10 (Force Majeure).
- **FREE-ISSUE ITEMS** means any items specified in the **PURCHASE ORDER** that are to be issued free of charge to the **VENDOR** by the **BUYER** or the **OWNER** for incorporation into the **GOODS**.
- **GOODS** means the goods and services, including but not limited to, materials, equipment, fabricated products, software, drawings, certification and other documentation, to be supplied under the **PURCHASE ORDER**. Where appropriate, references to the **GOODS** shall be to parts or sections of the **GOODS**.
- **OWNER** means the TOP SPP Company Limited., having registered office at 555/1 Energy Complex Building A, 11<sup>th</sup> Floor, Vibhavadi Rangsit Road, Chatuchak, Chatuchak, Bangkok 10900, Thailand
- **PLANT** means the **OWNER’S Project** (specified in the Requisition), Thailand in connection with the construction and/or operation of which the **GOODS** are to be supplied.
- **PRICE** means the price, or where more than one price is stated, the aggregate of prices, stated in the **PURCHASE ORDER** for the supply and delivery of the **GOODS**.
- **PURCHASE ORDER** means the contract between the **VENDOR** and the **BUYER** for the supply of the **GOODS**, which comprises the Purchase Order Form, these General Terms and Conditions of Purchase (together with any Special Terms and Conditions), the attachments, requisitions, drawings, specifications and other documents included and/or referred to in the **PURCHASEORDER**, together with the **VENDOR**’s unconditional written acceptance of the **PURCHASE ORDER**, and any subsequent written amendments to the original **PURCHASE ORDER**.
- **PURCHASE ORDER AMENDMENT** means a document, signed by both parties, that formally records the details of any amendment to the **PURCHASE ORDER** made under Clause 5 (Variations) and agreed between the **BUYER** and the **VENDOR**, including but not limited to, changes to the specification, quantity, **DELIVERY DATE(S)** and/or **PRICE**.
- **SUB-ORDER** means an order or subcontract directly or indirectly placed by the **VENDOR** on a **SUBCONTRACTOR** in connection with the manufacture or supply of part of the **GOODS**.
- **SUBCONTRACTOR** means any sub-VENDOR or subcontractor of any tier on whom the **VENDOR** has directly or indirectly placed a **SUB-ORDER**. If used in the **PURCHASE ORDER**, the term “Sub-VENDOR” shall have the same meaning as **SUBCONTRACTOR**.
- **VENDOR** means the firm, company or other corporate entity (including its successors and/or permitted assigns) contracted by the **PURCHASE ORDER** to supply the **GOODS** to the **BUYER** and “**VENDOR’S GROUP**” means **VENDOR**, its affiliates, subcontractors of any tier, its and their respective directors, employees, servants and agents.

1.2 The **PURCHASE ORDER** constitutes the entire agreement between the **BUYER** and the **VENDOR** with respect to the supply of the **GOODS** and supersedes all previous negotiations, representations and/or

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agreements between the parties, both written and oral. In particular, all standard or other sales terms submitted by the **VENDOR**, whether prior to or after the date of the **PURCHASE ORDER**, shall be overridden and excluded unless they have been accepted by the **BUYER** and expressly incorporated into the **PURCHASE ORDER**.

No amendment to the **PURCHASE ORDER** shall be effective unless recorded in a **PURCHASE ORDER AMENDMENT**.

- 1.3 The headings in the terms and conditions are included only for ease of reference and shall neither be part of, nor be taken into consideration in the interpretation of, the **PURCHASE ORDER**.
- 1.4 Throughout the **PURCHASE ORDER**, unless stated otherwise:
- (a) Reference to "days" means calendar days unless the term "working days" is used.
  - (b) Words in the singular include the plural, and vice versa. The words "he" and "his" may be read as "she" and "hers".
  - (c) General references to "terms and conditions" include the "Special Terms and Conditions" (if any) incorporated into the **PURCHASE ORDER**. "Special Terms and Conditions", which shall include any "Purchase Order Notes", shall take precedence over "General Terms and Conditions".
  - (d) All references to clause numbers are to those of these General Terms and Conditions of Purchase.
- 1.5 The **PURCHASE ORDER** shall be governed by and construed in accordance with the laws of Thailand.
- 1.6 Whenever the consent of either the **BUYER** or the **VENDOR** is required under the **PURCHASE ORDER**, it shall not be unreasonably withheld.
- 1.7 Unless expressly provided otherwise, no person other than a party to the **PURCHASE ORDER** shall have any right to enforce any of its terms under the **PURCHASE ORDER**.

**2. GENERAL OBLIGATIONS OF VENDOR**

- 2.1 The **VENDOR** is to supply the **GOODS** in full compliance with the requirements of the **PURCHASE ORDER**. In particular, the **VENDOR** must ensure that the **GOODS** meet all the specifications and requirements of the **PURCHASE ORDER** as to quality, quantity and performance.
- 2.2 Without affecting any specific requirements of the **PURCHASE ORDER**, the **VENDOR** shall observe and exercise the standard of care, skill and competence which reputable **VENDORS** normally practise in the performance and management of similar work.
- 2.3 The **VENDOR** represents that it has the skills, resources (including management and financial resources) and capacity necessary to meet all of its obligations under the **PURCHASE ORDER**. Except for anything that the **BUYER** expressly agrees to provide or do under the **PURCHASE ORDER**, the **VENDOR** shall provide all requisite materials, tools and equipment and be responsible for doing everything necessary for the satisfactory and timely manufacture and delivery of the **GOODS**.
- 2.4 The **VENDOR** must obtain the **BUYER's** written consent before incorporating into the **GOODS** any design or feature that has not already been proven in commercial service.
- 2.5 For the purposes of sub-clauses 6.2.4, 11.2 and 12.2, the **VENDOR** shall allow, and shall ensure that **SUBCONTRACTOR's** will allow, the **BUYER's** and/or the **OWNER's** representatives safe access at all reasonable times to places where work on or in connection with the **PURCHASE ORDER** is being carried out, and provide them with such information as they may reasonably require for their expediting, testing and/or inspection activities.
- 2.6 The **VENDOR** shall be responsible for all relevant safety, health and environmental matters during its performance of the **PURCHASE ORDER** and shall take all reasonable measures to ensure that it and its **SUBCONTRACTORS** provide and maintain safe and environmentally sound workplaces wherever their activities are carried out. Without affecting this general obligation, the **VENDOR** shall, and shall require its employees to comply with all health, fire, environmental and safety laws and regulations issued by any duly appointed authority having jurisdiction over the premises and/or activities of the **VENDOR**. Furthermore, the **VENDOR** must ensure that its employees, anybody else acting under the **VENDOR's** control, and authorised visitors to its premises are made fully aware of all relevant safety regulations, safe working procedures and health, fire, safety or environmental instructions.

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2.7 If access to any premises owned and/or controlled by the **BUYER** and/or **OWNER** is required for the purposes of fulfilling the **VENDOR's** obligations under the **PURCHASE ORDER**, the **VENDOR** shall ensure, and cause **SUBCONTRACTOR's** to ensure, that their employees, agents and representatives comply with all health, safety, security, environmental and other policies, procedures, rules and regulations that apply to the premises and which are in force during the time access is required.

3. **PURCHASE ORDER DOCUMENTS**

3.1 The **PURCHASE ORDER** documents are to be taken as being mutually explanatory of one another.

3.2 Subject to any decision or ruling on the matter by the **BUYER** under sub-clause 3.3, if differing standards relating to the same matter appear or are referred to within the **PURCHASE ORDER**, the most stringent of the standards shall apply.

3.3 Without prejudice to sub-clauses 3.1 and 3.2, if the **VENDOR** becomes aware of any discrepancy, contradiction or ambiguity in the **PURCHASE ORDER** documents, it shall notify the **BUYER** accordingly and request a decision or ruling on the matter. Unless agreed otherwise, the **BUYER** shall provide the **VENDOR** with a decision or ruling within five (5) working days.

3.4 Should normal engineering or manufacturing practice require any item of work, equipment or material which has not been specified in the **PURCHASE ORDER**, but is required to be performed or provided for ensuring the proper functioning of the **GOODS**, the **VENDOR** understands and agrees that the necessity for the work, equipment or material is implied as being included in the scope of the **PURCHASE ORDER** and that the cost of such work, equipment or material is deemed to have been allowed for in the **PRICE**.

4. **PRICE AND TERMS OF PAYMENT**

4.1 In consideration of the satisfactory supply, delivery and warranty of the **GOODS**, the **BUYER** shall pay the **PRICE**, together with any amendments to the **PRICE** made under sub-clause 5.4, to the **VENDOR**, in accordance with the terms and/or schedule of payments set forth in the **PURCHASE ORDER**.

