

# General Terms and Conditions for Sale of Goods and Services of HIMA APAC

(Edition March 2022 )

## 1.0 DEFINITIONS AND INTERPRETATIONS

1.1 The following definitions shall apply to this General Terms and Conditions except where the context otherwise requires

1.1.1 "**CONDITIONS**" means the general terms and conditions set out in this document and (unless the context otherwise requires) any additional terms and conditions agreed in writing between the Purchaser and the Vendor;

1.1.2 "**CONTRACT**" means the agreement for the purchase and sale of Goods and/or supply of Services, howsoever formed or concluded, whether pursuant to an order of the Purchaser or a quotation of the Vendor or otherwise, to which these Conditions apply;

1.1.3 "**DAY**" or "**DAYS**" means calendar days unless stated otherwise.

1.1.4 "**GOODS**" means any goods (including any instalment of the goods or any parts for them) which the Vendor is to supply as set out in the Order;

1.1.5 "**GST**" refers to "tax" as defined in the Singapore Goods and Service Tax Act 2005 (Chapter 117A) for Country of Singapore or within the meaning of A New Tax System (Goods and Services Tax) Act 1999 ("the GST Act") for the Country of Australia

1.1.6 "**INCOTERMS**" means the international rules for the interpretation of trade terms of the International Chamber of Commerce in its 2010 edition;

1.1.7 "**ORDER**" means a Purchase Order for the supply of Goods and/or Services placed by the Purchaser and which incorporates these Conditions.

1.1.8 "**ORDER CONFIRMATION**" means Contract concluded when Vendor accepts such order in writing.

1.1.9 "**PURCHASER**" means a person(s) or organisation who purchases any Goods and/or Services from the Vendor.

1.1.10 "**SERVICES**" means the services which the Vendor is to supply as set out in the Order.

1.1.11 "**SST**" means any tax, levy, charge, or impost implemented under Sales Tax Act 2018 and Service Tax Act 2018 or the any Act of the Parliament of Malaysia substantially in the form of, or which has a similar effect to the Acts.

1.1.12 "**VENDOR**" means HIMA Asia Pacific Pte Ltd, HIMA S.E.A Sdn. Bhd or HIMA Australia Pty. Ltd.

## 1.2 Interpretations

1.2.1 References to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, or re-enacted.

1.2.2 And reference to writing or documents includes email with official signatory, and any comparable means of communication.

1.2.3 All headings, indexes, titles, subtitles, subheadings, words that are bold, italicized, capitalized, or otherwise emphasized in these Conditions are for ease of reference only and such emphasis should not be taken into consideration in the interpretation or construction of these Conditions.

1.2.4 Words importing the singular only also include the plural and vice versa and includes the plural and vice versa, and each gender includes every other gender

1.2.5 The words "including" or "such as" are not used as, or to be interpreted as a word of limitation, and do not limit the meaning of the words to which the example relates to that example or an example of a similar kind.

1.2.6 Words denoting a natural person include any person or body corporate or incorporated.

## 2.0 BASIS OF CONTRACT

2.1 The Contract will be on these Terms and Conditions to the exclusion of any other terms that Purchaser purports to apply or incorporate or which are implied by trade, custom, practice or course of dealing.

2.2 In the event of any inconsistency or conflict between the terms in these Conditions and the Contract, the terms of the Contract shall prevail.

2.3 The Vendor's employees or agents are not authorised to make any representations concerning any Goods or Services unless confirmed by the Vendor in writing.

2.4 Any advice or recommendation given by the Vendor or its employees or agents to the Purchaser or its employees or agents which is not confirmed in writing by the Vendor is followed or acted upon entirely at the Purchaser's own risk and accordingly the Vendor shall not be liable for any such advice or recommendation which is not so confirmed by the Vendor in writing.

2.5 Any typographical clerical obvious or other error or omission in any sales Literature, quotation, price list, acceptance of offer, invoice, or other document or information issued by the Vendor shall be subject to correction without any liability on the part of the Vendor.

## 3.0 QUOTATION

3.1 Unless otherwise provided in the quotation offered by the Vendor itself, said quotation remains valid for a period of thirty (30) days from the date of the quotation, following which the offer shall become void. No order submitted by the Purchaser shall be deemed to be accepted by the Vendor unless confirmed in writing by the Vendor's authorised representative.

3.2 The quantity, quality, and description of and any specification for the Goods and/or the description of the Services shall be those set out in the Vendor's offer (if accepted by the Purchaser) or the



Purchaser's order (if accepted by the Vendor) or as otherwise set out in any Contract documentation.

3.3 The Vendor reserves the right to make any changes in the specification of the Goods which do not materially affect their quality or performance, which are required to conform with any applicable statutory or regulatory requirements, or which are due to unavailability of the Goods.

