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## **Sulzer Wood Ltd** **General Terms and Conditions of Purchase**

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These Terms and Conditions can be found on the Internet under [www.sulzerwood.co.uk](http://www.sulzerwood.co.uk).

### **1. Definitions**

- 1.1 "Affiliate" means any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, "subsidiary" and "holding company" shall have the meanings assigned to them under 1159 of the Companies Act 2006.
- 1.2 "Applicable Export Laws" means any export control regulations and/or laws in force at the time of export in Supplier's country of export and/or, in the case of re-export, in force at the time of re-export in the country of origin of the particular re-exported Export Item.
- 1.3 "Applicable Export Laws" means any export control regulations and/or laws in force at the time of export in Supplier's country of export and/or, in the case of re-export, in force at the time of re-export in the country of origin of the particular re-exported Export Item.
- 1.2 "Change" means a change of the Contract, such as but not limited to changes related to specifications, shipment, schedule, warranty, design, drawings, quantity, delivery, omissions, modifications, deletions, shipping instructions and/or shipment schedules.
- 1.4 "Change Order" means the document to be issued by Purchaser and Supplier in common agreement after a Change has been requested by Purchaser or Supplier.
- 1.5 "Confidential Information" means proprietary or confidential data including pricing, terms, documents, specifications, plans or drawings that are not generally known to the public.
- 1.6 "Contract" means these Terms and Conditions together with the Purchase Order and all documents and particular terms agreed by the Parties and referenced in the Purchase Order.
- 1.7 "Contract Price" means the total sum indicated in the Contract together with any adjustments in accordance therewith. For Services carried out on a time basis, the Contract Price shall be determined in accordance with the hourly rates specified in the Contract.
- 1.8 "Customer" means the customer of Purchaser for the Scope of Supply, including but not limited to the end-user (ultimate owner of the Scope of Supply).
- 1.9 "Day(s)" means calendar day(s) unless the term "working day(s)" is used.
- 1.10 "Delivery Date" means the delivery date(s) stated in the Contract.
- 1.11 "Disclosing Party" means Supplier, Purchaser or Customer disclosing Confidential Information to one or both of the others.
- 1.12 "Dispute" means any and all disputes arising under or relating to this Contract, including any claims based on statutory or common law.
- 1.13 "Effective Date" means the date of issuance of the Purchase Order as stated on the face thereof or such other date as may be expressly stated in the Purchase Order.
- 1.14 "Export Item" means any Scope of Supply, including but not limited to commodities, software or technology provided by Supplier that is required to be exported or re-exported under the Contract.
- 1.15 "Force Majeure" means war, riots, terrorist attacks, fire, acts of God such as flood and storm or strike (subject to clause 4.3 e hereof).
- 1.16 "Free Issue Materials" means the materials and/or tools (such as but not limited to dies, jigs, fixtures, patterns, gauges, moulds, test equipment, equipment for repairs or servicing by Supplier) delivered by Purchaser for execution of the Contract.

- 1.17 "Incoterms" means the revision in place at the Effective Date of the document published under the name "Incoterms" by the International Chamber of Commerce.
- 1.18 "Intellectual Property of Purchaser" means the intellectual property rights connected to the information provided by Purchaser to Supplier in physical or electronic format, or communicated orally.
- 1.19 "Intellectual Property of Supplier" means the intellectual property rights connected to the information provided by Supplier to Purchaser in physical or electronic format, or communicated orally, and which is needed for the use of the Scope of Supply, irrespective of whether originating from Supplier or its sub-suppliers.
- 1.20 "Parties" means Purchaser and Supplier.
- 1.21 "Party" means Purchaser or Supplier.
- 1.22 "Purchase Order" means the order documents issued by Purchaser to order the Scope of Supply.
- 1.23 "Purchaser" means Sulzer Wood Limited.
- 1.24 "Purchaser Group" means Purchaser, its Customers, its and their respective Affiliates and its and their respective directors, officers, employees (including agency personnel), but shall not include any member of Supplier Group..
- 1.25 "Quality Assurance" means the quality assurance documentation, including but not limited to the quality records, method statements, description of the production and work procedures etc. as required under Purchaser's, Customer's and/or Supplier's quality requirements.
- 1.26 "Receiving Party" means Supplier, Purchaser or Customer receiving Confidential Information from one or both of the others.
- 1.27 "Scope of Supply" means the goods and/or Services to be delivered under the Contract, including all related documentation.
- 1.28 "Services" means site services such as erection and commissioning, repairs and maintenance work.
- 1.29 "Supplier" means the Party which is named or defined as Supplier in the Purchase Order.
- 1.30 "Supplier Group" means the Supplier, its sub-suppliers of any tier, its and their Affiliates, its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the Purchaser Group.
- 1.31 "Terms and Conditions" means these Sulzer Wood General Terms and Conditions of Purchase