4.2 Subject to Clause 5 (Variations), and unless otherwise stated elsewhere in the **PURCHASE ORDER**, the **VENDOR** agrees that the **PRICE** stated in the **PURCHASE ORDER** is fixed and will not be subject to adjustment and/or escalation.

Unless expressly identified as being made in respect of specific parts of the **GOODS**, stage or milestone payments (if any) due to be made pursuant to the prescribed terms of payment do not represent the value of, or the progress made in the manufacture or supply of the **GOODS** at any given time. Such payments are intended only to assist the **VENDOR** commercially.

4.3 Unless expressly stated otherwise in the **PURCHASE ORDER**, the **VENDOR** shall be responsible for, and hold **BUYER** and/or **OWNER** harmless from, all taxes, fees, duties and the like related to the manufacture and supply of the **GOODS** and the general performance of the **PURCHASE ORDER** that are due, payable, levied or applicable up to the point of delivery specified in the **PURCHASE ORDER**. The **VENDOR** shall be deemed to have allowed in the **PRICE** for all such taxes, fees, duties and the like and, subject to the delivery terms specified in the **PURCHASE ORDER**, for compliance with, and the supply of all documentation in respect of, any relevant export and/or import laws and regulations.

4.4 The **VENDOR** and/or **VENDOR'S** sub-contractors shall observe and comply with all laws and regulations which may be applicable in connection with the import, export, use, possession and storage of all imported equipment and materials and agree to indemnify and hold the **BUYER** and/or **OWNER** harmless from any damages, penalty, taxes, duties, interest, charges, bonds, offence, costs or losses whatsoever which may be incurred by the **BUYER** and/or **OWNER** as a result of any act or omission by the **VENDOR**, **VENDOR'S** sub-contractors, or representatives of such persons, including any errors in information provided by **VENDOR**.

4.5 Provided that it has given the **VENDOR** written notice of its intentions and without prejudice to any other remedy which the **BUYER** may have, any amounts otherwise payable to the **VENDOR** under the **PURCHASE ORDER** may be withheld and/or set-off by the **BUYER** on account of amounts properly payable to the **BUYER** by the **VENDOR** under the **PURCHASE ORDER**, including but not limited to, amounts that may be "back-charged" to the **VENDOR** under sub-clauses 16.3, 17.4 and 17.5. The notice must be given not less than ten (10) days prior to the date that upon which the sum against which the **BUYER** proposes to withhold payment becomes due under the **PURCHASE ORDER** and (ii) must specify the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground each ground and the amount attributable to it.

**5. VARIATIONS**

- 5.1 The **BUYER** may, at any time, order variations to the specifications, quantity or delivery of the **GOODS**, and/or vary the terms of the **PURCHASE ORDER** in any other way.

Instructions to the **VENDOR** covering proposed variations must be issued by the **BUYER's** designated representative in writing. If, for practical reasons, it is necessary for the **BUYER's** designated representative to give any such instruction orally, the instruction shall be effective only if it is confirmed in writing by the **BUYER's** designated representative within three (3) days of being given.

- 5.2 If the **VENDOR** considers that any oral or written request made by any person other than the **BUYER's** designated representative or any change on any drawing or other document issued by the **BUYER** constitutes a variation to the **PURCHASE ORDER**, it shall notify the **BUYER's** representative in writing, and shall not proceed with the relevant change unless the **BUYER's** representative gives written confirmation of the relevant request or change.

- 5.3 If any variation required by the **BUYER's** designated representative would cause an increase or decrease in the cost of the **GOODS**, or affects the **DELIVERY DATE(S)** or any other obligations of the **VENDOR** under the **PURCHASE ORDER**, the **VENDOR** must, within five (5) working days of the issue of the **BUYER's** written instruction for the variation to the **VENDOR**, give the **BUYER** written notice that it intends to seek an amendment to the **PURCHASE ORDER**.

As soon as reasonably possible after giving notice of its intention to apply for an amendment, but in no event later than ten (10) working days after the **BUYER's** instruction is issued, the **VENDOR** shall submit a detailed application, accompanied by records and supporting information sufficient to enable the **BUYER** to evaluate the application.

Should the **VENDOR** fail to notify the **BUYER** as provided above, no subsequent variation will be permitted in respect of such request or occurrence.

- 5.4 Provided that the request is justified and the **VENDOR** has notified the **BUYER** and provided details of the requested variation to the **PURCHASE ORDER** within the periods set forth in sub-clause 5.3, the **PRICE**, **DELIVERY DATE(S)** or any other obligations of the **VENDOR** shall be the subject of equitable amendment(s) agreed between the **VENDOR** and the **BUYER** and recorded in a **PURCHASE ORDER AMENDMENT**. Whilst the **BUYER** may waive this requirement in circumstances where the **VENDOR** could not reasonably have been expected to give notice or provide details within the prescribed period(s), failure of the **VENDOR** to notify and provide details within those period(s) shall constitute confirmation that the existing provisions of the **PURCHASE ORDER** are unaffected by the variation and that the **VENDOR** will perform the variation without making any claim for an amendment to the **PURCHASE ORDER**.

- 5.5 The **VENDOR** shall not change any design or details shown in information furnished by the **VENDOR** and incorporated into the **PURCHASE ORDER**, or make any change to the technical specification of the **GOODS** as set out in the **PURCHASE ORDER**, without the **BUYER's** prior written consent.

- 5.6 If the **BUYER** consents to a written request submitted in the prescribed form (a "Concession Request") from the **VENDOR** for a relaxation or amendment to the technical specification of the **GOODS**, the written consent of the **BUYER**, provided it is given by the **BUYER's** designated representative, shall (i) have the same effect as a **PURCHASE ORDER AMENDMENT** with respect to the requested relaxation or amendment and shall (ii) be obtained prior to implementation of the concession.

Provided that, prior to proceeding to evaluate a request, it has given the **VENDOR** (i) an indication of such costs and (ii) an opportunity to reconsider its request, the **BUYER** reserves the right to require the **VENDOR** to reimburse any direct costs incurred by the **BUYER** and/or the **OWNER** as the result of consenting to a relaxation or amendment under this sub-clause 5.6 and/or to seek a reduction in the **PRICE** as the result of the concession.

**6. ASSIGNMENT AND SUB-CONTRACTING****6.1 Assignment**

- 6.1.1 The **BUYER** may assign or otherwise transfer the **PURCHASE ORDER** or any benefits, interests, rights, burdens and obligations under it to any other party with the consent of the **VENDOR**, which must not be unreasonably withheld.

- 6.1.2 The **VENDOR** shall not assign or otherwise transfer the **PURCHASE ORDER** or any partial or total interest in it, including but not limited to, any payments to become due under the **PURCHASE ORDER**,

without first obtaining the written consent of the **BUYER**.

- 6.1.3 In the event of cancellation or termination under Clauses 21 (Cancellation for Convenience), or 22 (Termination for Default), the **VENDOR** shall, if the **BUYER** so requests, and with immediate effect, assign all of its rights under all **SUB-ORDERS** to the **BUYER**. The **VENDOR** shall ensure that any **SUB-ORDERS** it enters into contain a provision whereby the **SUBCONTRACTOR** unconditionally agrees and consents to assignment by the **VENDOR** to the **BUYER**.

6.2 *Sub-contracting*

- 6.2.1 The **VENDOR** shall not sub-contract any part of the work to be performed under the **PURCHASE ORDER** without the **BUYER**'s prior written consent, and in no circumstances shall the **VENDOR** sub-contract the whole of the work.

Provided that it shall not exercise such right unreasonably, the **BUYER** shall have the right to reject any **SUBCONTRACTOR** proposed by the **VENDOR**.

- 6.2.2 The **VENDOR** shall not be relieved of any obligations under the **PURCHASE ORDER** by entering into a **SUB-ORDER** and shall be responsible for the acts, errors or omissions of the **SUBCONTRACTOR** and its personnel and for the **GOODS** supplied and/or work performed by the **SUBCONTRACTOR**.

The **VENDOR** shall enter into direct **SUB-ORDERS** in its own name and at its own risk. No **SUB-ORDER** shall create any contractual relationship between the **SUBCONTRACTOR** and the **BUYER**.

- 6.2.3 The **VENDOR** shall ensure that the rights of the **BUYER** and the requirements of the **PURCHASE ORDER** are effectively provided for in any **SUB-ORDER**. Each **SUB-ORDER** shall provide for its immediate suspension, cancellation or termination in the event of suspension, cancellation or termination of the whole or part of the **PURCHASE ORDER**. However, in accordance with sub-clause 6.1.3, each **SUB-ORDER** shall also contain the right for it to be assigned to the **BUYER** in preference to cancellation or termination.

- 6.2.4 The **BUYER** reserves the right through its own and/or **OWNER'S** representatives to progress, expedite and inspect all work covered by **SUB-ORDERS** in the manner laid down in Clauses 11 (Expediting) and 12 (Inspection and Testing).