3.4 Unless otherwise approved in writing, the Vendor reserves the right to charge the Purchaser a minimum order charge to cover overheads including freight cost if the order does not meet the minimum order value of EUR 600 or equivalent to the local currency per order.

**4.0 SPECIFICATIONS AND DRAWINGS**

**4.1 Description**

4.1.1 Unless agreed in writing by the Vendor, all drawings, designs, specifications, and particulars submitted by the Vendor are approximate and only for information purposes such that the Purchaser cannot rely on the accuracy of the same.

**4.2 Sufficient Information**

4.2.1 The Purchase Order shall be accompanied by sufficient information to enable the Vendor to commence work and proceed without interruption. The Purchaser shall be responsible for, and warrant, the accuracy of the information it provides.

**4.3 Incorrect Information**

4.3.1 The Purchaser shall be responsible for and bear the cost of any alteration to Goods and/or Services supplied by the Vendor arising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Purchaser.

**5.0 APPROVAL AND CERTIFICATES**

**5.1 Responsibility for Licenses, Approval, and other Permits.**

5.1.1 Unless otherwise agreed in writing, it shall be the responsibility of the Purchaser to obtain and provide any licences, access, approvals or permits as necessary for the performance of any Agreement arising between the Vendor and the Purchaser.

**5.2 IEC 61511 Compliance**

5.2.1 For System Integration ( in accordance with IEC 61511 phase 4):

If the Agreement and Purchase Order requires compliance to international standard IEC 61511, it is the Purchaser's responsibility to provide applicable Safety Requirements Specifications (SRS) in accordance with the requirements of the standard. In the absence of the provision of the applicable Safety Requirements Specifications (SRS), compliance to IEC 61511 is not practically possible.

**6.0 PRICE AND AVAILABILITY**

6.1 The price for the Goods and/or Services will be the price as referred to in the Order Confirmation ("Price") and, unless otherwise agreed in writing, is exclusive of :

6.1.1 Any costs of insurance, carriage, and delivery of the Goods;

6.1.2 Taxes (including Sales and Services Tax ("SST"), Goods and Services Tax ("GST")) , Withholding tax (WHT) , import duties or levies (as applicable).

6.2 The Vendor reserves the right up to the actual delivery date and/or performance to vary the Price, by giving written notice to the Purchaser , to take account of:

6.2.1 any increase in the cost to the Vendor (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the costs of labour materials or other costs of manufacture), subject to Condition 6.3; or

6.2.2 any change in delivery and/or performance dates, quantities, or specifications for the Goods and/or Services which is requested by the Purchaser; or

6.2.3 any delay change in circumstances caused by any instructions of the Purchaser or failure of the Purchaser to give the Vendor adequate information or instructions or otherwise by the actions of the Purchaser.

6.3 Notwithstanding Condition 6.2.1, if an event that is beyond the Vendor's control compromises the equilibrium of the Contract to such an extent that the Vendor is unable to execute its obligations, the parties agree to negotiate in good faith a modification of the Contract.

6.4 In the event, by acting on the Purchaser's requests, specific prior studies are required to establish an offer and such offer is not followed by an order, any costs incurred in connection with such studies shall be borne by the Purchaser.

6.5 Current products are expected to remain available for the next 10 years and products notified for discontinuance are expected to remain available for the next 5 years.

6.6 Any collections, controls, inspections, tests, and certificates requested by the Purchaser are at the Purchaser's expense, and these additional operations shall be carried out in factory or on site at the Vendor's discretion.

6.7 Exchange rate variation payable shall be calculated at the rate of exchange actually paid by the Vendor against the exchange rate in the quotation. If prices are expressed in different currencies and the Purchaser seeks or requires payment in any different currency, the Purchaser shall bear any foreign exchange risk arising from such payment.

**7.0 PAYMENT**

7.1 If no other specific terms of payment have been agreed in writing between the Purchaser and the Vendor, the following terms shall apply:

**i) Consultancy**

- a) For Contracts based on time and material -
  - Job progression as per monthly time sheets;
- b) For Contracts with a fixed price –
  - 40% upon Order Confirmation ;
  - 60% upon submission of first draft deliverables.

**ii) Project**

- Payment milestones -
- 40% upon Order Confirmation,
  - 60% before delivery to site.

**iii) Site Services**

- Job progression as per monthly time sheets



Vendor's location, but if the Vendor does so, it shall accept no liability whatsoever, nor shall such action in any way affect the Vendor's Contract delivery obligations as aforesaid.

**iv) Component**

- a) For Purchaser with credit facilities,
  - 100% upon delivery of goods
- b) For Purchaser without credit facilities,
  - 100% advance payment.

**v) Training**

- 100% before start of course.