## **2. General**

- 2.1 The Contract constitutes the entire agreement between Purchaser and Supplier with respect to the performance of the Scope of Supply and supersedes all previous negotiations, representations and/or agreements between the Parties, both written and oral. The Contract shall become a binding agreement at the Effective Date. In particular, all standard or other sales terms submitted by Supplier in any of Supplier's documents, communications or acknowledgements, whether prior to or after the Effective Date, are hereby excluded unless expressly incorporated in the Contract or otherwise agreed in writing by both Parties.
- 2.2 It is Supplier's responsibility to check and verify the documentation provided by Purchaser for the purposes of the execution of the Contract and to notify Purchaser in writing in the event of any discrepancies, errors or inadequacies within the documentation. If no such notification takes place within five (5) Days after receipt of the documentation, the documentation shall be deemed to be accepted.
- 2.3 In case of contradiction between the said documents, the following order of priority shall apply:
  - a. Latest version of the Change Order
  - b. Contract documents signed by both Parties
  - c. Purchase Order
  - d. Purchaser's specifications
  - e. Purchaser's Terms and Conditions

- f. Supplier's offer documents excluding Supplier's terms and conditions

### **3. Delivery**

- 3.1 Conforming to the Delivery Date is an essential requirement for the Contract. Supplier shall deliver the Scope of Supply and the related documentation in the quality and at the date(s) specified in the Contract. Delivery Date shall be deemed to have been met only for Scope of Supply and documentation which is in conformity with the Contract. Time extensions shall only be accepted in Change Orders or, to the extent agreed by Purchaser, in case of Force Majeure events.
- 3.2 Delivery shall be made according to the Incoterms revision mentioned in the Purchase Order, or if no such revision is mentioned in the Purchase Order, the revision current at the Effective Date of the Contract. If no specific delivery terms have been agreed upon, delivery shall be made according to Incoterms (revision current at the Effective Date of the Contract) DDP (Delivered Duty Paid) Purchaser's place.
- 3.3 Supplier shall notify Purchaser in writing of the readiness for dispatch of the Scope of Supply not less than ten (10) working days before shipment. Supplier shall deliver the Scope of Supply on the Delivery Date.
- 3.4 In the event of actual or foreseeable delay, Supplier shall immediately notify Purchaser giving details of its proposed action plan to be implemented at Supplier's cost in order to mitigate such delay. In the event that Purchaser deems that such Supplier proposal is inadequate, Purchaser reserves the right to provide a revised, reasonable action plan and Supplier shall implement such plan at Supplier's cost. Any actions by Supplier in accordance with this clause 3.4 or any Purchaser proposals, or lack of Purchaser proposals, shall not relieve Supplier of its liability for delay.
- 3.5 Where the Delivery Date is determined by a period of time, such period shall commence at the Effective Date.
- 3.6 If Purchaser is not in a position to take over the Scope of Supply on Delivery Date, Purchaser shall inform Supplier in due time after receipt of announcement of readiness for dispatch from Supplier. Supplier undertakes to store the Scope of Supply at Supplier's risk and cost in its premises for a period of maximum two (2) months from Delivery Date.
- 3.7 Where liquidated damages for late delivery are agreed by the Parties and expressly stated in the Contract, Supplier shall pay liquidated damages at the rate specified in the Contract. If no liquidated damages are stipulated in the Contract, Purchaser shall be entitled to all remedies provided by the applicable law in case of late delivery, including but not limited to termination of the Contract for cause according to clause 15 hereof.