- 6.2.5 Every **SUB-ORDER** shall prohibit any further sub-contracting by the **SUBCONTRACTOR** of any part of the **SUB-ORDER** unless the **SUBCONTRACTOR** first obtains the consent of the **VENDOR**, which the **VENDOR** will not give without first obtaining the consent of the **BUYER**.

- 6.2.6 Despite the other provisions of this sub-clause 6.2, unless expressly agreed otherwise, the prohibition of sub-contracting without consent under sub-clause 6.2.1; the provisions relating to assignment and the right to assign; the rights to progress, expedite and inspect; and the prohibition of further sub-contracting without approval, set forth in sub-clauses 6.1.3, 6.2.3, 6.2.4 and 6.2.5 respectively, shall not normally apply in the case of **SUB-ORDERS** for generally available materials, components and products made to a standard specification that are (i) customarily sold on a "ex-stock" or "off the shelf" basis, (ii) purchased under existing "call-off" or "framework" agreements with **SUBCONTRACTORS** approved by the **BUYER**, or (iii) specifically identified in the **PURCHASE ORDER** as being the subject of this sub-clause 6.2.6. Nevertheless, the **BUYER** reserves its rights to progress, expedite or inspect when production delays or defects in these materials, components, or products could, in its opinion, prejudice the **VENDOR'S** ability to meet its obligations under the **PURCHASE ORDER**.

7. **FREE-ISSUE ITEMS**

- 7.1 **FREE-ISSUE ITEMS** will at all times remain the property of the **BUYER**, and the **VENDOR** shall ensure that they are clearly marked as the property of the **BUYER**. Wherever practicable, **FREE-ISSUE ITEMS** shall be segregated and/or stored separately from the **VENDOR'S** and/or any **SUBCONTRACTOR'S** property.

- 7.2 The risk of loss of or damage to **FREE-ISSUE ITEMS** shall pass to the **VENDOR** when they are received by the **VENDOR** and shall remain with the **VENDOR** until the **GOODS** into which they have been incorporated are delivered in accordance with sub-clause 8.2. The **VENDOR** shall take care of and maintain **FREE-ISSUE ITEMS** in good condition and shall use them only in connection with the **PURCHASE ORDER**.

- 7.3 Loss of or damage to **FREE-ISSUE ITEMS** whilst they are in the **VENDOR'S** care shall be made good at the **VENDOR'S** expense.

7.4 Upon completion of the delivery of the **GOODS**, or cancellation or termination of the **PURCHASE ORDER**, any surplus **FREE-ISSUE ITEMS** are to be returned to the **BUYER** or otherwise disposed of in accordance with the **BUYER**'s instructions.

8. **TIME AND TERMS OF DELIVERY**

8.1 The **GOODS** shall be delivered on or, by prior arrangement with the **BUYER**, before the **DELIVERY DATE(S)** specified in the **PURCHASE ORDER**.

8.2 The **GOODS** shall be delivered in accordance with the ICC Terms of Trade for International Contracts (INCOTERMS 2020) as specified in the **PURCHASE ORDER**.

8.3 Without affecting its general obligations under sub-clause 8.1, if any technical or other documentation is expressly stated in the **PURCHASE ORDER** to be the subject of separate delivery, the **VENDOR** shall supply such documentation in accordance with the requirements as to time and place of delivery for such documentation set out in the **PURCHASE ORDER**. Failure of the **VENDOR** to comply with this requirement shall entitle the **BUYER** to recover liquidated damages from the **VENDOR** as specified in the "Special Terms and Conditions" forming part of the **PURCHASE ORDER**.

8.4 Without prejudice to the **BUYER**'s other rights under the **PURCHASE ORDER**, if the **VENDOR** fails to deliver the **GOODS**, or a designated part of the **GOODS**, by a specified **DELIVERY DATE** or any extended date granted under sub-clause 9.3, the **VENDOR** shall pay the **BUYER** the amount(s) stated as "Liquidated Damages for Delay" in the "Special Terms and Conditions" included in the **PURCHASE ORDER** for every week or day, as the case may be, which elapses between the scheduled **DELIVERY DATE**, or any extended date, and the actual date of delivery of the **GOODS** or the specified part.

The **BUYER** may:

- (a) Deduct and retain the amount of any liquidated damages becoming due under this sub-clause 8.4 or under sub-clause 8.3 from any sums owed or becoming owed to the **VENDOR** under the **PURCHASE ORDER**, or
- (b) Require the **VENDOR** forthwith to pay the relevant amount to the **BUYER** as a debt.

Payments to the **BUYER** under these sub-clauses 8.3 and 8.4 shall be paid as liquidated damages, not as a penalty.

9. **PROGRAMME AND DELAY**

9.1 The **VENDOR** shall establish and keep to a production programme in accordance with the requirements of the **PURCHASE ORDER**. Without prejudice to sub-clause 9.3, the programme shall be updated to reflect changes resulting from **PURCHASE ORDER AMENDMENTS** and other matters affecting the **VENDOR**'s progress.

9.2 As soon as reasonably possible, but in no event more than five (5) working days after any relevant event, the **VENDOR** shall advise the **BUYER** of any actual or anticipated delay to the **VENDOR**'s performance of the **PURCHASE ORDER**. The **VENDOR** shall identify the causes of delay, and give details of any corrective action it proposes to take and any likely effect on the **DELIVERY DATE**.

9.3 A **DELIVERY DATE** may only be adjusted (i) to reflect the impact of any variation ordered by the **BUYER** under sub-clause 5.1 or (ii) in respect of any actual delay in the performance of a critical work activity either caused by **FORCE MAJEURE** or for which the **BUYER** is responsible under the **PURCHASE ORDER**. Adjustment of a **DELIVERY DATE** shall be by way of a **PURCHASE ORDER AMENDMENT**.

10. **FORCE MAJEURE**

10.1 Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed or prevented by Force Majeure.

For the purpose of this provision Force Majeure shall mean any unforeseen event or circumstance beyond the control of either of the parties hereto and which, notwithstanding the exercise of any diligence by either party hereto, could not be foreseen or prevented; thus, it shall include acts of God, acts of War (declared or undeclared), hostilities, riot, civil commotion or unrest, military action, insurrection, flood, fire, incendiarism, explosion, embargo, acts of government, strikes, lock-outs or other labour disturbances, but not strikes, lockouts or other labour disturbances of **VENDOR** and

**SUBCONTRACTORS** (except in the case of national or industry-wide strikes), nor any failure of source of supply of any material or service whatsoever required for the WORK whether or not due to Force Majeure events.

- 10.2 Either party shall have the right, by giving notice to the other, to suspend performance of his obligations hereunder in whole or in part forthwith upon, and to the extent necessitated by, the occurrence of Force Majeure and the time for completion of the **GOODS** and all other relevant periods shall be extended commensurate with any delay or delays in performance by either **VENDOR** or **BUYER** when such delay is caused by Force Majeure and notice thereof is given as provided in Clause 10.3.
- 10.3 The party asserting Force Majeure shall in each instance give the other party notice thereof no later than seven (7) days after the beginning of each such period of delay. Such notice shall include a brief description of the event or circumstances of Force Majeure, the portion of **GOODS** affected and an estimate of the anticipated delay. Further, such asserting party shall re-confirm the existence of Force Majeure every seven (7) days until the circumstance of Force Majeure ceases. In the event of failure to issue such notice of continuing Force Majeure it shall be deemed that the circumstance of Force Majeure has ceased.
- 10.4 Not later than seven (7) days after the cessation of any continuing circumstances comprising Force Majeure, the party that asserted it shall give the other party notice of the date of such cessation.
- 10.5 Nothing herein shall alter any obligation with respect to portions of the **GOODS** not affected by such Force Majeure.
- 10.6 In the event of Force Majeure, the parties hereto shall consult and agree upon the appropriate measures to be taken in order to eliminate, mitigate and minimise the consequences of such Force Majeure. The occurrence of Force Majeure shall not entitle **VENDOR** to any additional compensation whatsoever.
- 10.7 If the cumulative duration of any period or periods of Force Majeure exceeds one hundred and twenty (120) days, the parties shall agree upon the appropriate action to be taken which may include suspension of all or part of the **PURCHASE ORDER** for a further period as may be agreed or cancellation of all or part of the **PURCHASE ORDER**. In the event of cancellation, the **VENDOR** shall be entitled to payment according to Clause 21 for work performed prior to the date of the notice declaring Force Majeure, and payment for the actual cost of measures undertaken at **BUYER'S** request for the orderly close-out of work, but shall not be entitled to any additional compensation for the intervening period. **VENDOR** expressly waives any claim for other costs or damages, including without limitation loss of anticipated profits on account of such cancellation.
- 10.8 The occurrence of any weather conditions, or any consequence thereof, shall not be considered Force Majeure unless it constitutes a Force Majeure under Thai Law.
- 10.9 Defects in items and/or information for which **VENDOR** is responsible hereunder, or any default in performance by **VENDOR** and its sub-contractors shall not constitute Force Majeure.