**8.2 Delivery in installment**

- 8.2.1 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract (to which these Conditions apply). Any failure in delivery of any one or more of the instalments shall not entitle the Purchaser to repudiate the whole Contract.
- 8.2.2 The Vendor has the right at any time to sub-contract all or any of its obligations for the sale of the Goods or supply of the Services to any other party as it may from time to time decide without giving notice of the same to the Purchaser.

**8.3 Dates of Delivery**

- 8.3.1 Any dates quoted for delivery of the Goods or performance of Services are approximate only. The Goods may be delivered by the Vendor in advance of the quoted delivery date upon giving reasonable notice to the Purchaser. Unless previously agreed by the Vendor in writing, the time for delivery/performance shall not be of the essence, and the Vendor shall not be liable for any delay in delivery or performance howsoever caused.
- 8.3.2 If the Vendor has failed to deliver the Goods or perform the Services in accordance with the Contract, the Purchaser shall be entitled, by serving written notice on the Vendor to demand performance within a specified time .

- 8.4 If the Vendor fails to do so within the specified time, the Purchaser shall be entitled to terminate the Contract in respect of the undelivered Goods or unperformed Services and claim compensation for actual loss and expense sustained due to the Vendor's non-performance, which was foreseeable at the time of conclusion of the Contract and resulting from the usual course of events, subject always to the limitations set out in Condition 17.

- 8.5 If the Vendor is ready, willing, and able to perform the Services, but refrained to do such performance by the Purchaser, the Vendor shall be entitled to declare itself released from the performance of such Services, by giving a written notice to the Purchaser, and claim compensation for all loss (including economic loss and loss of profit), costs (including the cost of all labour and materials used), damages charges and expenses incurred up to the time of the giving of such notice.

**8.6 Inspection and Tests**

- 8.6.1 Where inspections and tests are performed, they will be undertaken in accordance with the Vendor's standard practice, including test documentation, and will be carried out at the place of manufacture or elsewhere at the Vendor's sole discretion. Such inspections and tests, together with any additional tests, as may be specified in the Vendor's quotation, are the only inspections and tests included in the quoted price. Should any further inspection or tests be required by the Purchaser, they will be subject to the Vendor's agreement and may result in an increase in the contract price agreed by the Vendor to the Purchaser and an extension to the time for delivery.
- 8.6.2 Where the carrying out of an inspection or witnessed test has been agreed to, the Vendor shall give the Purchaser seven (7) days' notice that the Vendor is ready to carry out such inspection or witnessed test, and if the Purchaser is absent from a duly notified inspection or witnessed test then such inspection or witnessed test shall be deemed to have been undertaken in the Purchaser's presence such that the outcome of the inspection or test will be deemed to be accepted by the Purchaser.

7.2 Invoices shall be paid by the Purchaser within Thirty (30) days following the invoice date in the currency specified on the invoice and in cleared funds.

7.3 The Purchaser shall pay the price without any deduction or set-off. The Vendor shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Purchaser for Purchaser who does not have credit facilities. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

7.4 If in the Vendor's opinion that the Purchaser's creditworthiness deteriorates before the delivery of the Goods or the performance of the Services, the Vendor may require full or partial payment of the price prior to delivery or the provision of security by the Purchaser in a form acceptable to the Vendor.

**7.5 Delay or Default in Payment**

7.5.1 Should the Purchaser fails to make any payment on the due date , then without prejudice to any other right or remedy available to the Vendor, the Vendor shall be entitled to:

7.5.1.1. charge the Purchaser interest (both before and after any judgment) on the amount unpaid at the rate of 0.5% per month or part thereof until payment in full is made; and/or

7.5.1.2 appropriate any payment made by the Purchaser to such of the Goods or Services (or the goods or services supplied by the Vendor under any other contract between the Purchaser and the Vendor) as the Vendor may think fit (notwithstanding any purported appropriation by the Purchaser); and/or

7.5.1.3 suspend any further deliveries of the Goods and/or suspend further performance of the Services; and/or

7.5.1.4 Terminate the Contract

**8.0 DELIVERY AND PERFORMANCE**

**8.1 Incoterms 2010**

8.1.1 Unless agreed otherwise in writing, delivery of the Goods shall be made in accordance with Incoterms 2010 "Free Carrier" (FCA) Brühl (Baden), Germany, excluding packaging or any other shipping expenses, insurance, and transport charges, plus value added tax.

8.1.2 The Vendor may, if the Purchaser so requests, and at Purchaser's cost (including shipment and freight costs) and assumption of risk over the Goods (including destruction/damage), assist the Purchaser to arrange for transportation or insurance of the Goods from the



## 8.7 Storage

8.7.1 If the Goods are ready for delivery and the Purchaser request for storage arrangement, the Vendor and the Purchaser may, in writing, mutually agree on the financial terms, duration, and risks of storage. The Vendor may provide, at the Purchaser's cost, insurance coverage as agreed in the Contract.