### **4. Force Majeure**

- 4.1 In case the delivery under the Contract is affected by a Force Majeure event, Supplier shall immediately inform Purchaser in writing and provide reasonable evidence of such Force Majeure event. In the event of delay in performance due to such Force Majeure event, the Delivery Date or time for completion of the Services will be extended to reflect the length of time lost by reason of such delay. If the grounds for Force Majeure continue for more than two (2) months, both Supplier and Purchaser may terminate the Contract upon seven (7) Days written notice to the other Party.
- 4.2 Upon termination, Purchaser shall have the option to buy the finished and unfinished parts of the Scope of Supply and related sub-supplies from Supplier. Supplier shall be entitled to be compensated for the work done plus the expenses for the sub-supplies bought by Purchaser.
- 4.3 No event or circumstances shall be considered to be an event of Force Majeure to the extent such circumstance or event is due to the neglect or breach of Contract or of statutory duty of a Party. Furthermore Force Majeure shall not include
  - a. any failure of Supplier to perform its obligations under the Contract unless caused by Force Majeure, or
  - b. any shortage of materials or utilities, unless such late delivery or shortage is caused primarily by an event of Force Majeure, or
  - c. lack of funds, or
  - d. any breakdown of equipment or machinery unless such breakdown was caused by an event of Force Majeure, or
  - e. any strike or other form of labour dispute which involves the employees of Supplier and any sub-supplier, unless Supplier can reasonably demonstrate that it does not arise out of any act or omission of Supplier or any sub-supplier.

### **5. Transfer of Title and Risk**

- 5.1 Unless otherwise required by the applicable compulsory law, title to the Scope of Supply and parts thereof shall be transferred to Purchaser as soon as parts of the Scope of Supply have been finished.

- 5.2 Until delivery of the Scope of Supply, Supplier shall store and insure the same separately at its own cost and clearly mark and identify it as Purchaser's ownership.
- 5.3 Supplier undertakes to impose corresponding obligations to its sub-suppliers in order to ensure that Purchaser's rights under this clause 5 shall also apply to sub-supplies related to the Scope of Supply.

**6. Price and Payment**

- 6.1 Unless otherwise stated in the Contract, the agreed purchase prices shall be fixed prices, shall remain unchanged until completion of the Contract and shall include packaging and freight costs as well as taxes and duties exclusive of VAT.
- 6.2 VAT shall be stated separately in the invoice and in accordance with the current legislation. The format of the invoice must be scannable and must be in compliance with the applicable law. It shall state the number of the Purchase Order, identify partial deliveries and, if mentioned in the Contract, also the line items.
- 6.3 Payment terms shall be net sixty (60) Days from receipt of the Scope of Supply and acceptance of the invoice by Purchaser.
- 6.4 Unless otherwise stated in the Contract, if Purchaser makes advance payments, Supplier shall provide an irrevocable, unconditional first demand bank guarantee in the amount of the advance payments, issued by a first class bank acceptable to Purchaser, having a validity date as agreed between the Parties.
- 6.5 On delay of requested certificates of material, quality documents or other documents making part of the Scope of Supply, Purchaser shall be entitled to extend any agreed payment period in accordance with the delay.
- 6.6 Purchaser reserves the right to set off counter-claims of Purchaser or its affiliated companies against payments owed to Supplier. Supplier shall only be entitled to assign claims against Purchaser to third parties with Purchaser's prior written approval, which Purchaser shall not refuse unreasonably.
- 6.7 The payment by Purchaser of any sums under the Contract does not signify acceptance of any of the Scope of Supply nor does such payment relieve Supplier of any of its obligations under the Contract.