#### 11. **EXPEDITING**

- 11.1 The **VENDOR** shall expedite its own work and that of any **SUBCONTRACTORS** to ensure that there is no delay in the timely completion of the **VENDOR'S** obligations under the **PURCHASE ORDER**. Provided always that the expediting of **SUBCONTRACTOR'S** activities shall include visits to the relevant works where appropriate, the expediting shall be carried out in accordance with the **VENDOR'S** customary procedures or those (if any) specified and/or referred to in the **PURCHASE ORDER**, whichever are the more stringent.
- 11.2 Without reducing or limiting the **VENDOR'S** own obligations to expedite under sub-clause 11.1, the **BUYER** shall have the right to expedite and check the progress of work on the **PURCHASE ORDER** by way of its own or **OWNER'S** representatives.

If any failure or inability on behalf of the **VENDOR** to carry out its own expediting to the reasonable satisfaction of the **BUYER** results in the **BUYER** having to perform additional expediting itself, the **BUYER** shall be entitled to recover the direct costs of the additional expediting from the **VENDOR**, provided that it



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has given the **VENDOR** reasonable prior notice (together, where practicable, with an indication of costs) of its intention to perform the additional expediting and/or an opportunity to rectify the failure or inability.

11.3 The **BUYER** shall have the right to appoint third parties to exercise its rights under this Clause 11 and Clause 12 (Inspection and Testing).

12. **INSPECTION AND TESTING**

12.1 The **VENDOR** shall carry out the inspection and testing procedures specified or referred to in the **PURCHASE ORDER** and provide all relevant certification documents. If no procedures are specified or referred to in the **PURCHASE ORDER**, the procedures shall be compatible with those normally applied in connection with the manufacture and delivery of the kind of **GOODS** to be supplied under the **PURCHASE ORDER**. All inspection and testing procedures shall be in accordance with applicable law, appropriate codes and standards, and sound engineering practice.

No **GOODS** shall be delivered until all applicable inspections and tests have been successfully completed and all the documentation, which is due to be provided on or before delivery of the **GOODS**, including but not limited to, certification documents, has been completed to the requirements of the **PURCHASE ORDER**.

Unless expressly stated otherwise in the **PURCHASE ORDER**, all testing, including any specified performance testing, of the **GOODS** shall be carried out prior to delivery.

12.2 The **BUYER** reserves the right for its own and/or **OWNER'S** representatives to attend and witness all pre-delivery examination, testing and inspection of the **GOODS**. The **BUYER** may also arrange for third party examination, testing and inspection of the **GOODS** prior to delivery. Unless the **BUYER** agrees in writing to a shorter period of notice, the **VENDOR** shall give the **BUYER'S** representative not less than ten (10) working days written notice by fax or e-mail of the **GOODS** being available for examination, testing and inspection. The notice shall specify the location of the examination, testing and inspection activities. No examination, testing or inspection shall take place unless the documentation relevant to the **GOODS** at that time has been completed to the requirements of the **PURCHASE ORDER**.

The **BUYER** reserves the right to carry out further examination, testing and inspection at its own expense on receipt of the **GOODS**.

12.3 The **VENDOR** shall arrange for the **BUYER'S**, **OWNER'S** or third party inspection and testing personnel to be provided with such facilities, protective equipment or clothing, and assistance as they may reasonably require to enable their tasks to be carried out safely and efficiently.

12.4 All costs associated with the inspection and testing carried out by the **VENDOR** under sub-clause 12.1, together with the costs of providing facilities, protective equipment or clothing, and assistance under sub-clause 12.3, shall be deemed to have been included in the **PRICE**.

12.5 Neither the witnessing by the **BUYER'S** or **OWNER'S** representatives of (or their failure to witness) any inspection and testing performed by the **VENDOR** nor any pre-delivery or post-delivery inspection and testing by or on behalf of the **BUYER** and/or the **OWNER** shall relieve the **VENDOR** of any of its obligations or liabilities arising under the **PURCHASE ORDER** or otherwise at law.

Furthermore, no form of pre-delivery inspection report, material or test certification, inspection release note, release for movement or shipment, or any similar document issued by the **BUYER** shall in any circumstances be taken as acceptance of the **GOODS** by the **BUYER** or be construed as confirmation that the **GOODS** supplied by the **VENDOR** conform to the requirements of the **PURCHASE ORDER**.

12.6 If the **VENDOR** cancels or postpones any scheduled inspection and testing visit without reasonable prior notification to the **BUYER** or the visit is cancelled, postponed or extended in duration by the **BUYER** because the **GOODS** are not ready for inspection and testing and/or relevant documentation is not available at the scheduled time of the visit, the **VENDOR** shall pay any additional personnel, travel and accommodation costs incurred by the **BUYER** as the result of the cancellation, postponement or extension.

13. **DESPATCH OF GOODS**

13.1 When all tests and inspections to be carried out prior to delivery have been completed and the **GOODS** have been prepared for shipment, the **VENDOR** shall notify the **BUYER** that the **GOODS** are ready for despatch and request authority to despatch or deliver the **GOODS**. The authority shall be in the form of a release instruction issued by an authorised representative of the **BUYER'S** Procurement Department.

The **BUYER** shall be under no obligation to accept delivery of, or make any relevant payment for, any **GOODS** that are despatched prior to receipt of the **BUYER**'s instruction.

- 13.2 If despatch (or delivery) of the **GOODS** is delayed due to any act or omission of the **BUYER**, including any unreasonable delay in issuing the instruction to despatch the **GOODS** referred to in sub-clause 13.1, other than because the **GOODS** are found to be not ready for despatch and/or for any other reason attributable to the **VENDOR**, and the delay is the direct cause of any failure of the **VENDOR** to meet any **DELIVERY DATE(S)**, then the **VENDOR** may request a corresponding amendment to the relevant **DELIVERY DATE(S)**. The **BUYER** must not unreasonably reject such a request.
- 13.3 Furthermore, if despatch (or delivery) is delayed for thirty (30) days or more for reasons attributable to the **BUYER** under sub-clause 13.2 and provided that the **BUYER** shall have no other liability to the **VENDOR** in respect of such delay, the reasonable direct costs of putting the **GOODS** into suitable storage on the **VENDOR**'s premises until such times as they are despatched (or delivered) shall be to the **BUYER**'s account.
- 13.4 The **VENDOR** shall be liable for any additional direct cost incurred by the **BUYER** as a result of the **VENDOR**'s failure to comply with the requirements contained in the **PURCHASE ORDER** for shipping documentation, certification, packing, marking, shipment and place of delivery.

#### 14. OWNERSHIP AND RISK

- 14.1 The **VENDOR** warrants that it can and will pass ownership of the **GOODS** to the **BUYER** free and clear of all liens, charges and other encumbrances on all materials, equipment, documentation, supplies and other items incorporated into the **GOODS**.

Without prejudice to (i) the **BUYER**'s right under Clause 16.1 to reject **GOODS** which do not conform to the requirements of the **PURCHASE ORDER** and (ii) the **VENDOR**'s right to be paid for the **GOODS**, ownership of the **GOODS** shall pass to the **BUYER**:

- (a) Upon delivery as specified within the Purchase Order. (...named port of shipment shall be identified in the special condition, Incoterms 2020); or
- (b) When the **BUYER** pays for the **GOODS**; or
- (c) Subject to the provisions of Clauses 21 (Cancellation for Convenience) and 22 (Termination for Default), upon cancellation or termination of the **PURCHASE ORDER**, whichever occurs first. However, (i) the ownership in materials and/or other items intended for incorporation into the **GOODS** for which specific stage or milestone payments are made shall pass to the **BUYER** immediately such materials and/or other items become identified as being intended for incorporation into the **GOODS** and (ii) sub-clause 24.2 shall apply to any documentation and/or computer software forming part of the **GOODS**.

The **BUYER** may require the **VENDOR** to provide a certificate (in a prescribed form) confirming transfer of ownership of the **GOODS** to the **BUYER** and shall be entitled to withhold any payment otherwise due for such **GOODS** pending receipt of the certificate.

- 14.2 If any **GOODS** which have passed into the ownership of the **BUYER** under sub-clause 14.1 nevertheless remain in the care and custody of the **VENDOR** and/or a **SUBCONTRACTOR**, they shall be clearly identified and marked as being the property of the **BUYER** and shall, as far as is reasonably practicable, be segregated and/or stored separately from the **VENDOR**'s or the **SUBCONTRACTOR**'s property.
- 14.3 Despite transfer of ownership to the **BUYER** in accordance with sub-clause 14.1, the **VENDOR** shall remain responsible for the care, custody and control of the **GOODS** and shall bear the risk of loss or damage to them until they are delivered in accordance with the **PURCHASE ORDER**.
- 14.4 If the **BUYER** exercises its right to reject the **GOODS** under Clause 16 (Rejection of Non-conforming Goods), the ownership of, and the risk of loss or damage to, the rejected **GOODS** shall revert to the **VENDOR**.