8.7.2 The Vendor shall not be liable in any case for the impossibility or delays of the Vendor's obligations to the extent that such circumstances are based on "Force majeure event" in clause 14 or other events which are not predictable at the time the Contract is concluded and for which the Vendor is not responsible.

8.8 However, if the Purchaser refuses or fails to take delivery of the Goods when they are ready for delivery or to provide any Delivery Information to enable on time delivery (otherwise than by reason of any cause beyond the Purchaser's reasonable control or by reason of the Vendor's fault), the Vendor, without prejudice to any other right or remedy available, may:

8.8.1 store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage; or

8.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract provided the price has been paid in cleared funds in full or charge the Purchaser for any shortfall below the price under the Contract as the case may be; or

8.8.3 terminate the Contract and claim damages.

## 8.9 Suspension of delivery

8.9.1 Upon the happening of any one of the events set out in clause 14, the Vendor may at its option fully or partially suspend delivery or performance while such event or circumstances continues. The Vendor may also terminate any Contract so affected with immediate effect by written notice to the Purchaser and the Vendor shall not be liable for any loss or damage suffered by the Purchaser as a result thereof. For the avoidance of doubt, nothing herein shall prevent the Vendor from invoicing the part of the order that is already in process.

## 9.0 PACKING

9.1 Unless stated otherwise in any quotation, packing is not included in the contract price. Any packing required by the Purchaser and not specifically stated as being included in any quotation shall be to the Purchaser's account.

9.2 Packaging of the Goods is effectuated according to the Vendor's standard and conforms to all applicable environmental regulations according to the purpose of the Goods. The Purchaser shall meet the cost of any special packaging of the Goods which it may request, or which may be necessitated by delivery by any means other than the Vendor's normal means of delivery. The Purchaser shall unless otherwise agreed in writing be solely responsible for the disposal of all packaging in accordance with all regulations whether statutory or otherwise relating to protection of the environment.

## 10.0 TITLE AND RISK

10.1 Risk of damage to or loss of the Goods shall pass to the Purchaser in accordance with *Incoterms 2010* in Clause 8.1:

The aforesaid shall apply regardless of whether any Services are to be performed with regards to the delivered Goods.

10.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Purchaser until the Vendor has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Vendor to the Purchaser for which payment is then due.

10.3 Until title of the Goods has passed to the Purchaser, the Purchaser shall hold the Goods as the Vendor's fiduciary agent and bailee undertakes to:

10.3.1 keep the Goods, at no cost to the Vendor, separately from those of the Purchaser and third parties in such a way as they are clearly identified as the property of the Vendor; and

10.3.2 maintain the Goods in satisfactory condition;

10.3.3 have the Goods insured for their full Price against all risks to the reasonable satisfaction of the Vendor, whenever requested by the Vendor, produce a certificate of insurance to the Vendor and procure that any insurance proceeds received in respect of lost or damaged Goods are paid to the Vendor, to the extent required to satisfy the indebtedness of the Purchaser to the Vendor,

10.4 If the Purchaser has not received the proceeds of any such sale, it will if called upon to do so by the Vendor assign to the Vendor within seven (7) days all rights against the person or persons by whom the proceeds are owed.

10.5 The Purchaser shall immediately notify the Vendor of any matter from time to time affecting the Vendor's title to the Goods and the Purchaser shall provide any information relating to the Goods as may require from time to time.

10.6 Until such time as the property in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been resold), the Vendor shall be entitled at any time to require the Purchaser to deliver up the Goods to the Vendor and if the Purchaser fails to do so forthwith to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.

10.7 The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Vendor. If the Purchaser does so, all moneys owing by the Purchaser to the Vendor shall (without prejudice to any other right or remedy of the Vendor) forthwith become due and payable.

10.8 The Purchaser hereby irrevocably appoints the Vendor and its servants as its duly authorised agent for the purpose of entering upon any premises where the Goods are stored for the purpose of examination and/or recovery of the same at any time without notice.

10.9 Where the Goods have been incorporated by the Purchaser into any product or article in such a way that the substance and identity of the Goods have been irrevocably altered or destroyed, then property in such new product(s) or article(s) shall immediately vest wholly in the Vendor, and the provisions of the preceding sub-conditions shall apply mutatis mutandis to such products or articles as if they were Goods remaining as the property of the Vendor. This sub-condition shall not apply if the Vendor has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Vendor to the Purchaser for which payment is then due. The provisions of the preceding sub-conditions shall also apply mutatis mutandis to Goods which have been incorporated by the Purchaser into any product or article in such a way that the substance and identity of the Goods have not been irrevocably altered or destroyed.

