

**DEXCREST LTD**

**TERMS AND CONDITIONS OF PURCHASE**

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## 1 DEFINITIONS

**“Affiliate”** shall mean any legal entity which controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to “control” another if it owns directly or indirectly at least fifty percent (50%) of (i) the shares entitled to vote at a general election of directors of such other entity, or (ii) the voting interest in such other entity if such entity does not have either shares or directors.

**“Buyer”** shall mean Dexcrest Limited.

**“Buyer Group”** shall mean each member of Buyer, and in respect of each such member, its officers directors, employees, agents, consultants, invitees, parent, assignees, Affiliates, subsidiaries and each of their respective officers, directors, employees, consultants, contractors, invitees, agents, representatives, carriers, supplier’s agents, freight forwarders, successors, heirs, and insurers of each such entity at all tiers.

**“Buyer Information”** shall have the meaning as set forth in Article 19.

**“Buyer Representative”** shall have the meaning as set forth in Article 29.

**“Change”** shall have the meaning as set forth in Article 15.

**“Claim”** shall mean any claim, liability, loss, demand, damages, Lien, cause of action of any kind, obligation, costs, royalty, fees, assessments, penalties, fines, judgment, interest and award (including recoverable legal counsel fees and costs of litigation of the Person asserting the Claim), whether arising by law, contract, tort, voluntary settlement or otherwise.

**“Defects Liability Period”** shall have the meaning as set forth in Article 8.3.

**“Delivery”** means the transfer of physical possession of the Goods to the Buyer in accordance with the shipping terms set out in the Purchase Order. “Deliver” and “Delivered” shall be construed accordingly.

**“Delivery Schedule”** means the schedule contained in the Purchase Order setting out the Delivery dates for the Goods.

**“Effective Date”** shall be the date set out in the Purchase Order.

**“Employee”** shall mean any individual who is employed on the direct payroll of a party, and works under the direct supervision and control of such party. It shall also include any temporary, contract or agency labour, crewmen, seconded, or other individual employed or obtained under contract by a party who work under the direct supervision and control of the employing party.

**“Facility”** shall mean the assemblage of building, process and utility equipment and other equipment and materials to be procured, fabricated and constructed at the Suppliers Works, to be installed, pre-commissioned, commissioned, at the jobsite.

**“Force Majeure”** shall have the meaning as set forth in Article 5.

**“Goods”** shall mean the goods, work and/or services described in and furnished under this Purchase Order.

**"Indemnitees"** shall mean Buyer Group.

**"Intellectual Property"** shall mean all domestic and foreign industrial and intellectual rights to copyright, patents, registered and unregistered trademarks, trade names, registered and unregistered designs, trade secrets, circuit layouts, inventions, discoveries, innovations, prototypes, manufacturing processes, improvements, technical data, monopoly rights, and all other rights conferred under statute, common law or equity in UK.

**"Lien"** shall mean any and all claims of any kind provided for under law against any real or personal property interest related to the Goods or Supplier's Work as security for payment of a debt or a duty under a law, with the right by a lien holder to take, hold or sell the subject property should such payment or duty not be satisfied.

**"Notice"** shall mean a written communication from Supplier or Buyer to the other party or parties required under this Purchase Order and as provided for in accordance with Article 31 for the purpose of formally informing a party of a matter arising or specified under this Purchase Order. "Notify", "Notified" and "Notification" shall be construed accordingly.

**"Onsite Services"** shall have the meaning as set forth in "General Conditions for Onsite Services" if applicable.

**"Person"** shall mean an individual, corporation, company, state, statutory corporation, government entity or any other legal entity.

**"Personnel"** shall mean all of a party's Employees, Employees of a party's contractors, and other individuals of a party for whom a party is legally responsible under the context of the specific provision.

**"Project IP"** means all Intellectual Property arising or created by Supplier, its Subcontractors or Vendors, agents or any of their employees in performing the Supplier's Work and its other obligations under this Purchase Order, including Intellectual Property subsisting in or in relation to license technology provider information.

**"Purchase Price"** shall mean the amount payable to Supplier as determined in accordance with the Purchase Order.

**"Purchase Order"** shall mean these Terms and Conditions of Purchase, the Purchase Order, any special terms and conditions, and all attachments, exhibits and documents expressly listed in the Purchase Order or referenced in such listed documents.

**"Required Standard of Care"** shall mean the professional and ethical standard to be used by Supplier in carrying out all of the professional design, procurement, manufacturing, fabrication and transportation rendered under this Purchase Order as would be required by an experienced international supplier/vendor performing work of similar complexity and magnitude.

**"Subcontractor"** shall mean any person, agent, firm, partnership, corporation or combination engaged by Supplier under a contract, subcontract or other form of contract agreement, at any tier, for the performance of Supplier's Work under this Purchase Order.

**"Supplier"** shall mean the party identified as "Supplier" on the face of the Purchase Order and its permitted successors and assigns.

“**Supplier Group**” shall mean Supplier, Subcontractors, Vendors, parent, Affiliates, subsidiaries and directors and employees of each and any of them.

“**Supplier’s Representative**” shall have the meaning as set forth in Article 29.

“**Supplier’s Work**” shall mean any and all Personnel to be provided, work to be performed, including the Onsite Services, Supplier’s tools, equipment, facilities to be used, Goods to be designed, or engineered, procured, supplied, fabricated, transported, and other performance requirements in the Purchase Order which are performed by or required of Supplier in executing or preparing to execute its duties and obligations under the Purchase Order.

“**Supplier’s Work Area**” means any place where any Supplier’s Work under this Purchase Order is to be performed including without limitation, a) Supplier’s, Supplier Group’s, or its or their Subcontractors’ or Vendors’ offices or other facilities, b) offices or other facilities of Buyer.

“**Vendor**” shall mean any person, firm, partnership, corporation or combination engaged by Supplier under a purchase order at any tier for the supply of goods and materials for the Supplier’s Work under this Purchase Order.

- 1.1 Where the context so requires, use of the singular includes the plural and vice-versa.
- 1.2 All headings and numbering in this Purchase Order are for convenience of reference only and shall in no way be used in interpretation of any of the provisions in this Purchase Order

## 2 **COMPLETE AGREEMENT**

- 2.1 Unless otherwise agreed in writing, this Purchase Order constitutes the entire agreement with respect to the Goods pertaining to this Purchase Order (including any electronic commerce transactions between the parties or any of them), superseding and expressly excluding all quotations, proposals, communications, negotiations and counter-proposals of Supplier unless if specifically referenced and incorporated herein. Any different or additional terms and conditions proposed by Supplier; (a) contained on any of Supplier's quotations, proposals, forms, invoices, or delivery documents, (b) in Supplier's acceptance, (c) during Supplier's performance of this Purchase Order, or (d) on Supplier’s internet site to which agreement by Buyer or Owner in any manner, whether through a online electronic agreement, deemed implied by site use, or otherwise, is required in any manner during performance of this Purchase Order, shall be null and void and of no legal effect on Supplier or Buyer.
- 2.2 No amendment to this Purchase Order shall be effective unless it is in writing and signed by the parties. These terms and conditions shall not be supplemented unless specifically agreed to in writing by the parties. Buyer’s signature on any invoice or other form or document accompanying Delivery of the Goods shall constitute acknowledgment of receipt of said Goods only, and shall not constitute Buyer’s assent to any terms and conditions contained thereon.
- 2.3 Supplier shall perform Supplier’s Work in accordance, and compliance, with; (a) these terms and conditions, and the requirement of all other attachments which form the Purchase Order, and (b) any direction or instruction of the Buyer given pursuant to the Purchase Order.
- 2.4 If any provision or portion of this Purchase Order shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such provision or portion of this Purchase Order shall be deemed omitted and the remaining provisions and portions shall

remain in full force and effect. In such event, the parties shall use their best endeavours to replace such invalid provision by another appropriate valid provision as close as possible to the original provision in meaning and effect.

- 2.5 The Indemnitees' and Supplier Group's rights, liabilities, responsibilities and remedies with respect to the Supplier's Work shall be exclusively those expressly set forth in this Purchase Order. To the extent permitted by law, any statutory remedies which are inconsistent with this Purchase Order are waived.
- 2.6 Supplier has been given the opportunity to ascertain the nature and extent of the risk relating to the performance of its obligations under the Purchase Order and shall be deemed to have ascertained the nature and scope of such risks, contracts and agreements and to have satisfied itself as to the effect or potential effect that the performance and observance of obligations by the parties to such contracts and agreements thereunder (or failure to perform and observe those obligations) may have on Supplier's rights and obligations under the Purchase Order. Supplier shall be deemed to have included all contingencies on the Purchase Order Price and Delivery Schedule as it requires in respect of such matters and shall be deemed to have gathered all information necessary for it to perform its obligations under the Purchase Order.

### 3 **CONFLICTING REQUIREMENTS**

Anything that may be called for in the specifications and not shown on the drawings, or shown on the drawings and not called for in the specifications, shall be of like effect as if called for and shown in both. Upon Supplier's discovery that any provision of this Purchase Order (including the specifications, drawings or other documents) may contain any ambiguity, error, omission or conflict with any other provision contained herein, it is Supplier's responsibility to give Buyer immediate written notice of such for resolution by Buyer and Supplier shall comply with the determination of Buyer in such matter. If Supplier proceeds with performance after discovery without notification to and resolution by Buyer, then Supplier assumes the risk of all resulting expenses, costs and consequences incurred.

### 4 **INSPECTION, EXPEDITING, DOCUMENTATION & CONDEMNATION**

- 4.1 Supplier is fully responsible for the timely, proper and accurate performance of this Purchase Order, including, to the extent applicable, the design, fabrication, manufacture, production, construction, and Delivery of the Goods in accordance with the Delivery Schedule, and compliance with all terms, conditions, specifications, drawings, and other written requirements of Buyer.
- 4.2 Buyer and its designee(s) have the right to inspect and expedite the Goods at any stage of design, fabrication, manufacture, storage, transit, and upon Delivery to assure compliance herewith. Supplier shall permit Buyer and its designee(s) to visit all Supplier's Work Areas and to inspect any and all of the Supplier's Work and materials and equipment comprising the Goods at any time and the Supplier and each such Subcontractor or Vendor shall provide safe and proper facilities therefor. Supplier shall require each of its Subcontractors and Vendors to agree to similar provisions. Supplier shall at all times during working hours keep a competent representative, fluent in written and spoken English, in the immediate vicinity of the Supplier's Work Area to receive communications from Buyer and supervise the performance of Supplier's Work.
- 4.3 Supplier shall provide at its expense all necessary access, equipment, fuel, labour, tools and instruments to enable Buyer to carry out of such inspection and testing.

