

DIALOG	Document Title	GENERAL TERMS & CONDITIONS OF PROVISION OF GOODS AND/ OR SERVICES		
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GENERAL TERMS & CONDITIONS OF PROVISION OF GOODS AND / OR SERVICES (“GTC”)

ARTICLE 1 – DEFINITIONS

- 1.1 “ACCEPTANCE” shall mean notification in writing from COMPANY that the GOODS have been received in apparent-good condition and / or SERVICES have been completed satisfactorily (such notification shall be without prejudice to COMPANY’S rights against VENDOR / CONTRACTOR should the GOODS thereafter prove to be incorrect or defective).
- 1.2 “COMPANY” shall mean the entity identified in the purchase order, being the purchaser or recipient of the GOODS or SERVICES.
- 1.3 “COMPLETION” shall mean completion of performance of the SERVICES or delivery of the GOODS to the satisfaction of COMPANY and “COMPLETED” shall be construed accordingly.
- 1.4 “GOODS” shall mean materials, equipment and/or goods purchased or to be purchased hereunder.
- 1.5 “PARTY” or “PARTIES” means COMPANY and/or VENDOR / CONTRACTOR, as the case maybe.
- 1.6 “SCHEDULED DELIVERY DATE(S)” shall mean the delivery date by which the GOODS or part thereof shall be delivered to COMPANY.
- 1.7 “SERVICES” shall mean services performed or to be performed by VENDOR / CONTRACTOR under the provision of SERVICES including provision of resources and VENDOR’S / CONTRACTOR’S equipment or machinery where necessary for the performance of the SERVICES.
- 1.8 “SPECIFICATIONS” shall mean the drawings and/or description of the GOODS and/or the Scope of Work or description of SERVICES as stated in the purchase of GOODS or provision of SERVICES, as the case maybe or in any other documents attached or incorporated herein by way of reference.
- 1.9 “TAX or TAXES” shall mean (i) all forms of taxation including any charge, tax, tariff, duty, levy, impost or withholding wherever chargeable imposed for support of or levied or assessed by federal, state, municipal or local government or any other governmental, statutory or regulatory authority, body or institution including but not limited to tax on gross or net income, profits or gains, taxes on receipts, sales, goods, services, expenditure, costs, property, use, occupation, franchise, transfer, value added, personnel, payroll social security contributions, stamp duty or other statutory levies; (ii) any penalty, fine, surcharge, interest, charges or costs payable in connection with any taxes.
- 1.10 “VENDOR / CONTRACTOR” shall mean the person, firm, or company, providing the GOODS and / or providing the SERVICES including its permitted assignees and successors in title.
- 1.11 “WORK” shall mean any and all works to be provided and things to be done in connection with the GOODS and/or the SERVICES pursuant to the purchase of GOODS and/or provision of SERVICES.

ARTICLE 2 – BINDING CONTRACT

- 2.1 These “GTC” for purchase of GOODS or provision of SERVICES apply to and form an integral part of all requests for proposal, tender bid, quotations and purchase orders issued by COMPANY. COMPANY expressly rejects the applicability of any other general terms and conditions or stipulations of VENDOR / CONTRACTOR.
- 2.2 These GTCs together with the SPECIFICATIONS, drawings, or other documents referred to or issued by COMPANY, including Specific Terms and Conditions (if any), or any documents incorporated by reference, supersede any prior or contemporaneous communications, representations, promises, or negotiations, whether oral or written, with respect to the purchase of GOODS or provision of SERVICES, as the case may be. All documents related to the purchase of GOODS or provision of SERVICES, as the case may be, are to be interpreted together as one agreement.
- 2.3 In the event of any ambiguity or inconsistency between any of the documents or in parts of any one of them, VENDOR / CONTRACTOR shall immediately notify COMPANY of such instances and COMPANY shall issue instruction in regards hereto. Should VENDOR / CONTRACTOR fail to give notice to COMPANY as aforesaid or fail to discover such conflicts, errors and omissions in the above mentioned documents as should reasonably have been discovered by VENDOR / CONTRACTOR, COMPANY shall determine the prevailing order of applicability or priority for such ambiguity or inconsistency.