**7. Inspection, Drawings, Test Certificates, Operating Instructions, Spare Parts Deliveries**

- 7.1 Supplier shall carry out the inspections and tests of the Scope of Supply in compliance with the requirements stated in the Contract and provide to Purchaser all related certificates and inspection reports. Unless otherwise agreed in the Contract, inspection and test costs shall be borne by Supplier. The inspection and test place shall be determined in the Contract.
- 7.2 Supplier shall give Purchaser reasonable notice of the inspection date, and Purchaser shall be entitled to attend the inspection. Purchaser shall be entitled to reject any part of the Scope of Supply that is defective or does not comply with the Contract and Supplier shall correct such defect or non-compliant Scope of Supply and carry out new inspections and tests of the same at Supplier's cost, without affecting the Delivery Date.
- 7.3 Supplier shall permit (or arrange for permission) Purchaser or other party to be nominated by Purchaser, including agents, representatives or Purchaser's Customer, to reasonably and safely access the Scope of Supply, either at Supplier's premises or other places, including the premises of Supplier's sub-suppliers' sites, where the Scope of Supply is being executed, prepared or stored, during normal working hours for the purposes of inspection, progressing and testing of the Scope of Supply.
- 7.4 Purchaser's approval of final construction drawings, inspections and tests shall in no event relieve Supplier of its responsibility for the Scope of Supply.
- 7.5 Final construction drawings, test certificates, maintenance and operating instructions and spare parts lists required for the proper maintenance of the Scope of Supply shall be handed over to Purchaser in the quantities and languages requested in the Contract.
- 7.6 Supplier shall deliver to Purchaser spare parts related to the Scope of Supply, at Purchaser's request, within fifteen (15) years after acceptance of the Scope of Supply at fair market prices applicable at the time of delivery.

**8. Quality**

- 8.1 Supplier shall comply with Purchaser's, Customer's and Supplier's Quality Assurance requirements, which will include the production of work procedures and/or method statements and quality inspection plans. Supplier shall provide Purchaser a copy of its Quality Assurance documentation upon Purchaser's written request.

8.2 Quality records have to be safely archived for the period required by the law applicable to the respective Scope of Supply, however not less than ten (10) years after acceptance as defined in clause 11.1 hereof.

**9. Free Issue Materials**

9.1 The title to Free Issue Materials shall remain with Purchaser even after Supplier has performed Services on them. Such materials and/or tools shall be marked as Purchaser's property, shall be stored separately until used for performance of the Contract and shall be insured by Supplier under an all risks policy for their full replacement cost.

9.2 On demand by Purchaser, machining waste from Free Issue Materials shall be returned to Purchaser.

9.3 Supplier shall notify Purchaser immediately of any claim of faulty or insufficient quantity or quality of Free Issue Material or such claim is waived.

9.4 Free Issue Materials made available by Purchaser must not be copied or used for any purpose except for the execution of Purchase Order placed by Purchaser, unless Supplier has obtained Purchaser's prior written approval.

**10. Changes**

10.1 At any time Purchaser has the right to instruct Supplier in writing to vary the Scope of Supply, and Supplier shall proceed with such variation as instructed. Variations may include Changes as defined herein above.

10.2 If any Change affects the price and/or Delivery Date, Supplier shall inform Purchaser in writing of the effects thereof within three (3) working days of receipt of Purchaser's instruction and an equitable adjustment shall be made to the Contract Price and/or Delivery Date. Should Supplier fail to notify Purchaser of such effects within the required timescale, then Supplier waives all rights to any adjustment. Save as aforesaid, Supplier shall not make any alteration in or modification of the Scope of Supply.

**11. Acceptance, Warranty**

11.1 Unless otherwise agreed upon in writing, acceptance shall take place after delivery at the place of destination or after putting into commercial operation at Purchaser's or Customer's place, whichever occurs latest. Payment for work in whole or part will not constitute acceptance.

11.2 Supplier expressly warrants that the entire Scope of Supply covered by the Contract will conform to specifications, drawings, samples, performance guarantees or any kind of description furnished or specified by Purchaser and forming part of the Contract, will be merchantable, of good and new material, state-of-the-art workmanship as usually applied for such Scope of Supply and free from defects. Supplier expressly warrants that any design carried out by Supplier together with the material specified in the Contract will be fit and sufficient for the purpose specified. If certificates, test reports or similar documents form part of the agreed Scope of Supply, the data contained therein shall be deemed as warranted characteristics, even if such certificates originate from Supplier's sub-suppliers.

11.3 Should Supplier fail to meet the warranties or guarantees during the warranty and guarantee period, Supplier shall at Purchaser's option forthwith remedy the defects on the spot, or have them remedied at Supplier's cost. Should Supplier fail to remedy defects forthwith or in case of emergency, Purchaser shall be entitled to remedy the defects itself or cause them to be remedied by a third party, in each case at Supplier's charge and risk. Such remedy of defects by Purchaser shall not affect the warranty obligations of Supplier.