10.10 If the provisions in this Condition 10 are not effective according to the law of the country in which the Goods are located, the legal concept closest in nature to retention of title and this Condition 10



in that country shall be deemed to apply mutatis mutandis to give effect to the underlying intent expressed in this Condition, and the Purchaser shall take all steps necessary to give effect to the same.

10.11 The Purchaser shall indemnify the Vendor against all loss damages costs charges and expenses including legal fees incurred by the Vendor in connection with the assertion and enforcement of the Vendor's rights under this Condition.

**11.0 WARRANTIES**

11.1 Subject as expressly provided in these Conditions, the remedies will be the sole and exhaustive remedies of the Purchaser in respect of any Defect. All warranties, conditions and other terms implied by law (whether as to quality, merchantability, description, fitness for purpose or otherwise) are excluded.

11.2 All descriptions, illustrations, technical specifications (other than the Specification) and advertising issued by the Vendor or contained in the Vendor's catalogues or brochures are for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

11.3 In relation to the Goods and Deliverables, the Vendor, or its related companies warrants that Goods manufactured shall :

- i) be free from defects in design, materials, and workmanship for a period of eighteen (18) months commencing from the date on which the Goods are delivered or deemed to be delivered or within twelve (12) months from commissioning, whichever is earlier ("Warranty Period");
- ii) be of satisfactory quality;
- iii) not and will not infringe the IPR of any third party

Where the Purchaser is dealing as a consumer, within the applicable law, the Vendor further gives to the Purchaser such implied warranties as cannot be excluded by law.

11.4 In relation to the Services, the Vendor, or its related companies warrants that:

- i) it will be performed with the best care, skill, and diligence in accordance with best practice in the Vendor's industry, profession, or trade; and
- ii) it be performed by appropriately qualified, trained, and experienced personnel and in sufficient number to ensure that Vendor's obligations are fulfilled in accordance with the Contract; and
- iii) all goods and materials supplied and used in the Services shall be free from defects in workmanship and design goods within six (6) calendar months after the Services have been performed.

**12.0 REMEDIES**

12.1 If it is proven to the Vendor's reasonable satisfaction that Goods manufactured by the Vendor or its related companies and/or Services provided by the Vendor are not free from defects due to faulty design, materials, and workmanship (except as revealed by examination as referred to in clause 12.2 of these terms) then the Vendor shall, at no cost and at its option, either:

- (i) repair such Goods;
- (ii) replace such Goods with the same or equivalent Goods at the point of delivery applicable to the contract under which such Goods were supplied to the Purchaser by the Vendor;

- (iii) re-perform the Services or payment of the cost of having the Services supplied again; or

12.2 This warranty does not apply, and the Vendor shall not be liable:

- (i) for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without the Vendor's prior written approval and the Vendor shall be indemnified against each loss, damage, liability, costs, charges, and expenses arising out of such claims;
- (ii) if the total price for the Goods and/or Services has not been paid in cleared funds by the due date for payment.
- (iii) in respect of any defect in the Goods and/or services provided arising after the expiry of the Warranty Period.
- (iv) for any alteration of the Goods without the Vendor's prior agreement
- (v) for installation or use of the Goods that is not in accordance with their ordinary conditions of use, the safety, and environmental laws applicable, the proper professional standards, or with the defined technical specifications; or
- (vi) for failure by the Purchaser to comply with the installation, use or maintenance instructions provided with the Goods; or
- (vii) for fair wear and tear of the Goods supplied; or
- (viii) if the Goods have not been properly handled, located, used, maintained, and stored; or
- (ix) if the Purchaser did not fulfill all of his/its contractual obligations

12.3 Any claim by the Purchaser which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified in writing to the Vendor with sufficient supporting documentations within :

- 12.3.1 Seven (7) days from the date of delivery or deemed delivery of the Goods where apparent (or should have been apparent) on reasonable examination; or
- 12.3.2 Seven (7) days after discovery of the defect or failure where the defect or failure was not apparent on reasonable inspection.

However , in no event shall the Purchaser be entitled to reject the Goods based on any defect or failure, except where the failure is such that the Goods delivered are of a fundamentally different nature than those which the Vendor had contracted to deliver.

12.4 If the Purchaser does not give due notification to the Vendor in accordance with Condition 12.3, the Vendor shall have no liability for any defect or failure or for any consequences resulting therefrom. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet a specification is notified to the Vendor in accordance with Condition 12.3, the non-conforming Goods (or part thereof) will be repaired or replaced at the Vendor's option. All travel, transport and shipment costs, assembly, and disassembly costs such as handling costs associated with the return of Goods shall be borne by the Purchaser.