- 4.4 If any Goods or part of the Supplier's Work fails to pass an inspection and/or test, then such inspection and/or test shall be repeated at Supplier cost until it complies with the terms and conditions of the Purchase Order.
- 4.5 In the event that Buyer determines that a Supplier's Work Area is unsafe, Buyer may require Supplier to stop the part of the Supplier's Work affected until the unsafe condition is corrected.
- 4.6 Supplier will provide Buyer with all data, drawings, specifications, test results, quality documentation, schedules and other documents and information relating to the Goods. Notwithstanding any specifications, data, requirements or other information provided by Buyer, it is Supplier's responsibility to request any additional documentation or information from Buyer in a timely manner which Supplier determines it may need for performance of this Purchase Order, and Buyer will respond to the extent possible in a timely manner. Supplier will comply with Buyer's inspection and testing requirements, plans or procedures set forth in this Purchase Order and with other such instructions and directions as may be provided by the Buyer Representative. No inspection, waiving of inspection, review, approval, acceptance or provision of any instructions, direction, information, drawings or data hereunder by or from Buyer, or lack of such from Buyer, will constitute a waiver of, or relieve or discharge Supplier from, either expressly or by implication, Supplier's responsibilities and obligations under this Purchase Order.
- 4.7 If Supplier is required by Buyer to uncover any part of the Goods for inspection, the cost of uncovering and subsequent covering of any part not specifically requiring inspection under the Purchase Order shall be borne by Buyer unless the part so uncovered is not in compliance with the requirements of the provisions of such Purchase Order in which case such costs shall be borne by the Supplier.
- 4.8 In the event Buyer, incurs additional costs arising out of changes in Supplier design documentation Buyer may backcharge Supplier for all such costs.
- 4.9 Manufacture of the Goods shall be undertaken only at a manufacturing facility which has been approved by Buyer.

## 5 **TIME OF PERFORMANCE AND FORCE MAJEURE**

- 5.1 **Time of Performance** - Supplier acknowledges that the time required for performance and the Delivery Schedule specified herein are critical, material and of the essence to performance of this Purchase Order for the avoidance of substantial loss to Buyer. Any failure by Supplier to meet the Delivery Schedule which is not expressly excused under the terms of the Purchase Order (and Supplier has wholly complied with the provisions relating thereto) or without Buyer's written consent may constitute a breach of contract or default hereunder.
- 5.2 Supplier shall promptly notify Buyer of any actual or anticipated delay in Delivery and take all reasonable steps to avoid or end delays without additional cost to Buyer. Upon Buyer's request, Supplier shall submit a plan, subject to Buyer's approval, for mitigating the delay to achieve the Purchase Order Delivery Schedule.
- 5.3 Buyer, at its option, may require or approve in writing a change in the Delivery Schedule or progress requirements as established in this Purchase Order in response to Supplier's notice. Subject to Article 5.4, if Supplier fails to obtain the approval of Buyer for any such change to the Delivery Schedule, and Supplier fails for any reason to meet the Delivery Schedule, progress requirements, or it becomes apparent that Supplier will not for any reason meet the Delivery

Schedule or progress milestones, Buyer may in such case terminate the Purchase Order for default pursuant to Article 25 and take any other action as Buyer may consider necessary or desirable under the circumstances to avoid or minimise losses. Buyer has the right to backcharge Supplier for all direct costs and expenses of any nature resulting from Supplier's unexcused non-performance, delays or failure to meet the required Delivery Schedule.

- 5.4 **Force Majeure** - Subject to the following terms, any failure by a party to comply with this Purchase Order (except for the payment of money) shall be excused if and for so long as compliance is prevented by Force Majeure, which shall mean:

"**Force Majeure**" means any exceptional act, circumstance or event beyond the control of the parties arising after the Effective Date, limited to the following:- earthquakes, named cyclones, fires, storms, tidal waves or other acts of God, terrorism, riots, national or state-wide or industry-wide strikes, picketing, boycotts, insurrections, rebellions, civil disturbances, war and dispositions or orders of governmental authority, whether such authority be actual or assumed. Force Majeure expressly excludes adverse weather conditions, default or failure due to Supplier, quarantine deficiencies, power or transportation problems, riot, commotion, disorder, strike or lock-out conducted at any Supplier's Work Area by Supplier's Personnel, Subcontractors, Vendors or any representatives, or any other persons engaged in carrying out, or assisting Supplier in carrying out the Supplier's Work, whether in privity of contract with Supplier or not, unless the riot, commotion, disorder, strike or lock-out was part of a national or state-wide or industry-wide labour strike or lock-out. In such event, the party so prevented from performing shall give written notice to the other party by the fastest means of communication available, specifying the circumstances which such party believes constitutes Force Majeure and the estimated duration thereof. Such party shall make all reasonable efforts to mitigate the consequences of such Force Majeure.

- 5.5 If a Force Majeure event causes delay in the performance of the Supplier's Work or in the Delivery Schedule, Supplier shall demonstrate, in writing providing all supporting documentation, such impact on the Delivery Schedule for Buyer's due consideration. Buyer may extend the Delivery Schedule pursuant to Article 15 (subject to compliance with the provisions thereof) or, without penalty to Buyer, cancel this Purchase Order under Article 14.
- 5.6 Supplier shall not be excused from performance hereunder as a result of Force Majeure where alternate sources of supply of Goods are available. Supplier shall not be entitled to additional compensation arising out of a Force Majeure event delay, and Buyer has no obligation to make payment to Supplier for Supplier's Work which Supplier is unable to perform due to an event of Force Majeure.
- 5.7 Notwithstanding the provisions of this Article 5, the Buyer may at its discretion grant an extension to the time for performance and/or a change to the Delivery Schedule as it deems to be reasonable in the circumstances.

## 6 **TITLE, SHIPMENT, AND RISK OF LOSS.**

- 6.1 **Title** - Unless expressly stated otherwise in the Purchase Order, title to the Goods, all material, inventory and Supplier's Work in progress, design data, other documentation and all contractual rights thereto will vest in Buyer upon the earlier of:

- 6.1.1. Delivery of the Goods to Buyer;
- 6.1.2. as payments are made by Buyer; or



- 6.1.3. when Goods are identified as being for this Purchase Order.
  - 6.1.4. Where Goods are identified as being for this Purchase Order, upon identification, Supplier will take action to segregate the Goods and clearly label them as property of Buyer as far as reasonably practical.
  - 6.1.5. The foregoing timing of passage of title shall not alter Supplier's obligations related to risk of loss, shipping, export packing, export clearance and taxes where applicable as set out elsewhere in this Purchase Order.
  - 6.1.6. Supplier warrants free and clear title to the Goods, free and clear from any and all Liens, claims, restrictions, reservations, security interests and encumbrances.
- 6.2 **Shipping** - If applicable, Supplier is responsible for properly and carefully preparing, labelling, packing and shipping the Goods, at its expense unless otherwise specified herein, and providing all required shipping documentation. In the shipping process, Supplier will comply with all laws and regulations applicable to the Goods in addition to any requirements or instructions of Buyer as may be specified in this Purchase Order or otherwise in writing pertaining thereto. Supplier shall not ship the Goods without either Buyer's final inspection or a written waiver of inspection/Notification of release from Buyer. Violation of this requirement may at Buyer sole discretion constitute a rejection of the Goods, with subsequent return of Goods or other action at Supplier's cost.
- 6.3 **Risk of Loss and Damage** - Irrespective of vesting of title and any other provision herein to the contrary, Supplier will bear the risk of loss and damage of the Goods, and will insure or self-insure the Goods in its care, custody and control, including any material, equipment, goods for incorporation into the Goods, free issue material supplied to Supplier for incorporation into the Goods or Supplier's Work in conjunction with the Goods in accordance with the provisions of this Purchase Order, until the Goods are Delivered unless stated otherwise in the Purchase Order.
- 6.4 Should any loss or damage occur to the Goods prior to transfer of risk of loss and damage, Supplier shall either, at Buyer's option, immediately replace such Goods with identical Goods in order to meet its performance obligations hereunder at Supplier cost, or reimburse Buyer for the loss, including any necessary additional expenses and costs which may be incurred resulting from such loss.
- 6.5 Upon request, Supplier shall provide insurance coverage for the full replacement cost of the Goods while Supplier has risk of loss and damage responsibility. If such request is made after Effective Date, Supplier shall be entitled to a Change in accordance with Article 15. Supplier shall cause such insurance to contain the endorsements set out in Article 17.3.

## 7 **CONFORMING GOODS AND ACCEPTANCE**

- 7.1 The Goods will conform to the description, data, drawings, plans, specifications, performance or operation criteria (if applicable), any sample, and other requirements of Buyer provided to Supplier. The Goods will meet the standards set forth in Article 8. Supplier will not make any modification, change, or substitution, in whole or in part, without the prior written approval of Buyer. If required by Buyer, Supplier will supply satisfactory evidence of the origin, composition, manufacture, kind and quality of the Goods. Prior to shipment, Supplier will carefully inspect, and if applicable test, the Goods for conformance to the requirements of this Purchase Order. Notwithstanding any inspection or test, Buyer may, before, during or after Delivery condemn any

part of the Goods provided by Supplier where such Goods are unsound or defective or fail in any way to conform with the requirements of the Purchase Order.