11.4 Purchaser shall not be obliged to inspect the Scope of Supply or parts thereof immediately. Defects will be notified after detection. Supplier hereby waives the defence of late notification.

11.5 Unless otherwise agreed in the Contract, the warranty and guarantee period shall commence upon acceptance of the Scope of Supply as described in clause 11.1 hereof and shall expire eighteen (18) months from the date the Scope of Supply is put into commercial operation by Customer or thirty-six (36) months from the date of delivery of the Scope of Supply, whichever occurs first. In the event that Supplier is required to remedy any defects in accordance with this clause 11, the expiry of the warranty and guarantee period shall be extended by a period equal to the period between the date of notification of the defect by Purchaser and the date of satisfactory completion of the remedy by Supplier. For the repaired or replaced Scope of Supply or repeated Services, the warranty and guarantee period shall start anew from the date at which it is put into operation following the satisfactory completion of such repair, replacement or repeat.

11.6 Goods produced from materials other than specified, or by defective materials, shall be replaced by Supplier free of charge within five (5) years from delivery if defects are not detectable by visual control without using optical instruments.

11.7 Where substitute delivery is made, the items originally delivered to Purchaser shall be left with Purchaser for use free of charge until such substitute delivery is ready for operation to Purchaser. The same shall apply in case of whole or partial termination of the Contract due to faulty supply.

11.8 In the event of Disputes on quality parameters, an expert opinion will be obtained. The expert shall be determined in common agreement, must be neutral with regard to his/her relationship to the Parties and must have sufficient experience with respect to the case to be decided. The Parties undertake to accept the findings of the expert and agree that the costs of the expert opinion will be borne by the Party at fault.

## **12. Compliance with All Laws and Regulations applicable to the Contract / UN Global Compact**

12.1 Supplier warrants that it will comply with the requirements of the Contract and with all applicable laws, statutes, rules and regulations for the execution of the Contract. Supplier hereby indemnifies and holds Purchaser harmless for all costs and expenses (including legal costs), penalties and fines incurred as a result of a failure by Supplier to comply with this requirement.

12.2 The Supplier shall obtain all licences, permits, temporary permits and authorisations required by the applicable laws, rules and regulations for the performance of the Scope of Work, save to the extent that the same can only be legally obtained by the Purchaser or Customer.

12.3 The Sulzer Corporation is a participant of the UN Global Compact. Supplier is required to respect the 10 Principles contained therein, such as but not limited to not using child or forced labour, respect internationally proclaimed human rights, not discriminate in respect of employment, act responsibly regarding the environment, and work against corruption in all forms, including extortion and bribery.

## **13. Liens and Similar Claims**

13.1 Supplier guarantees that all Scope of Supply to be delivered under the Contract will be free of any lien, encumbrance or claim of any nature by any third party.

13.2 Further, Supplier shall not claim any lien, charges, attachment or other similar claim on the Scope of Supply or on any property of Purchaser or Customer and shall indemnify and hold harmless Purchaser and/or Customer against any lien, charge, attachment or other similar claim by Supplier and Supplier's sub-suppliers or any other third party to Supplier in connection with the Scope of Supply.

13.3 Supplier shall indemnify and defend Purchaser and the Customer against any and all claims, demands, actions, suits, proceedings and judgments which may be brought or secured against by reason of Supplier's failure under this clause 13.

## **14. Intellectual Property**

14.1 All Intellectual Property of Purchaser shall remain the exclusive ownership of Purchaser and may be used by Supplier only for the purpose of fulfilling its obligations under the Contract.

14.2 Supplier grants Purchaser and Customer a free, unlimited, irrevocable and transferable license to use the Intellectual Property of Supplier and its sub-suppliers for the unrestricted use of the Scope of Supply.

14.3 Supplier warrants that the Scope of Supply and the Intellectual Property of Supplier, and any component part thereof, shall not infringe any intellectual property rights of third parties. In the event of any such infringement, Purchaser may, in its sole discretion, require Supplier to procure the right to use the Scope of Supply without impairing its suitability or modify or replace it so that it is rendered non-infringing. Supplier shall indemnify and hold harmless Purchaser against any claims referring to the infringement of third party intellectual property rights.