12.5 When the Vendor has provided replacement Goods, the non-conforming Goods or parts thereof shall become the Vendor's property.

12.6 Any claim by the Purchaser that Services have not been undertaken or completed in accordance with the Contract, shall be notified to the Vendor within five (5) days after performance of the Services was completed. If the Purchaser does not give due



notification to the Vendor as aforesaid, the Vendor shall have no further liability to the Purchaser.

- 12.7 However if the Services have not been so re-performed within a reasonable time, despite a written warning from the Purchaser, the Purchaser shall be entitled to claim compensation for actual loss and expense sustained as a result of the Vendor's non-performance, which was foreseeable at the time of conclusion of the Contract and resulting from the usual course of events, up to a maximum cumulative amount of ten percent (10%) of the value of the unperformed Services but not for claims relating to loss of profit or goodwill, loss of production or revenue or any type of special indirect or consequential loss whatsoever.

### 13.0 RETURN OF GOODS

- 13.1 The Purchaser shall not be entitled to return any Goods for credit, which have been delivered in accordance with a Contract, unless expressly agreed by the Vendor in writing. If the Vendor agrees on a good will basis for the return of Goods, the Purchaser shall return the Goods subject to the following conditions:

13.1.1 The Purchaser must return the Goods carriage paid, at its expense and risk, to the place indicated by the Vendor;

13.1.2 The Goods must be returned in perfect condition, protected, and packed in its original packing;

13.1.3 A return does not exempt the Purchaser from its obligation to pay but gives rise to the establishment of a credit as detailed in Condition 13.2;

- 13.2 Upon receipt of the Goods, the Vendor shall, upon deduction of its own administration costs, issue a credit note to the Purchaser, such credit to be determined based on the price of the Goods in effect at the time of return or time of invoicing.

### 14.0 FORCE MAJEURE

- 14.1 The Vendor shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Vendor's obligations if the delay or failure was caused wholly or partly by a Force Majeure Event.

- 14.2 A "Force Majeure Event" means

14.2.1 Act of God, explosion, flood, tempest, fire, pandemic, epidemic, bad weather conditions or accident;

14.2.2 War or threat of war, sabotage, insurrection, civil disturbance, or requisition;

14.2.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, or local authority, including Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)) in Eschborn, Germany.

14.2.4 Import or export regulations or embargoes;

14.2.5 Interruption of traffic, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Vendor or of a third party);

14.2.6 Interruption of production or operation, difficulties in obtaining raw materials labour fuel parts or machinery;

14.2.7 Power failure or breakdown in machinery.

- 14.3 Upon the happening of any one of the events of a Force Majeure Event, the Vendor may at its option:

14.3.1 fully or partially suspend delivery/performance while such event or circumstances continue;

14.3.2 terminate any Contract so affected with immediate effect by written notice to the Purchaser and the Vendor shall not be liable for any loss or damage suffered by the Purchaser as a result thereof.

- 14.4 For the avoidance of doubt, nothing herein shall prevent the Vendor from invoicing the part of the order that is already in process.

### 15.0 INTELLECTUAL PROPERTY RIGHTS

15.1 "IPR" means all rights in and to all technology, techniques, application to register any of the rights, know-how, confidential information, patents, copyrights, designs, trade names, inventions, trade marks, discoveries and any other intellectual or industrial property right of any nature whatsoever subsisting in any part of the world.

15.2 All IPR belonging to a party prior to entry into this Contract shall remain vested in that party. Nothing in this Contract is intended to transfer any IPR from either party to the other.

15.3 The Vendor grants the Purchaser a royalty free, non-exclusive, non-transferable, perpetual (subject to compliance with the terms of the license) license to use all Intellectual Property Rights associated with the performance of Contract and any documentation provided pursuant to these terms for the installation, use, support, repair, or maintenance of the Goods and/or services by or on behalf of the Purchaser.

15.4 To the extent that software is included in the scope of the delivery, the Purchaser shall be granted a non-exclusive and non-transferable right to use the supplied software, including its documentation for the purposes of this Contract. The use of the software on more than one system is prohibited. The Purchaser may not reproduce, rework, translate the software or convert from the object code into the source code except to the extent that this happens on a transient basis as a necessary or incidental step to enable the Purchaser to make use of such software. The Purchaser shall not remove the manufacturer's information in particularly copyright notices or to change them without the prior express permission of the Vendor. All other rights to the software and the documentation, including the copies, remains with the Vendor or the owner of the software supplied. The granting of sub-licenses is not permissible.

15.5 If any claim is made against the Vendor that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark, or other industrial or intellectual property rights of any other person then the Vendor shall at its option either procure license rights for non-infringing goods for the Purchaser or supply non-infringing goods to the Purchaser. This shall be the sole and exclusive remedies to the Purchaser.