- 7.2 Supplier will remove any rejected Goods at Supplier's expense within ten (10) working days after notice. Supplier shall be responsible for all costs involved in the removal and replacement of such Goods, and the repair and replacement of any other equipment and materials of work forming part of the Facility necessarily damaged by such removal and replacement. If any Goods are rejected by Buyer, Supplier will not ship any replacement Goods without the prior written approval of and in accordance with the instructions provided by Buyer.
- 7.3 If the words "or equal" are used in this Purchase Order, proposed equals must be approved in writing in advance by Buyer. Supplier will not ship or deliver more or less than the quantity specified without the prior written approval of Buyer.
- 7.4 If Goods received are in an incorrect quantity or are damaged, defective, non-conforming, or rejected, Supplier shall either, at Buyer's option, immediately replace such Goods with identical Goods in order to meet its performance obligations hereunder, or reimburse Buyer for the loss, including any necessary additional expenses and costs which may be incurred resulting from such loss.

## 8 **WARRANTY**

- 8.1 **Warranties** - Irrespective of whether designs, data or information have been provided, reviewed or approved by Buyer, Supplier warrants to Buyer that the Goods furnished and Supplier's Work performed under this Purchase Order and each portion of the Goods which is altered, repaired or replaced under this warranty or Article 7 of this Purchase Order, whether manufactured, fabricated, or otherwise produced or provided by Supplier or others, will be:
- 8.1.1. new, and of the latest design or model conforming to Buyer requirements;
  - 8.1.2. conform to the descriptions, data, drawings, plans, specifications, any performance criteria, sample if any, and other requirements specified herein or provided by Buyer to Supplier;
  - 8.1.3. be of satisfactory quality;
  - 8.1.4. if specified in this Purchase Order, fit for the purpose intended;
  - 8.1.5. conform with all applicable laws, ordinances, codes and regulations;
  - 8.1.6. be of the highest quality;
  - 8.1.7. free from defects in design, materials, performance, operation, and workmanship;
  - 8.1.8. in conformance with all applicable safety, health and environmental regulations; and
  - 8.1.9. comply with the relevant statutory and other authorities, and when applicable, with all relevant legislation, codes and standard
- 8.2 All Supplier's Work on the Goods or otherwise in the performance of this Purchase Order will be done in a skilled manner, of the highest quality of workmanship, and in accordance with the Required Standard of Care. Supplier further warrants that the Goods will be of sufficient size and

capacity, and of correct materials, to properly perform any functions, purpose or purposes specified in this Purchase Order.

- 8.3 Defects Liability Period - The Goods will be warranted hereunder for a period of 24 (Twenty-Four) months after the Goods are delivered.**
- 8.4 **Remedies** - In addition to any other rights or remedies provided in law, equity, or under this Purchase Order, if, prior to the expiry of the Defects Liability Period, Buyer discovers any defect, error, non-compliance, omission, operational or performance deficiency, or breach of the warranty set forth in Article 8, upon written notice or telephonic notice confirmed in writing from Buyer, Supplier shall, as promptly as possible, but in no event later than 3 days after receipt of such notice, propose a method to achieve a satisfactory correction of the defect with the least loss of operating time. Upon approval of the method, Supplier will promptly repair, re-perform, or replace, working overtime or shift work, as required, all at Supplier's cost, the Goods in question (including bearing any necessary removal, reinstallation, access, shipping, labour and other direct costs resulting therefrom) in accordance with Buyer's instructions.
- 8.5 Unless Buyer specifies otherwise, such corrective work shall be executed on a basis that minimises disruption to the Facility, work by others, operating schedules, and the procurement and shipment of materials, equipment or other goods using the fastest means available. To the extent the defective item has been installed in the Facility, such repairs as may be necessary shall be carried out in-situ, unless Buyer expressly agrees otherwise.
- 8.6 If Supplier either fails to propose a satisfactory correction of the defects within 3 days of notice of the defect or does not begin commencing repairs and make continual efforts to complete the repair, reperformance, or replacement of the defective Goods within 7 (seven) days of notice of the defect, Buyer may, solely at its discretion, engage another contractor to repair, reperform, or replace the Goods and shall charge all related direct costs (including labour and access costs) to Supplier without voiding the warranties herein, and without Buyer waiving any other rights or remedies Buyer may have under this Purchase Order. If Buyer determines, for any reason, that the remedies provided for herein are not adequate or feasible, Buyer may elect to have such Goods removed at Supplier's expense and any portion of the Purchase Price paid for those Goods refunded in full. With respect to the above "commencing repairs" means acknowledging the defect and submitting a plan to Buyer for the repair, replacement, reperformance, or replacement of the defective Goods. In the event that Buyer determines that Supplier's plan is not adequate, Buyer may elect to have the defect corrected by others and backcharge the Supplier for such.
- 8.7 Any corrective work may be performed by Buyer, and/or by a third party on its behalf, at Supplier's expense without authorisation by Supplier in cases where it would be unreasonable or impractical for Buyer to give to Supplier an opportunity to perform the corrective work and Buyer has notified Supplier accordingly. Any corrective work performed by Buyer or a third party shall be deemed to be effected and made by Supplier without voiding the warranties herein, and without Buyer waiving any other rights or remedies Owner may have under this Purchase Order. Any corrective work performed by or for and on behalf of Buyer may be inspected by Supplier until forty-five (45) days after notification to Supplier that such corrective work has been completed.
- 8.8 If, after the Goods have been put into beneficial service, any item of Goods or part thereof is altered, repaired or replaced pursuant to Article 8, the Defects Liability Period shall be extended for a period of 12 (twelve) months commencing on the date of alteration, repair or replacement but in

no event shall all such extensions to the Defects Liability Period exceed an additional 12 (twelve) months.

## 9 **INDEPENDENT CONTRACTOR**

9.1 Supplier is acting in all respects as an independent contractor under this Purchase Order. None of Supplier's Personnel shall be considered to be Employees of Buyer. Supplier shall not be regarded as a joint venturer or partner of Buyer. As an independent contractor, Supplier assumes all legal and contractual obligations arising out of the performance of the Supplier's Work, no matter to whom such obligations may be owing, whether to Supplier's own Personnel, agents, representatives or Subcontractors or Vendors.

## 10 **LANGUAGE, GOVERNING LAW, COMPLIANCE WITH LAW**

10.1 **Language** - All documents, drawings, communications and correspondence shall be in the English language.

10.2 **Governing Law** - This Purchase Order, including Article 10, shall be governed, construed, interpreted, enforced and the relationship of the parties determined in accordance with the laws of England without regard to its choice of law rules.

10.3 **Compliance with Law.** In its performance under this Purchase Order, Supplier agrees to comply with all applicable laws, treaties, ordinances, directives, orders, codes and regulations, and specifically with, but not limited to, any import, export, quarantine, health, safety, security and environmental laws, treaties, ordinances, codes and regulations of any jurisdiction (whether international, country, region, state, province, city, or local and those of UK) (including all applicable permits, concessions and clearances) where this Purchase Order may be performed. NOTHING CONTAINED IN THIS PARAGRAPH WILL OBLIGATE SUPPLIER, BUYER, OR ANY PERSON ACTING ON THEIR BEHALF, TO ENGAGE IN ANY ACTION OR OMISSION TO ACT WHICH WOULD BE PROHIBITED BY OR PENALISED UNDER THE LAWS OR REGULATIONS OF ENGLAND.

10.4 SUPPLIER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY LOSS, COST (INCLUDING ATTORNEY FEES AND COURT COSTS), CIVIL OR OTHER FINES AND PENALTIES, DAMAGE OR LIABILITY, ARISING FROM OR ALLEGED TO ARISE FROM ANY VIOLATION, ALLEGED VIOLATION, OR FAILURE TO COMPLY WITH, THE TERMS OF THIS ARTICLE 10 BY SUPPLIER OR ANY OF ITS SUBCONTRACTOR'S OR VENDORS OR ANY OTHER PERSON FOR WHOM SUPPLIER MAY BE RESPONSIBLE.

## 11 **HAZARDOUS AND DANGEROUS GOODS**

11.1 Supplier is solely responsible for examining, inspecting, identifying, and determining whether or not any Goods provided hereunder (in whole or in part) constitute hazardous or dangerous goods, and to notify Buyer of such prior to shipment of the Goods. Unless expressly exempted by Buyer in writing, Supplier is responsible to determine if a Material Safety Data Sheet (MSDS) is required for the Goods, and if so, to supply with the Goods all such required MSDS documentation and information. In the event any Goods or any portion thereof are so identified by Supplier, Supplier shall ensure that such Goods are properly handled, labelled, documented, packaged, transported, and shipped in full compliance with any applicable legal requirements, to the point of Delivery to Buyer. It is the sole responsibility of the Supplier to ensure the compliance by Subcontractors and Vendors with the provisions of this paragraph, including but not limited to timely, complete and

proper submittal of all required documents and information. Supplier shall inform Buyer in writing prior to shipment of any precautionary measures that need to be taken with the Goods.

- 11.2 Supplier agrees to release, defend, indemnify and hold harmless Indemnitees from and against any loss, cost (including attorney fees and court costs), civil or other fines and penalties, damage or liability, arising from or alleged to arise from any violation, alleged violation, or failure to comply with, the terms of this Article 11 by Supplier or any of its Subcontractors or Vendors, or any other person for whom supplier may be responsible hereunder.

## 12 **IMPORT AND EXPORT COMPLIANCE AND IMPORT EXPORT OBLIGATIONS**

- 12.1 Supplier shall be responsible for obtaining all permits and licenses and clearing customs for such items and shall comply with the instructions provided in shipping and import instructions.
- 12.2 If the Exemption for the items includes the obligation to re-export certain of Supplier's equipment, goods, and surplus Goods, Supplier shall diligently comply with such obligation. All temporary import bonds for Supplier's goods, equipment and surplus Goods shall be for the Supplier's account. In the event any deposits which are refundable are paid by Buyer on behalf of Supplier for temporary imports, Supplier shall repay such to Buyer.
- 12.3 Supplier shall obtain all required export licenses from the country of export and/or country of origin of the Goods (including documentation and technical data) that may be exported by Supplier as part of the Supplier's Work.