## **15. Termination for Cause**

In the event Supplier shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver, administrator or liquidator shall be appointed on account of Supplier's insolvency, ceasing to trade or failing to pay debts, or in the event a Supplier is in default of any requirements under the Contract, Purchaser may, by written notice to Supplier, without prejudice to any other rights or remedies which Purchaser may have under the Contract, cancel further performance by Supplier under the Contract. In the event of such cancellation, Purchaser may complete the performance of the Contract by such means as Purchaser selects and Supplier shall be responsible for any additional costs incurred by Purchaser in so doing. Supplier shall deliver or assign to Purchaser any Scope of Supply in progress as Purchaser may request. Any amounts due to Supplier for the portion of Scope of Supply completed by Supplier in full compliance with the terms of the Contract prior to such termination shall be subject to set off of Purchaser's additional costs of completing the Contract and other damages incurred by Purchaser as a result of Supplier's default.

## **16. Termination for Convenience**

Purchaser reserves the right to terminate the Contract at any time during performance of the Contract, in whole or in part, upon written notice to Supplier. Purchaser shall pay Supplier all its reasonably substantiated direct costs sustained as a result of such termination, however not exceeding the portion of the Contract Price that represents the completed part(s) of

the Scope of Supply. Such reimbursable expenses shall not include the business profit, fixed overhead, royalties, development cost for serial machines and other similar costs of Supplier. In consideration of the payment made, Supplier shall deliver or assign to Purchaser any Scope of Supply in progress and Purchaser shall be entitled to use said Scope of Supply in progress at its own discretion. Supplier undertakes to impose corresponding obligations to its sub-suppliers.

## **17. Suspension**

- 17.1 Upon receipt of Purchaser's notice to suspend the performance of the Contract or any part thereof, Supplier shall cease work on the suspended parts of the Contract until receipt of Purchaser's written notice to resume and shall take such actions as may be necessary to protect and safeguard the part(s) of the Scope of Supply affected by the suspension.
- 17.2 Unless Purchaser's notice to suspend the Contract is attributable to an act or omission of Supplier or its sub-suppliers, the Delivery Date shall be adjusted to account any actual delivery directly resulting from suspension and the Contract Price shall be adjusted in respect of Supplier's reasonable substantiated direct costs incurred as a result thereof.

## **18. Confidentiality**

- 18.1 In connection with the Contract, Disclosing Party may provide Receiving Party with Confidential Information. Confidential Information shall not include information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party, (iii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information or (iv) is required to be disclosed by order of a competent court or government agency.
- 18.2 Subject to clauses 14.1 and 14.2 hereof, the Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information only in connection with the performance of the Contract or installation, operation, maintenance and use of Scope of Supply sold hereunder and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees or its sub-suppliers and their employees (if any) for the purpose of performance of the Contract or installation, operation, maintenance or use of the Scope of Supply sold hereunder. Further, if disclosure of Confidential Information to a third party is required, the Receiving Party agrees to use its best efforts to require proprietary or confidential treatment of the Confidential Information by such third party.

## **19. Export**

- 19.1 Supplier hereby represents and warrants that it is and will remain in compliance with the requirements of all Applicable Export Laws. Such requirements include but are not limited to obtaining all required authorizations or licenses for the export or re-export of any Export Item.
- 19.2 Without limiting the generality of the foregoing, Supplier hereby represents and warrants that it has not been and is not currently debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any Export Item regulated by any agency having jurisdiction. Supplier warrants that it will export and/or re-export any Export Item in accordance with all Applicable Export Laws and Supplier agrees to indemnify and hold harmless Purchaser from any costs, penalties, fines or other losses caused by or related to any violation or breach of the warranties contained in this provision.

## **20. Installation and Site Preparation**

In case the Scope of Supply contains Services to be provided at Purchaser's, Customer's or a third party's site, additional obligations of Supplier shall be stated in the Purchase Order.

## **21. Insurance, Liability, Indemnity**

### **21.1 Insurance**

Supplier shall effect and maintain from the Effective Date until the expiry of Supplier's obligations and liabilities under the Contract the following insurances with first class reputable insurers approved by Purchaser. For all insurances other than Employers' Liability Insurance/Workmen's Compensation shall, to the extent of the liabilities assumed by the Supplier under the Contract, include the Purchaser Group as additional assureds. All insurances required under this Clause 21 shall be endorsed to provide that underwriters waive any rights of recourse, including in particular subrogation rights against the Purchaser Group in relation to the Contract to the extent of the liabilities assumed by the Supplier under the Contract.