### 16.0 CONFIDENTIAL INFORMATION

16.1 Each of the parties hereto undertakes to the other to all commercial or technical information, know-how, specifications, inventions, processes or initiatives and any other information concerning the business, products, and services in any form or medium whether disclosed orally or in writing before or after the date of the Contract which is identified by any means as confidential at the time of such disclosure and/or would reasonably consider to be confidential.

16.2 Each of the parties will keep, and will procure to be kept, secret and confidential all Confidential Information disclosed by either party because of the relationship of the parties under the Contract, which either party will not disclose to any third parties unless required for the proper performance of the Contract (subject to Condition 16.3 or with the prior written consent of the other party).

16.3 The obligations of confidentiality will not extend to any information if the either party can show that it:



- 16.3.1. was in the public domain (other than due to a breach of this Condition 16); or
  - 16.3.2. was in its written records prior to entering into the Contract; or
  - 16.3.3. was independently disclosed to it by a third party entitled to disclose the same; or
  - 16.3.4. was required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 16.4 The Confidential Information may only be made available to those of each parties' employees, affiliates, agents, and subcontractors who need to know it to fulfil the Contract and who are under respective confidentially obligations.

**17.0 LIABILITY AND INDEMNITY**

- 17.1 The Purchaser will indemnify in full and on demand the Vendor against all liabilities, damages, losses (including economic loss such as loss of profit, loss of future revenue, loss of reputation and/or goodwill and loss of anticipated savings), costs and expenses (including reasonable legal (on a full indemnity basis) and other professional advisers' fees), suffered or incurred by the Vendor and/ or its affiliates arising out of or in connection with:
- 17.1.1 any acts or omissions of the Purchaser in connection with the use or application of the Goods and/or Services or otherwise;
  - 17.1.2 any injury, disease or death of persons or damage to property or the environment arising out of or in connection with
    - (i) the loading, unloading, storage, handling, purchase, use, sale, or disposal of the Goods or
    - (ii) any failure to disseminate site health and safety information;
  - 17.1.3 any infringement by the Purchaser of the Vendor's IPR (as defined in Condition 12.1).
- 17.2 Without prejudice to the limits of liability applicable under this Condition 17 or elsewhere in these Conditions, the Vendor's maximum and cumulative total liability (including any liability for acts and omissions of its employees agents and sub-contractors) in respect of any and all claims for defective performance, breach of contract, compensation, indemnity, tort, misrepresentation, negligence at law or equity and any other damages or losses which may arise in connection with its performance or non-performance under or in connection with the contract, shall not exceed 100% of the respective value.
- 17.3 Subject to Condition 17.4, the Vendor shall not be liable to the Purchaser (whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, under statute or otherwise) for any:
- 17.3.1 loss of profit; or
  - 17.3.2 loss of revenue, loss of production or loss of business; or
  - 17.3.3 loss of goodwill, loss of reputation or loss of opportunity; or
  - 17.3.4 loss of anticipated saving or loss of margin; or
  - 17.3.5 interruption losses; or
  - 17.3.6 wasted management, operational or other time;
  - 17.3.7 liability of the Purchaser to third parties;
- in each case, whether in contract, in tort, any other liability for direct or indirect indemnity or otherwise at law, for any special, indirect, incidental, or consequential, which arise out of or in connection with the performance, the suspension of

performance, the failure to perform or the termination of the Contract.

- 17.4 Nothing in this terms and conditions will apply over conflicting mandatory law such as the product liability act or in cases of gross negligence or willful misconduct or loss of life, bodily injury, or damage to the health of a person or loss of contract.
- 17.5 Where time of performance has been agreed by the Vendor to be of the essence of the Contract in deviation of Condition 8.3.1, and the Vendor fails to comply with its obligations in due time, so that the Purchaser may be entitled to compensation, or if the Purchaser becomes entitled for compensation arising out of the Vendor's non delivery of Goods as specified in Condition 8.3.2, the Vendor's liability limitations of this Condition 17 shall apply and the liability shall be limited to an amount of 0.25% for each full week of delay, in total to a maximum cumulative amount of 5.0%, of that portion of the contract price which is referable to such portion only of the Goods and/or Services the subject of the contract which cannot in consequence of such delay be effectively used by the Purchaser, which payment of liquidated damages shall be in full satisfaction of and the Vendor's total liability arising from such delay.
- 17.6 The remedies set out in Condition 12 are the Purchaser's sole and exclusive remedies for non-conformity of or defects in the Goods and the Vendor's liability for the same shall be limited in the manner specified in Condition 12.
- 17.7 If multiple events give rise substantially to the same loss, they shall be regarded as giving rise to only one claim under these Conditions.
- 17.8 Subject to Condition 12.3, no action or claim shall be brought by the Purchaser later than 12 months after the date it became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become aware, and in any event, no later than 12 months after the end of the Warranty Period.