## 13 **ASSIGNMENT AND NOTICE OF CHANGES**

- 13.1 Buyer may assign this Purchase Order at any time to an Affiliate of Buyer.
- 13.2 Supplier may not assign any of its rights and obligations under this Purchase Order without the prior written consent of Buyer.
- 13.3 This Purchase Order will be binding upon and will inure to the benefit of the successors and assigns of Buyer and Owner.
- 13.4 Supplier will give Buyer prompt written notice of any material change in its financial standing (including any prospective bankruptcy, reorganisation, insolvency, liquidation, dissolution or assignment for the benefit of any creditor), ownership or organisation or any other operational change which may affect its performance under the Purchase Order. In the event of any such material change which Buyer deems to be adverse to Buyer's goals with regard to this Purchase Order, Buyer reserves the right to terminate this Purchase Order pursuant to Article 25.

## 14 **CANCELLATION FOR CONVENIENCE**

- 14.1 Buyer has the right at any time to cancel all or any portion of this Purchase Order by written notice. In such event, no cancellation fee, charge or payment will be owed by Buyer to Supplier, and Supplier will be owed only for the direct costs of any completed and satisfactory performance to the date of cancellation, and, if any portion of the Goods will be Delivered to Buyer subsequent to Buyer's notice of cancellation, Supplier shall also be reimbursed any direct and necessary costs incurred to preserve, protect, store, and ship such Goods to the point of Delivery.

- 14.2 At the time of any cancellation by Buyer, Supplier will immediately discontinue all Supplier's Work, will not place additional purchase orders or other contracts or make any other commitment, and will cancel forthwith any existing purchase orders or other contracts and commitments on the best possible terms. The Supplier must use all its best efforts to mitigate any loss it may suffer as a result of the operations of this Article 14.
- 14.3 Supplier will preserve and protect the Goods on hand, Supplier's Work in progress, supplier data, and completed Supplier's Work, both in its own and in Subcontractor's and Vendor's facilities, in accordance with Buyer's instructions. Buyer has the right to enter Supplier's Work Area during regular business hours and take possession of any such Goods (and any related drawings, records, materials to be incorporated into the Goods, and equipment, for which Owner has paid Supplier or provided to Supplier) at which time title of such Goods shall pass to Buyer (if not already passed).
- 14.4 Buyer shall be only obligated to pay Supplier for any unpaid portion of the Goods of which Buyer takes possession. Supplier will be advised as to the disposition of such Goods. Supplier shall not be entitled to compensation for anticipated profit on Supplier's Work not completed. Buyer has no obligation to compensate Supplier for any additional amounts other than as set out in this Article 14 whether predicated on contract, tort, or on any other legal or equitable theory.

## 15 **CHANGES IN THE GOODS**

- 15.1 Supplier will make no modification, change, substitution, or revision to the requirements of this Purchase Order without Buyer's prior written consent.
- 15.2 Buyer has the right to make any modification, addition, deletion, amendment, omission or other change to the Goods or Supplier's Work, in the manner or time of performance of the Purchase Order, or otherwise, by written notice to Supplier ("Changes").
- 15.3 If Buyer issues any directive that is not identified as a Change but which Supplier considers to be a Change, Supplier shall so notify Buyer in writing within five (5) days after receipt of such directive. If Buyer originally identifies the directive as a Change, or if Supplier gives such timely notice and Buyer agrees that such directive is a Change, Supplier shall within five (5) days after giving such notice or after receipt of the directive advise Buyer of its proposed adjustment in compensation and/or Delivery Schedule, if any, providing all necessary documentation to fully support and objectively evidence such proposed adjustments.
- 15.4 If Supplier fails to give notice to Buyer or submit its proposal together with full supporting documentation in accordance with the foregoing, including without limit the timeframes set out, then Buyer shall have the right to instruct Supplier and Supplier shall have the obligation to carry Buyer's instruction and Supplier shall be deemed to have waived any and all rights or claims to an adjustment in compensation and/or the Delivery Schedule.
- 15.5 Buyer and Supplier shall attempt to agree in writing on an appropriate adjustment in compensation and/or the Delivery Schedule resulting from the Change. After such written agreement is reached, the Purchase Order shall be revised to reflect the changes, Supplier shall proceed with the Change (unless instructed by Buyer in writing to proceed at an earlier stage), and Supplier shall comply with such changes in accordance with the terms of this Purchase Order.
- 15.6 If Buyer and Supplier fail to agree on whether or not such directive is a Change or fail to agree on an appropriate adjustment in compensation and/or the Delivery Schedule, then Buyer may issue a written request for Supplier to proceed in accordance with such directive without such agreement.



Supplier shall comply with such written request, but such compliance shall not prejudice either Buyer's or Supplier's claim that the directive is a Change or, as the case may be, claim for an appropriate adjustment in compensation and/or the Delivery Schedule. Any adjustment in compensation shall be in accordance with Purchase Order schedule of rates.

15.7 Supplier has the affirmative obligation to give Buyer written notice, before proceeding with any Change, if, in Supplier's professional judgment, any proposed Change is likely to result in Goods that will not:

15.7.1. operate safely;

15.7.2. meet any applicable legal requirements; or

15.7.3. meet any of the overall requirements that have been specified by Buyer.

15.7.4. The required notice shall identify the feature or features of the proposed Change that Supplier regards as problematic, and a reasonable explanation of the problems it foresees if the Change is carried out.

## 16 **INDEMNIFICATION; CONSEQUENTIAL DAMAGES.**

16.1 Supplier's and its Subcontractors' and Vendors' Property

16.1.1. **Between Supplier and Indemnitees** - Supplier shall release, defend and indemnify Indemnitees against all damage to or loss of any property owned, rented or furnished by Supplier and its Subcontractors and Vendors including removal of wreckage.

16.1.2. **Mutual release, defence and indemnity among Indemnitees' vendors and subcontractors** - Supplier shall release, defend and indemnify Indemnitees' other vendors and subcontractors against all damage to or loss of property of Supplier, Subcontractors and Vendors. However, the obligations of Supplier in this Article 16.1.2 shall only be applicable to the extent that any such other vendor or subcontractor of Indemnitees has agreed to a reciprocal provision in favour of Supplier. Such reciprocal provision may be in the form of this Article or any other form or wording so long as the substantive nature of the clause is similar to this Article.

16.1.3. Supplier shall include a provision similar to Article 16.1 in its subcontracts and purchase orders to the effect that Supplier's Subcontractors and Vendors grant such release, defence and indemnity to Indemnitees' other vendors and subcontractors.

16.1.4. **Indemnitees' Property** - Supplier shall defend and indemnify Indemnitees against all damage to, destruction of or loss of all property owned by Indemnitees (including removal of wreckage) arising out of or in connection with Supplier's Work, however caused regardless of the active passive or concurrent negligence or negligence per se of any Indemnitee or other and regardless of whether liability without fault, is imposed or sought to be imposed on one or more of the Indemnitees. At Indemnitees' option, Supplier shall repair or replace such damaged or lost property. Supplier's indemnity obligation to Indemnitees under this provision (exclusive of defence costs incurred by Supplier) shall be limited to One million Pounds Sterling (GBP £1,000,000) or its currency equivalent per occurrence.

16.1.5. The provisions of this Article 16.1 shall not apply and Supplier shall not be liable where such loss, damage, injury or liability, cost or claim referred to in this Article is the result of the sole negligence or wilful misconduct of an Indemnitee upon whom liability is imposed and is not contributed to by any act of, or omission to perform some duty imposed by law or contract on Supplier, its Subcontractors, Vendors or either's agents or employees.

**16.2 Supplier's and its Subcontractors' and Vendors' Employees.**

16.2.1. **Between Supplier and Indemnitees** - Supplier shall defend and indemnify Indemnitees against any and all claims and liabilities for injury to or death of employees of Supplier, Subcontractors and Vendors.

16.2.2. **Mutual defence and indemnity among Indemnitee's vendors and subcontractors** - Supplier shall defend and indemnify Indemnitees' other vendors and subcontractors against all claims and liabilities for injury to or death of Employees of Supplier, Subcontractors and Vendors. However, the obligations of Supplier in this Article 16.2.2 shall only be applicable to the extent that any such other Indemnitee's vendor or subcontractor has agreed to a reciprocal provision in favour of Supplier. Such reciprocal provision may be in the form of this Article or any other form or wording so long as the substantive nature of the clause is similar to this Article.

16.2.3. Supplier shall include a provision similar to Article 16.2 in its subcontracts or purchase orders to the effect that Supplier's Subcontractors and Vendors grant such defence and indemnity to Indemnitees' other vendors and subcontractors.

16.2.4. **Indemnitees' Employees** - Supplier shall defend and indemnify Indemnitees against all claims and liabilities for injury to or death of employees of Indemnitees arising out of or in connection with Supplier's Works, however caused regardless of the active passive or concurrent negligence or negligence per se of any Indemnitee or other and regardless of whether liability without fault, is imposed or sought to be imposed on one or more of the Indemnitees.

16.2.5. The provisions of Article 16.2.4 shall not apply and Supplier shall not be liable where such loss, damage, injury or liability, cost or claim referred to this Article is the result of the sole negligence or wilful misconduct of an Indemnitee upon whom liability is imposed and is not contributed to by any act of, or omission to perform some duty imposed by law or contract on Supplier, its Subcontractor, Vendors or either's agents or employees.

16.2.6. **Third Party Property and Personal Injury/Death** - Supplier shall defend and indemnify Indemnitees against all claims and liabilities for loss or damage to third parties' property and injury to or death of third parties arising out of or in connection with Supplier's Work, however caused regardless of the active passive or concurrent negligence or negligence per se of any Indemnitee or other and regardless of whether liability without fault, is imposed or sought to be imposed on one or more of the Indemnitees. As used herein, "Third Parties" shall mean any person or entity other than Indemnitees, Supplier, Subcontractors, Vendors and any other vendor or subcontractor of Indemnitees which have agreed to reciprocal indemnities in favour of Supplier similar to the provisions of Articles 16.1.2 and 16.3.2.