#### 15. LIENS

- 15.1 At no time shall the **VENDOR** claim, create, or do anything that might result in the creation of, any lien, charge or other legal encumbrance on the **GOODS**. Furthermore, the **VENDOR** waives any right to claim or assert any lien, charge or encumbrance on the property of the **BUYER**.

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In addition to its right under sub-clause 14.1 to be provided with a certificate confirming transfer of ownership, the **BUYER** may require the **VENDOR** to provide written evidence, in a form acceptable to the **BUYER**, of the absence of any liens, charges or encumbrances, and shall be entitled to withhold payment otherwise due for such **GOODS** pending receipt of the evidence.

15.2 The **VENDOR** shall indemnify the **BUYER** against any cost, expense or liability relating to any lien claimed against the **GOODS** or the property of the **BUYER** created or caused by the **VENDOR** and/or any **SUBCONTRACTOR**. The **BUYER** shall have the right to withhold and/or set-off, or otherwise recover from the **VENDOR**, the amounts necessary to discharge any purported lien or claim unless the **VENDOR** can demonstrate to the **BUYER**'s satisfaction prior to the intended discharge that the lien or claim is either not valid or is otherwise unenforceable.

16. **REJECTION OF NON-CONFORMING GOODS**

16.1 At any time prior to and within a reasonable time after delivery (but before the **GOODS** are commissioned and/or put into use), the **BUYER** may, by written notice to the **VENDOR**, reject any **GOODS** which are found to be defective in quality, workmanship or design and/or in any other way do not fully conform to the requirements of the **PURCHASE ORDER** when inspected, tested or delivered. The notice shall specify the reasons for rejection.

16.2 No form of delivery receipt or similar document issued by or on behalf of the **BUYER** and/or any post-delivery inspection or testing shall (i) prejudice the **BUYER**'s right under sub-clause 16.1 to reject the **GOODS**, (ii) be construed as confirmation that the **GOODS** supplied by the **VENDOR** conform to the requirements of the **PURCHASE ORDER**, and/or (iii) release the **VENDOR** from any of its obligations under the **PURCHASE ORDER**.

16.3 Following the giving of notice under sub-clause 16.1, the **VENDOR** shall forthwith rectify the non-conformity by repairing or replacing the rejected **GOODS**. All of the costs of repair or replacement including, where repair or replacement involves the return of defective **GOODS** to the **VENDOR**'s premises or to any other place for repair, the carriage and insurance costs of shipment to the relevant place of repair and returning repaired or replacement **GOODS** and associated taxes for the return and /or replacement of defective **GOODS** or part (s) of **GOODS** to the **BUYER**, shall be borne by the **VENDOR**.

In the event that on-site repair is practicable, the **BUYER** shall allow the **VENDOR** reasonable access to any rejected **GOODS** for the purpose of effecting such repairs as may be necessary to make them conform to the requirements of the **PURCHASE ORDER**.

Failure of the **VENDOR** to repair or replace rejected **GOODS** within a reasonable time, or by agreement between **VENDOR**, **BUYER** and **OWNER**, shall entitle the **BUYER** either to repair or replace the defective **GOODS** itself or to have them replaced or repaired by others, and to recover all direct costs of repair or replacement from the **VENDOR**. The exercise by the **BUYER** of this right shall in no way relieve the **VENDOR** from its obligations under the **PURCHASE ORDER**.

16.4 No failure of the **BUYER** to exercise its right to reject non-conforming **GOODS** under sub-clause 16.1 shall in any way limit, diminish or restrict the **VENDOR**'s obligations with respect to defective **GOODS** under Clause 17.

16.5 If non-conformity upon delivery takes the form of loss or damage to the **GOODS** which has been sustained during transportation to the specified point of delivery and prior to the responsibility for care, custody and control of the **GOODS** transferring to the **BUYER** under sub-clause 14.3, the **VENDOR** shall, in compliance with the requirements of any relevant insurers, forthwith rectify, or arrange for the rectification of, the loss or damage, at no cost to the **BUYER**. When such loss or damage occurs after the care, custody and control of the **GOODS** has passed to the **BUYER**, the **VENDOR**'s only obligation shall be to provide the **BUYER** (at the **BUYER**'s expense) with such assistance as may reasonably be required in connection with the rectification of the loss or damage.

16.6 If in the case of any defect the **BUYER** and/or **OWNER** elects not to have such corrective work performed, **VENDOR** shall instead pay to **BUYER** the reasonably estimated cost which would have been incurred by **VENDOR** if such correction had been made, in consideration of which **BUYER** and/or **OWNER** shall release **VENDOR** from any obligations or further liabilities in respect of such defect.

16.7 Failure of **BUYER** and/or **OWNER** to discover defects or reject the **GOODS** or payment or partial payment or total take-over of the **PLANT** or use of all or any part of the **GOODS** or of the **PLANT** shall not be deemed a waiver of any defect therein.

**17. GUARANTEE**

- 17.1 The **VENDOR** represents, warrants and guarantees that the **GOODS** will conform to the specifications (including any performance criteria stated therein), drawings and other descriptions set forth or referred to in the **PURCHASE ORDER**, will be new, fit and sufficient for any purpose apparent from the **PURCHASE ORDER**, and of the quality specified in the **PURCHASE ORDER** or, if not so specified, of satisfactory quality.
- 17.2 Without prejudice to the **BUYER**'s other legal rights, if during a period ending [*twelve (12)*] months from start-up of the **PLANT** or [*eighteen (18)*] months after delivery of the relevant **GOODS**, whichever is the sooner, the **BUYER** notifies the **VENDOR** in writing of any defect or failure in any part(s) of the **GOODS**, then (unless the **BUYER** opts or directs otherwise) the **VENDOR** shall forthwith, at its own cost, replace or repair the defective part(s) of the **GOODS**. All repairs or replacements shall be carried out to the reasonable satisfaction of the **BUYER**. For the purposes of this sub-clause 17.2, "start-up" shall be deemed to take place upon the introduction of process feedstock into the **PLANT**.
- If it is necessary for any defective part(s) of the **GOODS** to be removed from the **PLANT** for repair or replacement, the **VENDOR** shall be liable for the **BUYER**'s reasonable direct costs of removing the defective part(s) and re-installing repaired or replacement part(s). Furthermore, where repair or replacement involves the return of defective part(s) to the **VENDOR**'s premises or to any other place for repair, the carriage and insurance costs of shipment to the relevant place of repair and returning repaired or replacement part(s) to the **PLANT** site shall be to the **VENDOR**'s account.
- 17.3 The **VENDOR**'s obligation to replace or repair defects in the **GOODS** under sub-clause 17.2 shall not apply to the extent that the defects are due to:
- (a) Faulty designs or specifications furnished by the **BUYER**, for which the **VENDOR** has disclaimed responsibility in writing prior to commencing manufacture;
  - (b) Ordinary wear and tear;
  - (c) Faulty operation, maintenance or repair of the **GOODS**, other than by the **VENDOR**,
  - (d) Conditions of service more severe than those specified in the **PURCHASE ORDER**; or
  - (e) faulty installation or erection of the **GOODS** by others except if, and to the extent that, such installation or erection by others was directly supervised by the **VENDOR** or third parties acting for and on behalf of the **VENDOR**.
- 17.4 If after having been notified of any defect in the **GOODS**, the **VENDOR** fails to remedy the defects within a reasonable time, the **BUYER** shall have the right, after first giving the **VENDOR** not less than three (3) working days written notice of its intention, either to repair or replace the defective part(s) of the **GOODS** itself or to have them replaced or repaired by others, and all direct costs of the repair or replacement shall be borne by the **VENDOR**. The exercise by the **BUYER** of this right shall in no way relieve the **VENDOR** from its obligations under the **PURCHASE ORDER**.
- 17.5 As an alternative to the work of repair or replacement being carried out by the **VENDOR**, particularly when operational constraints prevent appropriate access to the **GOODS**, the **BUYER** may, provided that it does so in a reasonable manner and in consultation with and with the agreement of the **VENDOR**, carry out, or arrange for others to carry out, the necessary work at the **VENDOR**'s expense. Following such repairs or replacements, the **VENDOR** shall promptly reimburse the **BUYER** for the costs of such work provided always that the amount of the "back charge" shall be reasonably equivalent to the costs that would have been incurred by the **VENDOR** had it been required to make the repairs or replacements. The exercise by the **BUYER** of this option shall, except as may be specifically agreed otherwise, in no way relieve the **VENDOR** from its obligations under the **PURCHASE ORDER**.
- 17.6 The provisions of sub-clause 17.2 shall further apply to any repaired or replaced part(s) of the **GOODS** for a period of twelve (12) months from the date they are reinstalled in the **PLANT**, or for the remainder of the original warranty period, whichever is the longer.
- 17.7 The warranties and guarantees given by the **VENDOR** under this Clause 17 shall survive the cancellation or termination of the **PURCHASE ORDER** in respect of any part of the **GOODS** already delivered at the time of cancellation or termination. Furthermore, no test, inspection or approval given or made by the **BUYER** and/or **OWNER**'s Representative and/or their respective representatives or agents shall prejudice any of such warranties and guarantees and/or any remedy of the **BUYER** in respect of defective **GOODS**.