**18.0 TERMINATION**

- 18.1 If the Purchaser commits a material breach of an obligation under the Contract, the Vendor may stop any Goods in transit, suspend further deliveries to the Purchaser, suspend the performance of any Services to the Purchaser, exercise its rights under these Conditions and the Contract and/or terminate the Contract with the Purchaser with immediate effect by written notice to the Purchaser. For the avoidance of doubt, a failure by the Purchaser to make any payment due to the Vendor under the Contract on or before the due date or the failure by the Purchaser to comply with its obligations will also constitute a material breach.
- 18.2 The Vendor shall not be liable for any loss or damage suffered by the Purchaser as a result thereof. In any event, the Vendor may invoice the part of the order that is already in process.
- 18.3 Without prejudice to any other right or remedy available to the Vendor, the Vendor shall be entitled to terminate the Contract by giving written notice to that effect to the Purchaser, if the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order, (being an individual or firm) becomes bankrupt, (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Purchaser, the Purchaser ceases or threatens to cease to carry on business; or the Vendor reasonably apprehends that any of the events mentioned herein is about to occur in relation to the Purchaser.
- 18.4 The Vendor will be entitle to suspend any further delivery/performance under the Contract without any liability to the Purchaser and if Goods have been delivered and/or Services performed but not paid for the price for such and undelivered Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.



## 19.0 EXPORT CONTROL

- 19.1 The Purchaser acknowledges that the Goods and Services may be subject to local and/or foreign statutory provisions and regulations regarding export control in fulfilment of the Vendor's quotation and/or Order Confirmation ("Contract"). The Vendor reserves the right to cancel the offer if the exports should be prohibited according to the aforementioned laws, without any compensation. The Vendor also reserve the right to cancel the Contract after award or signing of the Contract or during the life cycle of the project, should export be prohibited following the award or signing of the Contract according to the aforementioned laws, without any compensation.
- 19.2 Therefore, the Purchaser commits to inform the Vendor :
- about the project ; and
  - the use of the Goods and/or Services ; and
  - the kind of applications and implementations ; and
  - the name ; and
  - the destination of the end customer.

## 20.0 GOVERNING LAW AND DISPUTE RESOLUTION

### 20.1 Governing Law

- 20.1.1 These terms and conditions are governed by and construed to the substantive laws of the country in which the Vendor has its registered office, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and the applicable law rules of that country on the conflict-of-laws.
- 20.1.2 At the Vendor's option, the place of jurisdiction shall be either the court competent for the place where the Vendor has been incorporated or the court competent according to the applicable law.

### 20.2 Dispute Resolution

- 20.2.1 If there is a dispute between the parties arising out of, or in connection with, this Agreement, neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:
- the party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute (Dispute Notice) which:
    - states that it is a Dispute Notice under this clause;
    - identifies the dispute; and
    - states the alleged relevant facts that are relied on;
  - Within five (5) Business Days of a Dispute Notice being received by a party, a senior representative (such as the CEO) of each party must meet and will endeavour, in good faith, to:
    - resolve the whole of the dispute or as much of the dispute as possible; and
    - to the extent the dispute is not wholly resolved, decide what process will be used to resolve the dispute or the remaining matters that are not agreed.

20.2.2 Any agreement reached at a meeting pursuant to this clause must be in writing and signed by both parties.

20.2.3 If a dispute has not been resolved within thirty (30) Business Days after the relevant Notice of Dispute was given, then either party may (subject to any agreement to the contrary) submit to arbitration to have the dispute

determined, whether or not any negotiation process has commenced or concluded.

20.2.4 A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.

20.2.5 The place of arbitration shall be Vendor's Country of residence. The arbitration shall be conducted in accordance with either by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the SIAC for the time being in force for Singapore or the Rules of Arbitration of the International Chamber of Commerce for the time being in force for Malaysia and Australia, which the rules are deemed to be incorporated by reference in this Condition. The language of the arbitration shall be English. The award of the Tribunal shall be final and binding upon the parties.

20.2.6 Pending resolution of the dispute, this Contract will remain in full effect without prejudicing the parties' respective rights and remedies.

## 21.0 GENERAL

- 21.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 21.2 No waiver by the Vendor of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 21.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 21.4 Each of the parties will give notice to the other of the change or acquisition of any postal or email address or telephone, fax, or similar number at the earliest possible opportunity but in any event within forty - eight (48) hours of such change or acquisition.
- 21.5 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any representation, misrepresentation, or statement (whether made by the other party or any other person) which is not expressly set out in the Contract
- 21.6 Any notice required or permitted to be given by either party to the other party under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

(Edition March 2022)