16.2.7. The provisions of Article 16.2.6 shall not apply and Supplier shall not be liable where such loss, damage, injury or liability, cost or claim referred to this Article is the result of the sole negligence or wilful misconduct of an Indemnitee upon whom liability is imposed and is not contributed to by any act of, or omission to perform some duty imposed by law or contract on Supplier, its Subcontractor, Vendors or either's agents or employees.

### 16.3 **Pollution**

16.3.1. Supplier shall defend and indemnify Indemnitees against any loss, cost (including attorney fees and court costs), civil or other fines and penalties, damage or liability arising during the performance of the Supplier's Work from sudden and accidental surface/land/beach/water pollution and contamination of any kind whatsoever, to the extent that it originates from any property in the control of Supplier or created or spread by the activities of Supplier, including but not limited to dumping rubbish and equipment to an amount of One million Pounds Sterling (GBP £1,000,000) or its currency equivalent per occurrence.

16.4 Indemnitees rights to indemnification shall be independent of Indemnitees rights to insurance under Article 17.

### 16.5 **Defence of Claims, Costs and Attorneys' Fees in Connection with Any Claims or Litigation**

16.5.1. Supplier shall, at its sole cost and expense, defend any and all claims which may be brought against it or against Indemnitees for acts or omissions for which Supplier indemnifies Indemnitees, including claims brought against Supplier and any Indemnitee jointly and any and all suits and legal proceedings originating out of such claims. Supplier shall accept and initiate such defence within thirty (30) days of written request by an Indemnitee. Buyer shall render reasonable assistance to Supplier in the defence and disposal of such suits or claims.

16.5.2. Supplier shall promptly pay: (a) to any Indemnitee all costs and reasonable attorneys' fees incurred by such Indemnitees resulting directly from any and all loss, injury, liability and claims for which Supplier is obligated to indemnify such Indemnitee, and (b) exclusive of costs and attorneys' fees incurred in connection with arbitration under Article 27, Indemnitees' costs and reasonable attorneys' fees incurred in enforcing the provisions of this Purchase Order, or in any legal action in which Indemnitee prevails, in whole or in part, brought against Supplier based on the breach of this Purchase Order or to enforce an arbitration award.

16.5.3. Any Indemnitee shall at all times have the right to participate, at its cost, in the defence of any such suits or legal proceedings if it is a party in interest, or is made a party defendant.

**16.6 IN NO EVENT SHALL EITHER THE INDEMNITEES OR SUPPLIER GROUP BE LIABLE TO THE OTHER FOR AND THE INDEMNITEES AND SUPPLIER GROUP SHALL RELEASE, DEFEND AND INDEMNIFY THE OTHER FROM AND AGAINST ALL LIABILITY FOR INDIRECT AND CONSEQUENTIAL LOSS OR DAMAGE (INCLUDING FOR LOSS OF PROFIT (WHETHER DIRECT, INDIRECT, ANTICIPATED OR OTHERWISE), LOSS OF REVENUE, LOSS OF EXPECTED SAVINGS, LOSS OF EXPECTED PRODUCTION, OPPORTUNITY COSTS, LOSS OF BUSINESS (INCLUDING LOSS OR REDUCTION OF GOODWILL), DAMAGE TO REPUTATION, REGARDLESS OF WHETHER ANY OR ALL OF THESE THINGS ARE CONSIDERED TO BE INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGE) IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY STATUTE OR OTHERWISE ARISING FROM OR RELATED IN**

**ANY WAY TO THIS PURCHASE ORDER OR ITS SUBJECT MATTER, HOWEVER CAUSED REGARDLESS OF THE ACTIVE, PASSIVE, SOLE OR OTHER FAULT OF THE PARTY TO BE RELEASED HEREUNDER. CONSEQUENTIAL DAMAGES DO NOT INCLUDE SUPPLIER'S LIABILITY FOR MAKE-GOOD OR CORRECTION DUE TO DEFECTIVE SUPPLIER'S WORK AS DESCRIBED IN ARTICLES 4.2 AND 8.4 IN ORDER TO MEET SUPPLIER GUARANTEES AND WARRANTIES.**

16.7 **Use of Medical Facilities/Medical Evacuation** - Supplier shall defend and indemnify Indemnitees against all claims for injury to or death of Supplier Group Personnel arising out of or in connection with the diagnosis, treatment, medical evacuation, provision of pharmaceutical products or medical supplies furnished or rendered by Indemnitees.

## 17 **INSURANCE**

17.1 Neither the minimum policy limits of insurance required of Supplier under this Article 17 nor the actual amounts of insurance maintained by Supplier under its insurance program shall limit or reduce Supplier's liability and indemnity obligations contained within this Purchase Order.

17.2 Supplier shall maintain the following insurance and all other insurance required by applicable law throughout the period of this Purchase Order:

17.2.1. Workers' Compensation and Employer's Liability Insurance

17.2.2. General or Public Liability (Third Party, Bodily Injury and Property Damage) Insurance

### 17.3 **Policy Endorsements**

17.3.1. If services provided under this Purchase Order require Supplier to have representatives on either third party premises, or Indemnitees owned or maintained premises, then the insurance required in:

17.3.2. Article 17.2.1(a) shall contain a Blanket Principal's Indemnity Extension for both statutory benefits and common law liability;

17.4 **Evidence of Insurance.** At Buyers request, Supplier shall provide Buyer with certificates of insurance issued by its insurer or broker (to the satisfaction of Buyer) evidencing the insurance and endorsements required under this Article 17.4. Buyer's acceptance of this certificate does not constitute a waiver, release or modification of any of the insurance coverages and endorsements required under this Article 17. Supplier acknowledges that failure to provide an acceptable certificate of insurance required by this Article 17.4 may lead to non-payment of Supplier's invoices or termination of this Purchase Order. Supplier shall provide Buyer with thirty days notice before cancelling or making a material change to an insurance policy required by Article 17.

17.5 **Deductibles or Self-Insured Retentions.** Supplier is solely responsible for payment of all deductibles or self-insured retentions that are applicable to any Claims made against Indemnitees covered by Supplier's insurance policies.

17.6 **Insurance from Subcontractors and Vendors.** The insurance carried by Supplier's Subcontractors and Vendors shall not in any way limit Supplier's liability (inclusive of its Subcontractors and Vendors) to Indemnitees under Article 16 of this Purchase Order, or the insurance requirements of Supplier under Article 17 of this Purchase Order.

## 18 TAXES

18.1 **Supplier Taxes** - Supplier is solely responsible for (and Supplier's compensation provided for hereunder includes an allowance for) any and all liabilities or claims for taxes which any taxing authority claiming jurisdiction over this Purchase Order may assess or levy against Supplier relating to the Goods or this Purchase Order, including but not limited to:

18.1.1. **Income.** All income, excess profit or other taxes, charges and imposts assessed or levied on account of Supplier's earnings, taxable margin, receipts (including gross receipts) or franchise taxes for the privilege or actual conduct of business that are measured by Supplier's net worth, capital, surplus or undivided profits;

18.1.2. **Personnel.** All taxes assessed or levied against or on account of compensation or other benefits paid to Supplier's Employees;

18.1.3. **Property.** All taxes assessed or levied against or on account of, or by reference to the value of, any property or equipment of Supplier; and

18.1.4. **Goods.** All taxes assessed or levied against or on account of, or by reference to, the Goods or this Purchase Order.

18.2 **VAT, Goods and Services Tax, Sales and Similar Taxes.** If any value added tax (VAT), goods and services tax, sales tax, other excise taxes and/or other similar taxes are applicable, these taxes shall be separately itemised and identified on Supplier's invoices, collected by Supplier and paid over by Supplier to the appropriate governmental agency in accordance with the law in the relevant jurisdiction (except to the extent Buyer advises Supplier that, in accordance with applicable law, Buyer will be responsible for self-assessing and paying these taxes); and Supplier shall provide Buyer on a timely basis with invoices, tax receipts and any other documentation that may be required for Buyer to obtain tax reimbursement, credit, abatement or refund of any taxes assessed against Buyer and collected by Supplier.

18.3 **Indemnity for Taxes** – Supplier indemnifies Indemnitees against any and all liabilities or Claims for taxes (including interest and penalties), costs, losses, duties or charges, that any taxing authority may assess or levy against Indemnitees in connection with Supplier's tax obligations relating to this Purchase Order or arising out of Supplier's actions or failure to act diligently under Articles 18 or 12, as well as any taxes imposed on Indemnitees as a consequence of receiving payment under this Article 18.4

## 19 CONFIDENTIALITY

19.1 All data, designs, documents, drawings, specifications, communications and other information, revealed or disclosed in any form or manner to Supplier by or on behalf of Buyer (whether written, oral, electronic, visual, graphic, photographic, observational, or otherwise), and Project IP, (collectively defined as "Buyer Information") are proprietary and confidential to Buyer and will be used solely by Supplier for purposes of performing this Purchase Order. Supplier will treat all such information as confidential and will take reasonable steps which are necessary or desirable to ensure continued confidentiality and protection of Buyer Information and to prevent access to or use of Buyer Information by any unauthorised person. Supplier will not disclose Buyer Information to any third party except Supplier may disclose Buyer Information to those Subcontractors, Vendors, agents, officers, Personnel or employees who are involved in performing the Supplier's

Work only after they have first entered into appropriate confidentiality undertakings in accordance with the terms of this Article 19.