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- 17.8 The **VENDOR** shall ensure that each of its **SUB-ORDERS** contains a provision of equivalent effect to the foregoing so that all of the **SUB-CONTRACTOR**'s representations, warranties and guarantees take effect to the benefit of the **BUYER** as well as the **VENDOR**.
18. **LOSS, DAMAGE OR INJURY AND INSURANCE**
- 18.1 **VENDOR** shall indemnify, protect, defend and hold harmless the **BUYER** from and against any and all claims, demands, actions, damages, costs, charges, expenses and proceedings whatsoever asserted by:
- a) Third parties, or
  - b) **BUYER**, or
  - c) **BUYER'S GROUP**, or
  - d) **SUPPLIER'S GROUP**  
in respect of:
    - i) injury, bodily injury, death, loss, damage, property damage or loss suffered by a), b), c) or d) resulting from the negligence of **SUPPLIER'S GROUP** in connection with the performance of **PURCHASE ORDER** hereunder, or
    - ii) injury, bodily injury, death, loss, damage, property damage or loss suffered by a), b), c) or d) resulting from the negligence of **VENDOR'S GROUP** in the ownership, maintenance, use or operation of motor vehicles by the **VENDOR'S GROUP** in connection with the performance of the **PURCHASE ORDER** hereunder.
- 18.2 **VENDOR** shall indemnify, protect, defend and hold harmless **BUYER** and/or **BUYER'S GROUP** against all loss or damage to equipment or materials or all other things owned, hired, used or provided by the **VENDOR** and **VENDOR'S GROUP** and used in connection with the performance of the **PURCHASE ORDER** hereunder.
- 18.3 Notwithstanding the provisions of Clauses 18.1 and 18.2, **VENDOR's** liability for loss of or damage to the **PLANT** arising from the performance of the **PURCHASE ORDER** by **VENDOR** shall be limited to the amount recoverable from the Construction 'All Risks' insurance to be maintained by **OWNER** with respect to physical loss or damage to the **PLANT**, except that **VENDOR** shall be liable for any deductibles under such Construction 'All Risks' Insurance.
- 18.4 Without prejudice to sub-clause 7.2, the **VENDOR** shall insure **FREE-ISSUE ITEMS**, if any, to their full replacement value against loss, damage or destruction for the period during which they are in the **VENDOR's** care. The insurance policy shall contain an "indemnity to principals" clause and/or note the interest of the **BUYER** in the **FREE-ISSUE ITEMS**. If requested by the **BUYER**, the **VENDOR** shall produce appropriate evidence confirming that the insurance is in place.
- 18.5 In addition to the requirement under sub-clause 18.2 to insure **FREE-ISSUE ITEMS**, the **VENDOR** shall effect and maintain adequate insurance cover with reputable insurers in respect of its liabilities under the **PURCHASE ORDER** and shall, on request of the **BUYER**, produce appropriate evidence confirming that the insurance is in place. In particular the **VENDOR** shall maintain as a minimum requirement product liability insurance appropriate to the intended use of the **GOODS**, carry general third party liability insurance and carry 'Workman's compensation, Employer's Liability' (or equivalent) insurance in respect of its employees in accordance with applicable law.
- 18.6 **VENDOR** shall give not less than thirty (30) days prior notice of any material change in such insurance, and in the event of failure to maintain said insurance **BUYER** shall be entitled to effect such insurance at **VENDOR's** cost and expense.
19. **CONSEQUENTIAL LOSS**
- Except in the case of liquidated damages payable by the **VENDOR** to the **BUYER** under Clause 8 (Time and Terms of Delivery), in no circumstances whatsoever shall either party be liable to the other for any

loss or deferment of profit, loss of revenue, loss of use, loss of production, or business interruption, or for any consequential or indirect loss or damage, however the liability arises and whether in contract (including by way of indemnity), tort (including negligence) or otherwise at law.

20. **SUSPENSION**

20.1 Without limiting or otherwise affecting its rights under the **PURCHASE ORDER**, the **BUYER** may, at any time, suspend the performance of part or all of the **PURCHASE ORDER** by giving the **VENDOR** written notice. The notice must specify the part of the **PURCHASE ORDER** to be suspended and when suspension is to take effect. The **VENDOR** shall cease all work on the suspended parts of the **PURCHASE ORDER** at the prescribed time, but shall continue to perform any part of the **PURCHASE ORDER** which is not suspended and take such actions as may be necessary to protect and safeguard any **GOODS** affected by suspension.

20.2 Except when suspension is attributable to an act or omission of the **VENDOR**, the **BUYER** shall reimburse the **VENDOR** for the reasonable additional direct costs unavoidably incurred by the **VENDOR** as a result of suspension under sub-clause 20.1.

20.3 The **BUYER** may, at any time, authorise resumption of all or any part of the suspended parts of the **PURCHASE ORDER** by giving notice to **VENDOR** specifying the part of the **PURCHASE ORDER** to be resumed and the effective date of the resumption. The **VENDOR** shall resume suspended parts of the **PURCHASE ORDER** in the shortest practicable time after receipt of such notice.

Provided that the **VENDOR** shall use reasonable endeavours to minimise any such delay, following resumption of any suspended part of the **PURCHASE ORDER**, the **BUYER** shall, unless the suspension is attributable to an act or omission of the **VENDOR**, issue a **PURCHASE ORDER AMENDMENT** adjusting the **DELIVERY DATE(S)** to take into account any actual delay directly resulting from suspension under sub-clause 20.1.

20.4 Unless the parties expressly agree otherwise, delays caused by **FORCE MAJEURE** shall be treated in accordance with Clause 10 and shall not be construed as suspension under this Clause 20.

21. **CANCELLATION FOR CONVENIENCE**

21.1 Without limiting or otherwise affecting its rights under the **PURCHASE ORDER**, the **BUYER** may, at any time, cancel part or all of the **PURCHASE ORDER** for its own convenience by giving the **VENDOR** written notice. The notice must specify the part of the **PURCHASE ORDER** to be cancelled and when cancellation is to take effect. The **VENDOR** shall cease all work on the cancelled parts of the **PURCHASE ORDER** at the prescribed time, but shall continue to perform any part of the **PURCHASE ORDER** which is not cancelled.

21.2 In the event of cancellation under sub-clause 21.1, the **BUYER** shall:

- (a) pay the **VENDOR** in accordance with the **PURCHASE ORDER** for **GOODS** properly completed and/or delivered as at the date of cancellation; and
- (b) subject to sub-clause 21.3, reimburse the **VENDOR** for the out-of-pocket direct costs reasonably incurred by the **VENDOR** in relation to uncompleted parts of the **GOODS**, including but not limited to, cost of payments due to any third party in respect of which the **VENDOR** has (prior to the effective date of cancellation) properly and irrevocably entered into a commitment relating to the manufacture and/or supply of the **GOODS**, together with such additional out-of-pocket direct costs as are reasonably incurred by the **VENDOR** for work authorised in advance by the **BUYER** and performed by the **VENDOR** in connection with the cancellation.

21.3 If cancellation is the direct result of **FORCE MAJEURE**, the **VENDOR**'s entitlement to the reimbursement of the direct costs referred to in sub-clause 21.2(b) shall be limited to the costs incurred and/or committed prior to the onset of **FORCE MAJEURE**.

21.4 If the amount to be paid by the **BUYER** under sub-clause 21.2 is less than the total amount of any payments already made to the **VENDOR** in accordance with the **PURCHASE ORDER** prior to the cancellation, then the **VENDOR** shall forthwith repay the balance to the **BUYER**.

21.5 The **BUYER**'s sole liability to the **VENDOR** in the event of cancellation of the **PURCHASE ORDER** shall be determined in accordance with this Clause 21 and the **BUYER** shall have no liability whatsoever to the **VENDOR** for any other costs, expenses, overheads, anticipated profit or damages.