- a) Property Insurance for the Scope of Supply and any Free Issue Materials for their full replacement value whilst at Supplier's works against loss, destruction and damage caused by a peril covered under all risk type property insurance.



- b) Transport Insurance shall be effected in accordance with the agreed delivery term, which shall be construed in accordance with the Incoterms as defined in the Contract. If no trade term is specifically agreed or if the agreed trade term does not address transport insurance, then Supplier shall insure the Scope of Supply for one hundred and ten percent (110 %) of its full replacement value whilst in transit to the place where the risks are transferred to Purchaser against loss, destruction and damage caused by a peril covered under an all risk type transport insurance.
- c) General and Products Liability Insurance for any incident or series of incidents covering the operations of the Supplier in the performance of the Contract, in an amount not less than £10,000,000 (ten million pounds) onshore or offshore, .
- d) For Supplier's employees engaged in performing the Contract Occupational Accident and Disease Insurance (i.e. workers compensation or similar social insurance) in accordance with the law which may apply to those employees.
- e) Employers' Liability and/or (where the jurisdiction of where the Scope of Work is to be performed or under which the employees employed requires the same) Workmen's Compensation insurance covering personal injury to or death of the employees of the Supplier engaged in the performance of the Scope of Work to the minimum value required by any applicable legislation including extended cover (where required) for working offshore or £5,000,000 (five million pounds), whichever is the greater;
- f) If Supplier's employees use owned, non-owned or rented automobiles whilst performing Services at Customer's or Purchaser's site, Supplier shall effect and/or maintain Automobile Liability Insurance in accordance with local laws or custom.
- g) Any Other Insurance required by Purchaser and/or Customer and stated in the Contract.

The provision by Purchaser of any of the insurances as required hereunder or any insurances that Supplier may rely upon shall not limit Supplier's liabilities under this Contract.

Whenever required by Purchaser, Supplier shall furnish certificates of any insurance which Supplier is required to effect and/or maintain under this Contract.

## 21.2 Liability

For the purposes of this Clause 21.2 the expression "Consequential Loss" shall mean:

- (i) consequential or indirect loss under English law; and
- (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the Effective Date.

Notwithstanding any provision to the contrary elsewhere in the Contract and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the Contract, the Purchaser shall save, indemnify, defend and hold harmless the Supplier Group from the Purchaser Group's own Consequential Loss and the Supplier shall save, indemnify, defend and hold harmless the Purchaser Group from the Supplier Group's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the Contract.

## 21.3 Indemnity

21.3.1 The Supplier shall be responsible for and shall save, indemnify, defend and hold harmless the Purchaser Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the Supplier Group whether owned, hired, leased or otherwise provided by the Supplier Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (b) personal injury including death or disease to any person employed by the Supplier Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (c) subject to any other express provisions of the Contract, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Supplier Group. For the purposes of this Clause 21.3.1(c) "third party" shall mean any party which is not a member of the Purchaser Group or Supplier Group.

21.3.2 The Purchaser shall be responsible for and shall save, indemnify, defend and hold harmless the Supplier Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the Purchaser Group, whether :-

- (i) owned by the Purchaser Group, or
- (ii) leased or otherwise obtained under arrangements with financial institutions by the Purchaser Group which is located at the Purchaser Group's sites arising from, relating to or in connection with the performance or non-performance of the Contract; and

(b) personal injury including death or disease to any person employed by the Purchaser Group arising from, relating to or in connection with the performance or non-performance of the Contract; and

(c) subject to any other express provisions of the Contract, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Purchaser Group. For the purposes of this Clause 21.3.2(c) "third party" shall mean any party which is not a member of the Supplier Group or Purchaser Group.

21.3.3 Except as provided by Clause 21.3.1(a), Clause 21.3.1(b) and Clause 21.3.4, the Purchaser shall save, indemnify, defend and hold harmless the Supplier Group from and against any claim of whatsoever nature arising from pollution emanating from the reservoir or from the property of the Purchaser Group arising from, relating to or in connection with the performance or non-performance of the Contract.