**20 PAYMENTS, LIENS, RIGHT TO SET OFF AND BACKCHARGES**

- 20.1 Compensation received in accordance with the provisions of this Purchase Order shall be Supplier's sole and exclusive compensation for the Goods, and the price or prices set forth in this Purchase Order are not subject to increase.
- 20.2 Supplier, by accepting this Purchase Order and by delivering an invoice, represents and warrants that its invoice and all documents submitted in support of its invoice (including third party invoices, vouchers, financial settlements, billings and reports) are true and correct and certify that no price provided for under this Purchase Order is unlawfully discriminatory.
- 20.3 **Overpayments** - Supplier shall repay to Buyer any money paid to Supplier under this Purchase Order to which Supplier was not entitled, as soon as Supplier becomes aware of that overpayment or repayment is requested in writing by Buyer .
- 20.4 **Discounts, rebates and the like** - All discounts for purchases made against this Purchase Order and any changes hereto, including but not limited to; rebates, incentives, early payment, commercial fees or any other discounts available that are generated through the performance of the work and the supply of the Goods, shall accrue only to the benefit and account of Buyer.
- 20.5 **Invoices** - Supplier shall deliver invoices to the address indicated in the Purchase Order after Delivering the Goods in accordance with the requirements set out in this Purchase Order. Supplier shall include all of the following information in every invoice: (1) title and number of this Purchase Order; (2) the amount due, specified in the currency provided in the Purchase Order; (3) if applicable, all the following: (a) amount of local currency due; (b) value added tax (VAT) or other taxes which Supplier proposes to collect or for which it will seek reimbursement from Buyer (including any tax assessed against Buyer but collected by Supplier); and (c) Supplier's VAT and, if applicable, other tax registration numbers. Each invoice provided by Supplier must qualify as a valid Tax Invoice and each Adjustment Note issued by Supplier must qualify as a valid Adjustment Note.
- 20.6 With each invoice, Supplier shall provide to Buyer's satisfaction a detailed explanation to support its charges and any other requested information. This explanation shall include a description of the Goods delivered, their quantity, unit cost, the total Purchase Price and any other information that is required by Buyer.
- 20.7 Subject to applicable laws and regulations, Supplier shall separately state, re-phrase, combine or separately invoice items as may be necessary in order to fully comply with applicable tax requirements with respect to value-added tax (VAT), other goods and services tax, sales tax or other taxes which Supplier is required by law to collect or for which it will seek reimbursement from Buyer (including any tax that may be assessed against Buyer but collected by Supplier) applicable to any transaction under this Purchase Order. Any reimbursement of costs will be reduced by the amount of any credits, refunds or other reductions or savings Supplier is entitled to claim or receive in relation to VAT, goods and services tax, fuel tax credits, duties or other taxes or levies.
- 20.8 **Payments** - Regardless of the payment terms in this Purchase Order, Buyer's obligation to pay the Purchase Price is conditioned upon (a) receipt of completed, non-defective conforming Goods in

accordance with the Delivery Schedule set forth in this Purchase Order; (b) receipt and acceptance by Buyer of Supplier's accurate and properly completed invoice accompanied by satisfactory supporting documentation; and (c) compliance by Supplier with all terms and conditions of this Purchase Order. All payments shall be subject to all applicable banking and currency laws.

- 20.9 **Right to Withhold Payments** - If Buyer notifies Supplier of a failure to comply with any obligation of this Purchase Order, and Supplier remains in non-compliance for a period of five (5) days after receiving Buyer's notice of non-compliance, Buyer may withhold payment of any outstanding invoice until Supplier is in full compliance.
- 20.10 Where Buyer disputes an amount of an invoice which has been paid, it shall forthwith notify Supplier of the net value added tax (VAT), goods and services tax, sales tax or other comparable taxes and duty and gross amount disputed and the reason(s) for the dispute. Supplier shall forthwith issue a credit note.
- 20.11 Where Buyer, disputes an amount of an invoice that is unpaid, it shall forthwith notify the Supplier of the net value added tax (VAT), goods and services tax, sales tax or other comparable taxes and duty and gross amount disputed and the reason(s) for the dispute. Supplier shall issue an invoice for the undisputed portion and an invoice for the disputed portion.
- 20.12 **Liens and Payments to Others** - Supplier waives all rights to assess any Lien and/or attachments, statutory, constitutional, common law or otherwise against the premises, facilities, equipment and other property of Buyer.
- 20.12.1. **Supplier's Obligation** - Supplier shall pay (or procure the payment of) any valid claims owed by Supplier or Subcontractors, Vendors or others for materials and equipment used in the Goods, and taxes (including Vendor withholding taxes) related to the Goods or this Purchase Order, as they become due. Except as may arise by operation of law, no lien may become fixed upon any property of Buyer or Supplier as a result of Supplier failing to pay (or to procure the payment of) its debts or the debts of Subcontractors or Vendors when due.
- 20.12.2. **Buyer's Right to Pay** - If Supplier fails to pay (or fails to procure the payment of) valid claims owed by Supplier or Subcontractors, Vendors or others, Buyer has the right to pay these claims and to offset these payments against amounts due or which become due to Supplier under this Purchase Order. Except as required by law, court order or other lawful authority, Buyer shall not pay claims that Supplier is actively contesting if Supplier has taken all actions necessary (including the posting of a bond or other security to remove Liens on any property of Buyer ) to protect the interests of Buyer.
- 20.12.3. **Supplier's Certificate of Payment** - Before Buyer pays any of Supplier's invoices, Buyer may require Supplier to certify that there is no unsatisfied Claim for Personnel, equipment or taxes payable by Supplier in relation to the Goods.
- 20.13 **Right of Setoff and Backcharge** - Any sums due to Supplier hereunder may be applied by Buyer as a set-off against any sums owed by Supplier to Indemnitees or against any claims of third parties against Indemnitees arising from Supplier's performance, breach or default, hereunder, whether under this Purchase Order or any other purchase order or other contract related to the Project. At its sole discretion, Buyer may withhold from payments to be made to Supplier amounts legally required to be withheld from such payments and remitted to the taxing authority of any

jurisdiction relevant to the transaction. Upon prior notice to Supplier, Buyer reserves the right to backcharge Supplier for any losses, damages, claims, costs and expenses incurred resulting from Supplier's breach of any provision of this Purchase Order. Buyer may withhold or set-off any payment due under this Purchase Order or any other purchase order or other contract related to this Project with Supplier or any of its Affiliates in order to recover such backcharged amounts.

- 20.14 **Credits and Rebates** – Supplier shall apply for all refunds of export and customs duties, fuel tax credits and charges for which it is entitled to claim reimbursement from the relevant authorities. Supplier shall also apply for all rebates and remission of export and customs duties, fuel tax credits and charges to which it is, or may become, entitled. If any such export and customs duties or charges were paid by Buyer, upon receipt of a refund or credit, Supplier shall immediately reimburse Buyer accordingly for the full amount of such refund or credit. Supplier shall, however, apply for any exemption to which it is entitled in respect of export and customs duties or charges, in order to avoid the Buyer being involved in the financing of such duties or charges. All costs, fees, charges and expenses resulting from obtaining exemptions, rebates, refunds, credits or other privileges shall be borne by Supplier.
- 20.15 **Retention** – 10% Retentions or 10% Performance/Warranty Bonds –APPLICABLE ONLY IF STATED IN PURCHASE ORDER.
- 20.16 **Anticipated Billings** - By the 5th day of each month, Supplier shall provide Buyer a projection of any anticipated billing for the following two (2) months.

## 21 **SUBCONTRACTORS AND VENDORS**

- 21.1 Supplier shall not subcontract Supplier's Work or Goods or any major part thereof without Buyer's prior written approval. Supplier agrees that Buyer has the right to contact or visit any of Supplier's Subcontractors or Vendors directly to confirm delivery commitments or the origin, composition, manufacture, kind, quantity, or quality of any Goods provided thereunder. Any approval by Buyer will not constitute a waiver of any term or condition hereunder, at law, or in equity, nor relieve Supplier of any obligation herein. Supplier shall be responsible for all work, acts, omissions and defaults of any Subcontractor or Vendor as fully as if they were the work, acts, omissions or defaults of Supplier. Supplier shall ensure that its subcontracts and purchase orders with its Subcontractors and Vendors are consistent with the terms, conditions and technical requirements of this Purchase Order.
- 21.2 Supplier shall use all reasonable endeavours to stipulate in each subcontract or purchase order with its Subcontractors and Vendors that Supplier shall be entitled to assign to Buyer (or their nominee) any and all of the rights and obligations of Supplier under that subcontract or purchase order in whole or in part without any further consent or agreement of Subcontractor or Vendor. This paragraph shall not apply to Supplier existing framework subcontract or purchase order agreements.
- 21.3 All specifications, drawings, delivery requirements and any other information contained in this Purchase Order that are pertinent to properly fulfilling Supplier's individual orders shall be made part of Supplier's subcontracts and purchase orders with its Subcontractors and Vendors. Supplier shall ensure that these documents are available in each of such Subcontractor's and Vendor's premises.



21.4 Supplier will track the progress of Supplier's subcontracts and purchase orders, including those at Subcontractor's and Vendors premises', at frequent intervals and keep Buyer informed monthly as to progress and required versus scheduled completion dates of drawings and fabrication. If, during progress of Supplier's subcontracts or purchase orders with Subcontractor or Vendor, one or more subcontract or purchase order is evidently going to delay Supplier's Delivery to Buyer beyond a required date set out in the Delivery Schedule, Supplier shall at its sole cost act immediately to expedite the subcontract or purchase order to restore the Delivery Schedule and keep Buyer advised. Should Buyer desire to expedite an order, Supplier will make the necessary arrangements for Buyer representative to be promptly provided with up to five copies of Supplier's subcontracts and purchase orders, including, without limitation, specifications and drawings. Supplier shall also arrange for Buyer's representative to participate in expediting the subcontract or purchase order at Supplier's premises and office and/or those of the Subcontractor or Vendor as necessary in the opinion of an authorized Buyer representative. Any expediting performed by Buyer shall not relieve Supplier from any of obligations under the Purchase Order.