**22. TERMINATION FOR DEFAULT**

22.1 Without prejudice to its other rights at law or under the **PURCHASE ORDER**, the **BUYER** may, by giving five (5) days written notice to the **VENDOR**, terminate part or all of the **PURCHASE ORDER** if the **VENDOR**:

- (a) defaults, or fails in the performance of its obligations under the **PURCHASE ORDER** and, having been given notice by the **BUYER** to correct the default or failure, does not correct the matter immediately or, when immediate correction is not possible, fails immediately to commence and then continue effective corrective action;
- (b) becomes insolvent; commences, or has commenced against it, proceedings for insolvency, receivership, winding-up (other than for the purposes of reconstruction or amalgamation), bankruptcy or liquidation, or is the subject of similar proceedings in the jurisdiction in which it is incorporated or carries on its business; or
- (c) Is the subject of a merger, take-over, acquisition or transfer of business that would have a detrimental effect upon its ability to perform its obligations under the **PURCHASE ORDER**.

22.2 In the event of termination under sub-clause 22.1, the **BUYER** may at its sole option and without prejudice to its other rights in law:

- (a) Retain all or part of any **GOODS** already received by the **BUYER** or arrange for the return of such **GOODS** to the **VENDOR** (at the **VENDOR**'s risk and expense) and/or
- (b) Enter the **VENDOR**'s or any **SUB-CONTRACTOR**'s premises and recover any **GOODS**, the ownership of which has passed to the **BUYER** under sub-clause 14.1.

22.3 Provided that the **BUYER** shall have an obligation to pay any amount due under the **PURCHASE ORDER** for any properly delivered **GOODS** retained by the **BUYER**, and/or any **GOODS** recovered by the **BUYER**, under sub-clause 22.2, the **VENDOR** shall return any payments made under the **PURCHASE ORDER** prior to the date of termination. Furthermore, the **VENDOR** shall be liable for the direct costs, and any loss suffered by reason of **VENDOR**'s default, incurred by the **BUYER** as the result of such termination, including but not limited to, demurrage charges, shipping and storage costs, and the costs involved in having alternative **GOODS** supplied by third parties, to the extent that they exceed the amount the **BUYER** would reasonably and properly have paid to the **VENDOR** under the **PURCHASE ORDER** had it not been terminated.

22.4 As an alternative to immediate termination, the **BUYER** shall have the right to come to an arrangement (whether temporary or permanent) as to the continued performance of the **PURCHASE ORDER** with the **VENDOR**'s creditors, the administrator of any receivership, bankruptcy or liquidation proceedings, or any entity involved in a merger, take-over, acquisition or transfer of business.

22.5 In no event shall the total payment to **VENDOR** in the event of termination exceed the **PRICE** which would have been payable if the **PURCHASE ORDER** had been completed.

22.6 **VENDOR** expressly waives any claim for damages, including, without limitation, loss of anticipated profits on account of such termination. Any such termination shall be effective in the manner specified in said notice and shall be without prejudice to **BUYER'S** and/or **OWNER'S** other rights at law or under this **PURCHASE ORDER**.

**23. COMPLIANCE WITH LAW**

23.1 The **VENDOR** shall comply with all applicable laws, directives, and regulations including, without prejudice to the generality of the foregoing, manufacturing, testing, certification, export and import regulations and any codes and standards having the force of law, which are relevant to the manufacture, supply, installation or use of the **GOODS**. The **VENDOR** shall indemnify and hold the **BUYER** harmless against any claim, penalty or sanction directly connected with the **VENDOR**'s failure to comply with any such laws, regulations, directives, codes and standards, however they may arise, which is made against or imposed on the **BUYER**.

23.2 If any relevant code or standard is amended or comes into effect subsequent to the effective date of this **PURCHASE ORDER**, the **VENDOR** shall, provided that the **BUYER** confirms that it wishes the new code or standard to apply to the **GOODS**, ensure that the **GOODS** comply with the new code or standard. An instruction issued by the **BUYER** under this sub-clause 23.2 shall be subject to the provisions of Clause 5 (Variations).

**24 OWNERSHIP AND USE OF DOCUMENTATION**

- 24.1 All documentation (including but not limited to, reports, specifications, plans, drawings, patterns, designs, other technical or commercial documents) and computer software, issued to the **VENDOR** by the **BUYER** or third parties on behalf of the **BUYER** in connection with the **PURCHASE ORDER** shall remain the property of the **BUYER** or relevant third party as applicable and shall be returned forthwith to the **BUYER** or relevant third party upon demand, on completion of the **PURCHASE ORDER** and/or cancellation or termination of the **PURCHASE ORDER**.
- 24.2 Title to all documentation (drawings, specifications, calculations and other documents) and/or computer software prepared and/or supplied to the **BUYER** by the **VENDOR** or any **SUBCONTRACTOR** in connection with the **PURCHASE ORDER** and all intellectual property rights therein shall vest in the **BUYER** at the time of preparation.
- 24.3 The **VENDOR** shall not duplicate or arrange for others to duplicate, either on its own behalf or on behalf of a third party, any part of the **GOODS** manufactured to a design furnished by the **BUYER**, **OWNER** and/or any third party acting on behalf of either the **BUYER** or **OWNER**, nor shall it use any such design other than for the purposes of this **PURCHASE ORDER**.
- 24.4 All **VENDOR'S** drawings may be used by the **OWNER** from time to time (subject to the rights of any third parties having proprietary rights) for design, engineering, construction, operation, modification, revamp, improvement, repair and maintenance of the **PLANT**, or replacing all or any part of the **PLANT**. Such documents shall be the sole property of **OWNER** in so far as **VENDOR** has the legal right to transfer title therein.

**25 PATENTS**

- 25.1 The **VENDOR** shall indemnify the **BUYER** against all claims, losses, damages, costs (including legal costs) and expenses arising from, or incurred by reason of, any infringement or alleged infringement of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right where such infringement or alleged infringement arises out of, or in connection with, the supply of the **GOODS** to the **BUYER** under this **PURCHASE ORDER**. As soon as reasonably possible, the **BUYER** shall give the **VENDOR** notice in writing of any such claim (or action in pursuit of a claim) being made, threatened or brought against the **BUYER**.
- 25.2 The indemnity referred to in sub-clause 25.1 shall not apply:
- (i) To the extent that the **GOODS** are manufactured to the design, specifications or instructions of the **BUYER** and/or **OWNER**, and the infringement relates to such design, specifications or instructions, and/or
  - (ii) When the infringement or alleged infringement arises out of the use of the **GOODS** in a manner or for a purpose not specified by the **BUYER** and/or the **VENDOR** or which could not reasonably be expected or foreseen by the **VENDOR**.

**26 CONFIDENTIALITY AND PUBLICITY**

- 26.1 The **VENDOR** shall keep confidential and, except as required for the proper performance of its obligations under the **PURCHASE ORDER**, not disclose to others or use business or technical information which is:
- (a) Disclosed to the **VENDOR** by the **BUYER** and/or **OWNER'S** Representative, or
  - (b) Acquired or generated by the **VENDOR** in the course of performance of its obligations under the **PURCHASE ORDER**.
- The **VENDOR** shall require any **SUBCONTRACTOR** to give a similar undertaking with respect to such information disclosed to, acquired or generated by them in connection with their performance of a part of the **PURCHASE ORDER**.
- The obligations of sub-clause 26.1 shall not apply to information in the public domain other than through the act or omission of the **VENDOR** or information which the **VENDOR** owns or acquired lawfully from others and which may be freely disclosed without breach of any undertaking relating to confidentiality.
- 26.2 If the **VENDOR** enters into a separate "non-disclosure agreement" and/or any "licensing agreement" with the **BUYER** covering the supply and/or use of the **GOODS**, such agreement(s) shall overrule and take



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precedence over the provisions of sub-clause 26.1. A copy of any such separate agreement shall be deemed to be incorporated into the **PURCHASE ORDER**, whether or not appended to it.

- 26.3 Except as required for the proper performance of its obligations under the **PURCHASE ORDER**, the **VENDOR** shall neither copy nor make abstracts of documents relating to the **PURCHASE ORDER** for itself or on behalf of third parties.
- 26.4 The **VENDOR** shall not make any internal or external publicity announcements regarding the **PURCHASE ORDER** or his activities relating to it without the **BUYER**'s prior written consent. The **VENDOR** shall cause any **SUBCONTRACTOR** to comply with this requirement.
- 26.5 No photograph of any of the **BUYER**'s existing or new installations, equipment or other property may be taken or published without the relevant party's prior written consent.

**27 HAZARDOUS SUBSTANCES**

- 27.1 The **VENDOR** shall provide the **BUYER** with full information about any substance supplied as part of the **PURCHASE ORDER** which is either known to be, or could reasonably be expected to be, hazardous to the health or safety of persons installing it or using it in connection with their work and/or operating any part of the **GOODS**, whether or not such information must be provided under any applicable law or regulation. When no such substances are present, the **VENDOR** shall provide a written statement to that effect.
- 27.2 The **VENDOR** shall comply with all relevant and applicable national or international regulations and/or codes of practice relating to the packing, labelling, transportation, storage and handling of any hazardous substances forming part of the **GOODS**.