21.3.4 Except as provided by Clause 21.3.2(a) and Clause 21.3.2(b) the Supplier shall save, indemnify, defend and hold harmless the Purchaser Group from and against any claim of whatsoever nature arising from pollution occurring on the premises of the Supplier Group or emanating from the property and equipment of the Supplier Group (including but not limited to marine vessels) arising from, relating to or in connection with the performance or non-performance of the Contract.

21.3.5 All exclusions and indemnities given under this Clause 21 (save for those under Clauses 21.3.1(c) and 21.3.2(c)) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law, but shall not apply when caused by Gross Negligence or Willful Misconduct of the party to be indemnified. As used herein "Gross Negligence" shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences and "Willful Misconduct" shall mean conduct that is committed with an intentional disregard for the safety of others and/or the safety of another's property. "Gross Negligence" and/or "Willful Misconduct" shall not include any act or omission or any error of judgment or mistake made in good faith.

21.3.6 If either party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both parties shall co-operate fully in investigating the incident.

21.3.7 Nothing in this Clause 21 shall exclude or limit Suppliers liability arising under Clause 11 (Acceptance, Warranty).

## 22. Applicable Law / Dispute Resolution

### 22.1 Applicable Law

The Contract is construed and shall be interpreted in accordance with the laws of England and Wales. The conflict of law rules shall be excluded.

### 22.2 Mediation / Jurisdiction

The Parties shall endeavour to settle any Dispute between them in connection with, or arising out of, the Contract by mutual agreement. If the Parties fail to reach such agreement within thirty (30) Days then the Dispute shall be referred to a mediator for resolution. The Parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the Parties fail to agree within fourteen (14) Days, either Party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the UK Chartered Institute of Arbitrators, for the appointment of a mediator.

Should the mediation fail, in whole or in part, then either Party may take appropriate action in the courts of England and Wales to resolve the Dispute.

## 23. Miscellaneous

### 23.1 Access Rights

Supplier shall permit Purchaser and/or Customer and their employees, agents and/or any identified representative access to any of its and/or its sub-suppliers' premises at any reasonable time for the following purposes:

- a) Expediting the delivery of the Scope of Supply.

- b) In connection with their verification of Supplier's or sub-supplier's compliance with the Quality Assurance requirements.
- c) For the inspection of Free Issue Materials.

#### 23.2 Assignment

- a) Subject to clause 23.3 hereof, Supplier shall not assign, transfer or delegate any of the rights, duties or obligations set forth in the Contract to a third party, except respective prior written consent has been received from Purchaser.
- b) The Purchaser is entitled to assign the Contract or any part of it or any benefit or interest in or under it to any Customer of the Purchaser. In addition the Purchaser may make any such assignment to any other third party but only with the prior agreement of the Supplier which shall not unreasonably be withheld or delayed.

#### 23.3 Sub-supplies

Supplier shall not subcontract all or substantial parts of the Scope of Supply without prior written approval of Purchaser and shall submit to Purchaser a list containing all sub-suppliers. This provision shall not apply to purchases of standard commercial products, nationally advertised products or raw materials.

Supplier shall be responsible for the sub-supplies in the same way as for its own supplies under the Contract. Supplier must provide to its sub-suppliers all necessary information such that all requirements (including key characteristics where required) under the Contract will be fulfilled.

#### 23.4 Waiver of Rights

Purchaser's or Supplier's failure to exercise any of their rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

#### 23.5 Severability

If a provision of the Contract is determined to be void or unenforceable, this finding shall not render other provisions void or unenforceable, and Purchaser and Supplier shall make their best endeavours to replace such provision by a valid one covering the original commercial intention as far as legally possible.

#### 23.6 Changes

Changes to the Contract shall be made in Change Orders.

#### 23.7 Language

In case Contract documents are executed in more than one language, and if one of these languages is English, the English version shall prevail.

#### 23.8. Contracts (Rights of Third Party) Act

- a) Except to the extent expressly stated at Clause 23.8 b) or otherwise in the Contract neither Party to the Contract intend that any provision of the Contract shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 confer any benefit on, nor be enforceable by, any person who is not a party to the Contract.
- b) Sections 7.3, 13, 14, 21 and 23.1 of these Terms and Conditions are intended to be enforceable by Customer.