## 22 INTELLECTUAL PROPERTY

22.1 If applicable to this Purchase Order, any customised or made-to-order Goods which are first conceived, designed, created, developed, fabricated, or manufactured by Supplier under this Purchase Order (whether detailed or conceptual), and in whatever form, including but not limited to designs, manufactured items, or developed software and any and all related data, drawings, documents and specifications ("Custom Goods"), are the sole property of Buyer or other assignee (if so designated in the Purchase Order or upon request of the Buyer), with title to such vesting upon identification to this Purchase Order. Such Custom Goods and any and all related data, drawings, documents, and specifications will be considered and protected by Supplier as "Buyer Information" as set forth in Article 19. Supplier will turn over all such Custom Goods and any related data, drawings, documents and specifications to Buyer, including copies thereof, at no additional charge, at the expiration date of the warranty period, or earlier as may be requested in writing by Buyer. Any Intellectual Property owned or controlled by Supplier prior to the date of this Purchase Order which are incorporated or embedded into the Custom Goods shall remain the intellectual property of Supplier, and Supplier agrees to grant and does herein grant to Buyer or their assignees a non-exclusive, worldwide, transferable, fully-paid and perpetual license to use the Supplier Intellectual Property in connection with use of the Custom Goods. Except for any Supplier Intellectual Property, Supplier shall not retain any rights to the Custom Goods, in whole or in part. Supplier warrants, represents and covenants that the design, fabrication, manufacture, production, sale, distribution and intended use of the Custom Goods do not infringe directly or indirectly, in whole or in part, any patent, copyright, trade secret, trademark, trade name, or other intellectual property right of any third party. Supplier represents that it will pay or has paid all royalties, withholding taxes, fees and other amounts payable for the use of any intellectual property of third parties provided by or on behalf of Supplier in the performance of the Supplier's Work or Goods Delivered by or to be Delivered by Supplier (other than Intellectual Property provided to Supplier by Owner) and such royalties, withholding taxes, fees and other amounts payable are included in the Purchase Price. Supplier will inform Buyer of any technical information, Intellectual Property, or portions of the Goods, in which third parties hold Intellectual Property rights, patents or copyrights and of any conditions attaching to the use of that material because of those Intellectual Property rights.

22.2 Supplier agrees to release, defend, protect, indemnify and hold the Indemnitees harmless from and against any loss, cost (including attorney fees and court costs), civil or other fines and penalties, damage or liability arising out of any alleged or actual patent, copyright, trade secret, trademark,

trade name, or other intellectual property right infringement or other claim, demand or action made by any third party arising from or related to the design, fabrication, manufacture, production, sale, distribution or use of the Supplier's Work or the Goods or any Custom Goods, however Supplier will not be responsible to the extent of any negligence or fault on the part of Buyer as may be finally determined by a court or arbitrator.

22.3 On request, Supplier agrees to execute such additional documents as may be required by Buyer to confirm the provisions of this Article 23 including legal title in and to the Custom Goods.

22.4 In the event one or more of the Indemnitees and/or their successors in interest is or are enjoined from the use and/or sale of the Goods or Supplier's Work or any part thereof, then, in addition to any other rights or remedies Buyer may have under the circumstances, Supplier shall at its sole expense take all reasonable steps to procure for Owner and its successors in interest the right to use and sell the Goods or any part thereof or, if Supplier cannot so procure the aforesaid right within a reasonable time, Supplier shall at its sole expense subject to Buyer's prior approval either:

22.4.1. modify the Goods or Supplier's Work or any part thereof so as to avoid infringement of any other entities' rights provided that the Goods continue to meet the intended function and performance characteristics as required by this Purchase Order; or

22.4.2. replace the infringing Goods, or any part thereof with comparable non-infringing products or;

22.4.3. remove the Goods or any infringing part and refund Owner the amount paid under this Purchase Order.

22.5 The provisions of this Article 23 shall survive the expiration, cancellation or termination of this Purchase Order.

## 23 **DOCUMENTATION AND RIGHT OF AUDIT**

23.1 **Documentation** - Where Supplier's invoices include compensation for Supplier's Work performed at a lump sum, unit rate or for changes in the Supplier's Work, Supplier will submit Supplier's determination of units of Supplier's Work performed, substantiated by documents satisfactory in form and content to Buyer. Upon verification by Buyer of such documents, Buyer will advise Supplier in writing of either Buyer's acceptance of Supplier's determination, or of Buyer's alternative determination of such units.

23.2 Where Supplier's invoices include compensation for Supplier's Work performed for a reimbursable price, all costs, expenses and other amounts so invoiced will be substantiated and supported by documents satisfactory to and verified by Buyer.

23.3 Supplier will maintain for the longer of twenty four (24) months after: (i) expiry of the Defects Liability Period, or (ii) the final resolution of any claims or disputes arising out of the Purchase Order (the "Record Retention Period"), true and correct records of all records and accounts pertaining to Supplier's Work performed hereunder.

23.4 **Right to Audit** - Buyer will have the right to review, audit, copy and inspect, or cause to have reviewed, audited, copied and inspected, Supplier's records and accounts pertaining to performance under this Purchase Order at all reasonable times during the course of performance hereunder and during the Record Retention Period. Such audit may also cover Supplier's



procedures and controls with respect to such reimbursable costs. This obligation to maintain and share cost information shall not extend to costs associated with Supplier's Work that is being performed on a lump-sum basis or unit rate basis as provided in the Purchase Order, unless Supplier is claiming it is entitled to additional compensation, over and above the agreed lump-sum price, on a basis other than agreed unit prices, in which case the obligation shall apply. In case of changes involving claimed added unit-price Supplier's Work, Supplier shall keep and make available to the Buyer and Owner, on an open-book basis, all records documenting the number of units of Supplier's Work performed, both under the base Purchase Order agreement and the proposed change, Record Retention Period.

- 23.5 Upon completion of this audit, Owner shall pay Supplier any compensation due hereunder as shown by the audit. Any amount by which the total payment by Buyer to Supplier exceeds the amount due Supplier as shown by the audit shall be returned to Buyer.
- 23.6 **Non Cost Maintenance and Retention and Audit** - Supplier shall, and shall require all its Subcontractors and Vendors at all tiers to maintain documentation with respect to all Supplier's Work performed and Goods supplied, including such quality control documentation as reasonably required to properly carry out the Supplier's Work or manufacture or supply of the Goods. This documentation shall be made available to Buyer on an "open-book" basis, at all times during the term of the Purchase Order and through the Record Retention Period.
- 23.7 **Non Payment Claims** - Buyer, within its sole discretion, shall have the right but not the obligation to make an audit of all records of Supplier and such Subcontractors and Vendors of any tier in connection with any direct claims to an Indemnitee from Subcontractors and Vendors for non-payment by Supplier.
- 23.8 **Subcontractor and Vendor Records and Audit** - Supplier shall require, and shall require all Subcontractors and Vendors of any tier to require, in all agreements in connection with the Goods furnished and Supplier's Work performed hereunder, their agreement to the provisions of this Article 24 and Article 28.

## 24 **DEFAULT AND TERMINATION FOR CAUSE**

- 24.1 In the event of Supplier's:
- 24.1.1. actual or anticipated breach of or default under any provision of this Purchase Order including failing or refusing or neglecting to supply the Goods or Supplier Work's sufficient Supplier Personnel, facilities or equipment to complete the Goods, which has not been cured or the Supplier has not commenced the continuous remedy of such anticipated breach or default, within five (5) days after written notice of such has been provided to Supplier by Buyer;
- 24.1.2. any organisational or operational change as stated in Article 13 adversely affecting, or which may adversely affect, in Buyer's sole judgment and opinion, Supplier's performance hereunder;
- 24.1.3. any actual or threatened bankruptcy, reorganisation, receivership, insolvency, making an assignment for the benefit of creditors, liquidation, dissolution, or other financial or organisational instability;

24.1.4. carrying out its obligations in a negligent or careless manner or failing to carry out the same due to its fault or negligence;

24.1.5. material breach of quarantine requirements; or

24.1.6. materially breach the record and audit covenants or failure to obtain permits required to be in Supplier name from the appropriate governmental regulatory bodies of the country(ies) in which Supplier's Work is performed;

then Buyer has the right, in addition to any rights or remedies it may have in law, in equity, or under this Purchase Order, to require that Supplier provide acceptable documentary or other appropriate assurances of performance, including a performance bond, letter of credit, or other type of guarantee acceptable to Buyer.

24.2 Should Supplier be unable or unwilling to do so, Buyer has the right to immediately terminate this Purchase Order for cause by written notice to Supplier and Supplier will not be entitled to any cancellation or termination charge or other fee or penalty hereunder, nor will Buyer be liable to pay any costs of cancellation.

24.3 In such event, Buyer may immediately take possession of all or any portion of the Goods, subject only to an obligation to equitably compensate Supplier for same for any Supplier's Work completed to Buyer's reasonable satisfaction. Upon termination by Buyer as a result of Supplier's default hereunder, Supplier will be liable to and will immediately pay or reimburse Buyer for all reasonable costs of any nature which may be incurred by Buyer to cover any losses or expenses related to such default and to effect completion of performance of this Purchase Order.

## 25 **SITWORK**

If Supplier performs any Supplier's Work at a site controlled by an Indemnitee, Purchase Order Attachment 3 (General Conditions for Onsite Services) and the technical attachment 'On Site Services Scope of Work' will apply in addition to the provisions of this Purchase Order.

## 26 **CLAIMS AND DISPUTE RESOLUTION**

26.1 Supplier will submit any claims or disputes arising under this Purchase Order to Buyer in writing in accordance with Article 15. Buyer's obligation to make final payment is conditioned upon Supplier's settlement and release of all claims or disputes and receipt by Buyer of Supplier's executed waiver. In the event Supplier has not submitted a particular claim in accordance with Article 15 then Supplier waives any right to such claim. In the event of a dispute, claim or demand as described below Supplier acknowledges that it does not have the right to claim for payment or otherwise claim (except for the provisions of Article 16) against Buyer.

26.2 Any dispute, controversy or claim arising out of, in relation to, or in connection with this Purchase Order or the operation/activities carried out under this Purchase Order, including without limitation any dispute as to the existence, construction, validity, interpretation, enforceability or breach of this Purchase Order (hereafter "Dispute") shall be exclusively and finally settled as set forth hereafter.

26.3 The place of arbitration shall be London UK, and the language to be used in the arbitral proceedings shall be English. All arbitration fees and costs shall be borne equally, notwithstanding which party

may prevail. Supplier and Buyer shall each bear its own other costs, i.e., fees and costs of its own lawyers, experts and witnesses.