**28 BUSINESS STANDARDS**

- 28.1 Further to its obligations under sub-clause 23.1, the **VENDOR** undertakes to conduct its affairs in relation to the **PURCHASE ORDER** lawfully and in a manner consistent with the highest ethical standards prevailing in the business communities in which it operates. In particular, the **VENDOR** shall establish and maintain such business procedures and controls as may be necessary to avoid any conflict with the interests of the **BUYER**.
- 28.2 The **VENDOR** shall not permit any of its or any **SUBCONTRACTOR**'s employees, representatives or agents to carry out work connected with the **PURCHASE ORDER** whilst under the influence of alcohol or any controlled substance, including prescribed drugs which are misused. The **VENDOR** shall use reasonable endeavours to ensure that, should any of such persons be required to visit or work upon any premises owned and/or controlled by the **BUYER**, they will agree to comply with any alcohol or drug testing programme that may be in effect upon those premises.

**29 DATE-RECOGNITION AND RECORDING**

- 29.1 The **VENDOR** guarantees that the **GOODS** will not be adversely affected as a result of any date recognising or recording facility incorporated into them being unable to recognise or otherwise process or record data or information because of a change in date. Any failure in the **GOODS** arising from a change in date shall be treated as a defect to be remedied by the **VENDOR** in accordance with sub-clause 17.2.
- 29.2 The **VENDOR** shall ensure that all manufacturing and business equipment and IT systems (including, but not limited to, planning, material control, administration, payroll and accounting systems) used by it and/or any **SUBCONTRACTOR** in connection with the manufacture and supply of the **GOODS** are capable of remaining fully functional through any date change. Moreover, the functionality of such equipment and systems shall be considered to be within the reasonable control of the **VENDOR** or **SUBCONTRACTOR** and, accordingly, failure of the equipment or system caused by a change of date shall not constitute **FORCE MAJEURE**.

**30 QUALITY ASSURANCE**

- 30.1 Provided that compliance shall not relieve the **VENDOR** from any of its other duties and obligations under the **PURCHASE ORDER**, the **VENDOR**'s activities shall be carried out in compliance with an approved quality assurance ("QA") system.
- 30.2 The **VENDOR** shall allow the **BUYER**'s and/or **OWNER**'s representative's QA auditors access to personnel, documentation and records for the purpose of conducting QA audits relating to the manufacture and supply of the **GOODS**. Where non-conformities are identified during QA audits, the **VENDOR** shall undertake the corrective actions required by the QA auditors within agreed time limits.

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30.3 It shall be the **VENDOR's** responsibility to incorporate provisions similar to those in sub-clauses 30.1 and 30.2 into **SUB-ORDERS** and to include provision for the **BUYER** and/or **OWNER** to approve and carry out QA audits on **SUBCONTRACTORS**.

31 **AUDIT**

31.1 The **VENDOR** shall keep complete and accurate accounts and records of all transactions relating to the **PURCHASE ORDER** in accordance with accepted accounting practice and procedures, and shall maintain the accounts and records for a period of at least six (6) years after receipt of the final payment made to the **VENDOR** by the **BUYER** under the terms of the **PURCHASE ORDER**.

31.2 All invoices issued by the **VENDOR** to the **BUYER** shall accurately reflect the nature and extent of the matters to which they pertain.

31.3 Provided always that the right of audit shall not extend to the make up of lump sum prices and/or any fixed unit rates, the **BUYER** shall, through its own and/or any authorised third party representatives, have the right to inspect the accounts and records referred to in sub-clause 31.1 at all reasonable times during the performance of this **PURCHASE ORDER**, and during the period referred to in sub-clause 31.1, for the purpose of verifying the correctness of amounts invoiced by the **VENDOR**.

Wherever the **VENDOR** is entitled to the reimbursement of direct cost under the **PURCHASE ORDER**, such costs shall be justified, substantiated and the subject of audit under this sub-clause 31.3.

31.4 If any audit reveals errors in amounts invoiced and/or paid, the **BUYER** will notify the **VENDOR** and shall either be entitled to recover from the **VENDOR** any amount paid in excess of that due under the **PURCHASE ORDER** or pay the **VENDOR** the amount of any under-payment that may be revealed.

32 **COMMUNICATIONS**

32.1 Unless otherwise stated in the **PURCHASE ORDER**, all communications, correspondence, drawings and documents relating to the **PURCHASE ORDER** and **SUB-ORDERS** shall be in English and shall bear the **PURCHASE ORDER** number.

32.2 Subject to sub-clause 32.3, all communications and correspondence from the **VENDOR** to the **BUYER** (other than invoices, which are the subject of specific instructions) shall be addressed to the person named in the **PURCHASE ORDER** as the **BUYER's** designated representative at the stated address. No communication or correspondence between the **VENDOR** and any of the **BUYER's** personnel other than the designated representative shall be of contractual effect unless a copy of it has been forwarded to the **BUYER's** designated representative.

32.3 Notices shall be given in writing and shall be hand-delivered or sent by recorded mail or, provided a copy is sent by recorded mail at the same time, by fax, to the address stated in the **PURCHASE ORDER**. Transmissions by e-mail will not be acceptable.

The notices referred to in this sub-clause 32.3 shall be only be valid if addressed to the **BUYER** or to the **VENDOR** at the relevant address or such other address as may have been notified in writing by the relevant party prior to the issue of the notice.

The notices shall be deemed to have been duly delivered and received and become effective at the time of delivery if hand-delivered, or upon receipt if transmitted by recorded mail or facsimile, whichever is the earlier.

33. **WAIVER AND SEVERABILITY**

33.1 None of the terms and conditions of the **PURCHASE ORDER** shall be considered to be waived by either party unless a waiver is given in writing by one party to the other and signed by the authorised representatives of both parties.

No failure by either party to exercise any of its rights under the **PURCHASE ORDER** shall constitute a waiver of those rights nor shall the failure excuse the other party from full performance of any of its obligations under the **PURCHASE ORDER**.

33.2 The parties agree that if any competent tribunal determines that any part of a provision of the **PURCHASE ORDER** is inoperative, invalid, illegal or otherwise unenforceable by operation of any relevant enactment or rule of law, it shall be deleted from the **PURCHASE ORDER**. The remaining provisions of the **PURCHASE ORDER** shall be enforceable as if the inoperative, invalid, illegal or

otherwise unenforceable part had not been included.

34 **SURVIVING OBLIGATIONS**

Such provisions of this **PURCHASE ORDER**, including but not limited to Clause 4,15,17,18 and 24 herein, and as may be required to ensure that the parties hereto may fully exercise their rights and perform their obligations under **PURCHASE ORDER** shall survive its cancellation, termination or completion.

The obligations of Clause 24.0 shall continue for 20 years after any termination or 20 years after the **DELIVERY DATE**, whichever period extends longer, except that any surviving requirements of confidentiality agreements for the PROJECT shall remain in force.

35 **DISPUTE RESOLUTION**

35.1 The **BUYER** and the **VENDOR** shall endeavor to settle any dispute or difference between them in connection with, or arising out of, the **PURCHASE ORDER** by mutual agreement. Any dispute or difference which cannot be settled by agreement between the parties shall, unless the parties agree to refer the matter to an alternative form of dispute resolution procedure, be finally determined by reference to arbitration.

35.2 **VENDOR** and **BUYER** agree to accept the Thai Arbitration Act BE.2545 to govern settlement of disputes. In the event of any disagreement or dispute concerning or arising from this **PURCHASE ORDER** where the parties are unable to reach agreement, settlement shall be made by arbitration in Bangkok under the Thai Arbitration Act by three arbitrators, one to be appointed by each party within thirty (30) days of the notice requiring arbitration and the third to be appointed by mutual agreement of such two arbitrators within a further period of fourteen (14) days. In the event that either party fails to nominate an arbitrator within the prescribed time, or the two arbitrators fail to agree on the appointment of the third arbitrator, such appointments shall be made by the competent court.

All sums due to **BUYER** from **VENDOR** shall be paid within 60 (sixty) days of issuance of the arbitration award. Sums due to **VENDOR** from **OWNER** shall be made as direct payments by **OWNER** within 60 (sixty) days of issuance of the arbitration award.

Until a decision is made by the arbitrators, both **BUYER** and **VENDOR** agree to carry out in good faith their respective obligations hereunder and to take no action which may upset the status quo or prejudice the respective positions except for such action as may otherwise be permitted by the terms of the **PURCHASE ORDER**.

The arbitrators shall fix the expenses of the arbitration and shall assess the same against either **BUYER** or **VENDOR** or both in such proportion as the arbitrators deem appropriate.

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