## 27 **CONFLICT OF INTEREST, IMPROPER INFLUENCE**

### 27.1 Conflict of Interest

27.1.1. No member of Supplier Group, or any Person acting on behalf of any of them, may engage in any of the following activities without Buyer's prior written consent:

27.1.2. give to or receive from any director, Personnel or agent of Buyer Group in connection with the Supplier's Work, either of the following:

27.1.3. any gift or entertainment of significant cost or value; or

27.1.4. any commission, fee or rebate; or

27.1.5. enter into any business arrangement with any director, Personnel or agent of Buyer Group.

27.2 Supplier shall immediately notify Buyer of any violation of Article 27.1

### 27.3 **Improper Influence**

27.3.1. Neither Supplier nor Supplier's Personnel, agents, Subcontractors, or their Personnel or agents, may make any payment or give anything of value to any official of any government or public international organization (including any officer or employee of any governmental department, agency, company or other instrumentality) to influence his or its decision or to gain any other advantage for Buyer Group or Supplier Group in connection with the Supplier's Work performed hereunder.

27.3.2. Supplier shall immediately notify Buyer of any violation of Article 27.3.1 or of the occurrence of any event prior to the Effective Date which, if it had occurred after the Effective Date, would constitute a violation of Article 27.3.1, and pay Buyer an amount equal to the amount of the payment or the value of the gift paid or given in that violation or event in question.

27.4 **Termination.** Buyer may, at its sole option, terminate this Purchase Order with immediate effect for any violation of Article 27.3.1, or breach of the warranty set out in Article 27.6. If Buyer terminates this Purchase Order for violation of Article 27.3.1, or breach of the warranty set out in Article 27.6, then Buyer shall not be obligated to pay Supplier for any Work performed or delivered, or any expense incurred, after the date of the violation or in question. In addition, Supplier shall defend, indemnify and hold Indemnitees harmless from and against all Claims that arise out of or in connection with any inaccuracy of the representations set out in Article 27.6 or any violation of Article 27.3.2 arising out of such violation or event.

### 27.5 **Audit**

Upon Notice to Supplier specifying the reasons for the audit, any representative(s) authorised by Buyer may audit any and all records of Supplier and its Subcontractors for the sole purpose of determining whether there has been compliance with this Article 27.4.

**27.6 Conduct**

Supplier shall have a written code of business conduct which is consistent with this Article 27, and shall maintain a training program and internal control system to promote compliance with the code of business conduct amongst Supplier's Personnel, and shall require the same from its Subcontractors.

**28 PERSONNEL**

**28.1 Obligations to Supplier's Personnel** - Supplier shall be solely responsible, at its expense, for providing all of the requirements of its Personnel, including:

28.1.1. salaries, wages, insurance (including Worker's Compensation Insurance), termination payments, rest leave and benefits under applicable law and collective labour contracts;

28.1.2. medical attention except as otherwise may be provided by Buyer as indicated in Purchase Order;

28.1.3. fulfilment of immigration requirements, including passports, visas, medical examinations, personal customs duties and personal work permits;

28.1.4. food, lodging and transportation (except as otherwise provided in Purchase Order for General Conditions for Onsite Services; and

28.1.5. life-saving and personnel protective gear.

**28.2** Supplier shall use its best endeavours to ensure Supplier's Personnel are all suitably qualified and experienced for performance of the Supplier's Work for each location where such Supplier's Work is to be performed and shall ensure its Personnel are each suited to living and working at such locations. Supplier shall also require that each of the Subcontractors and Vendors implement the same requirements for their Personnel.

**28.3** Supplier shall advise Buyer of any industrial relations issues that might adversely impact the performance of Supplier's Work.

**29 REPRESENTATIVES AND NOTICES**

**29.1 Buyer's Representative** - Buyer will maintain a representative nominated in writing ("Buyer's Representative") who will be the only person authorised to represent Buyer with respect to this Purchase Order. The function of Buyer's Representative, which may from time to time be delegated in writing to others, shall include but not be limited to:

29.1.1. establishment and maintaining liaison between Supplier's Representative and Buyer;

29.1.2. reviewing the Supplier's Work as Buyer may desire in order to check the progress of the Supplier's Work and quality of workmanship; and

**29.2 Supplier's Representative** - Supplier shall propose in writing for Buyer's approval a representative ("Supplier's Representative") who shall on approval by Buyer, at all times act in full charge of the Supplier's Work and represent Supplier with respect to this Purchase Order. The functions of

Supplier's Representative which may from time to time be delegated in writing to others shall include but not be limited to:

- 29.2.1. establishing and maintaining liaison between Buyer's Representative and Supplier;
- 29.2.2. representing Supplier in matters pertaining to performance and quality, and progress of Supplier's Work;
- 29.2.3. acting as the single contact in the factory responsible for all facets of all orders entered for this Purchase Order including communications of all types (pricing, scheduling, production, engineering, contractual obligations) and each and every service required of the Supplier for this Purchase Order;
- 29.2.4. ensuring that at all times there are sufficient supporting staff to expeditiously handle all requests;
- 29.2.5. coordination at all levels and disciplines (engineering, sales, procurement, production) of Supplier's organization;
- 29.2.6. coordination with Buyer in all activities relating to procurement, engineering, inspection, expediting, traffic, accounting, and testing;
- 29.2.7. production scheduling and submission of "Progress Reports";
- 29.2.8. maintenance of the Delivery Schedule;
- 29.2.9. implementing preventative and correct action (recovery plans) whenever necessary and informing Buyer of action taken; and
- 29.2.10. performing such other tasks as may be the responsibility of Supplier under this Purchase Order.

29.3 All notices and other communications under this Purchase Order shall be in writing. Notices shall be delivered: (a) by mail (postage prepaid); (b) in person; or (c) by email, sent to Buyers notified email address(es) and marked "OFFICIAL NOTICE" or to such address specified from time to time by written notice to the receiving party. Notices shall be effective at the time of receipt. Notices shall be made to the addresses set out in the Purchase Order.

### 30 **RIGHT TO SUSPEND WORK**

30.1 Buyer may suspend performance of the Supplier's Work, either partially or completely, for whatever length of time Buyer may elect for any reason. At such time as Buyer elects to instruct Supplier to resume Supplier's Work, Supplier shall use all its best efforts to mitigate the cost and schedule impact of such suspension. Supplier shall be compensated for direct costs incurred as a consequence of and during the period of suspension, including its additional reasonable and documented costs (excluding any profit) incurred as demobilisation and remobilisation costs in accordance with Article 14.

**31 COMMUNICATIONS AND DOCUMENTATION**

Supplier shall provide documentation and such additional information in relation to the Supplier's Work as Buyer requires, in the format required by Buyer, including electronic versions of all drawings, specifications and data described in Purchase Order.

**32 HEALTH, ENVIRONMENT AND SAFETY**

32.1 While on the premises of an Indemnitee, Supplier and its employees shall comply with all applicable safety and health laws, regulations, and ordinances and with the operating, safety, health and plant regulations of Buyer, and shall ensure that all of its employees and agents have a safe place of work on said premises.

32.2 Supplier shall provide safety equipment and safeguards suitable for the occupational hazards involved and conforming to the safety regulations at any Supplier Work Area for its Personnel.

32.3 Use of Medical Facilities/Medical Evacuation: Notwithstanding any safety/first aid personnel which Buyer may employ at any work area, Supplier shall be responsible for its own safety program, first aid and medical service for its Personnel, agents, Vendors and Subcontractors.

**33 EFFECT OF WAIVER OR PERFORMANCE**

33.1 Buyer's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, right or privilege.

33.2 Buyer's acceptance of any Goods shall not operate as a waiver of rights hereunder or otherwise relieve Supplier from its responsibility for supplying and Delivering Goods in accordance with the Delivery Schedule and requirements, or any other obligation of Supplier, under this Purchase Order.

33.3 The payment of, objection to or failure to object to any invoice, or any payment or settlement in resolution of any Dispute, or any combination of these matters does not constitute acceptance by Buyer of the accuracy or justification of Buyer's invoices. Any payment by Buyer is made on the condition that Buyer reserves the right to challenge, at a later time, the validity of any invoiced amount.

**34 LIQUIDATED DAMAGES**

34.1 In the event this Purchase Order contains provisions requiring Supplier to pay to Buyer liquidated damages for (i) late delivery of documents, (ii) late Delivery of the Goods (iii) failure of the Goods to meet certain performance guarantees as may be set out in the Purchase Order, the Buyer and Supplier acknowledge and agree:

34.1.1. that, because of the unique nature of the Goods and the time requirements for performance, Buyer shall be damaged by:

34.1.2. Supplier failing to accomplish delivery of documents in accordance with the times required set out in the Purchase Order;

34.1.3. Supplier failing to deliver the Goods in accordance with the Delivery Schedule,

- 34.1.4. Supplier failing to cause the Goods to achieve the required performance guarantees, (collectively and individually the “Liquidated Damages Events”),
- 34.1.5. it would be impracticable or extremely difficult to fix the actual damages resulting from Liquidated Damages Events,
- 34.1.6. any sums which would be payable as liquidated damages are in the nature of liquidated damages, and not a penalty, and are fair and reasonable,
- 34.1.7. such payments are compensation solely for Liquidated Damages Events and shall not (i) prejudice any other rights of Buyer hereunder for other Supplier breaches of its obligations under this Purchase Order, (ii) shall not prejudice other rights of Buyer hereunder when the remedy of liquidated damages are exhausted or are not set forth in this Purchase Order for certain Liquidated Damages Events, and (iii) shall not relieve Supplier of its other obligations under this Purchase Order.

35 **SURVIVAL**

Despite delivery of the Goods or termination of this Purchase Order for any reason, all provisions in this Purchase Order containing representations, warranties, releases, defence obligations and indemnities, and all provisions relating to audit, inspection, confidentiality, insurance, disclaimer of certain remedies, limitations of liability, ownership or use or return of Buyer Information, retention and inspection of records, dispute resolution and governing law, and all causes of action which arose prior to completion or termination, survive indefinitely until, by their respective terms, they are no longer operative or are otherwise limited by an applicable statute of limitations.