ARTICLE 3 – STANDARD OF PERFORMANCE

- 3.1 VENDOR / CONTRACTOR shall exercise the best standards of skill, care and diligence in the provision of GOODS or performance of the SERVICES.
- 3.2 VENDOR / CONTRACTOR shall perform the SERVICES in accordance with sound and acceptable industry practice and in accordance with all applicable international or national codes and standards and applicable laws.

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ARTICLE 4 – DELIVERY, SHIPMENT AND PACKAGING

- 4.1 VENDOR / CONTRACTOR will deliver GOODS in accordance with the quantities and SCHEDULED DELIVERY DATE(S) specified by COMPANY. If the SCHEDULED DELIVERY DATE(S) are not stated, VENDOR / CONTRACTOR will offer its best delivery date(s), which will be subject to agreement by COMPANY.
- 4.2 GOODS shall be adequately and properly packed and all packages sequentially numbered. VENDOR / CONTRACTOR shall bear all packing charges. Any damage or loss resulting from inadequate packing shall be borne by VENDOR / CONTRACTOR.
- 4.3 All line items shall be securely tagged with the following:
 - COMPANY stock number
 - Name of part
 - Manufacturing part number
 - Purchase order number
 - Purchase order item number and
 - Platform or plant Location (Where applicable)

If the same line items are delivered in bundles or cartons, then at least one (1) unit of the line items in each bundle or carton shall be tagged. VENDOR / CONTRACTOR shall supply COMPANY at least one (1) original and one (1) copy of the Delivery Order, which contain the purchase order item numbers stated clearly, in brackets, against the corresponding Delivery Order item numbers.

- 4.4 Where part numbers assigned for GOODS are changed due to obsolescence, substitution or other reasons, VENDOR / CONTRACTOR shall notify COMPANY of such changes before delivery.

ARTICLE 5 – DELAYS, EXPEDITING AND INSPECTION

- 5.1 COMPANY or its authorized representative shall have free and unrestricted access with three (3) days' notice to VENDOR'S / CONTRACTOR'S or VENDOR'S / CONTRACTOR'S supplier's premises to inspect progress of the WORK.
- 5.2 VENDOR / CONTRACTOR shall submit its WORK schedule and /or progress report to COMPANY on a fortnightly basis or as otherwise requested by COMPANY.
- 5.3 In the event that:-
 - (a) delay in delivery of the GOODS or COMPLETION is, in COMPANY'S opinion, likely; and
 - (b) VENDOR'S / CONTRACTOR'S WORK is, in COMPANY'S opinion, behind schedule and /or too slow to ensure delivery of the GOODS or COMPLETION by the SCHEDULED DELIVERY DATE or any extension thereof;

then COMPANY may notify VENDOR / CONTRACTOR and require VENDOR / CONTRACTOR to take necessary action including without limitation increasing resources for the WORK or air freighting to mitigate the delay and VENDOR / CONTRACTOR shall forthwith upon receipt of such notice from COMPANY, take the required steps to expedite the WORK. VENDOR / CONTRACTOR shall not be entitled to any additional payment in respect of or in connection with the taking of such steps, unless and to the extent that the steps required to be taken have been necessitated by changes in the SPECIFICATIONS required by COMPANY or by any default on COMPANY'S part.

- 5.4 If VENDOR / CONTRACTOR fails to comply with the said notice from COMPANY within fourteen (14) days from the date of the said notice or if steps taken are in the opinion of COMPANY, unsatisfactory or unlikely to achieve the expedition required, COMPANY may take all such steps as it deems fit including but not limited to the deployment of its own resources to expedite the WORK and mitigate any delay in COMPLETION and/or delivery of the GOODS. Unless and to the extent that the steps taken hereunder have been necessitated by changes in the SPECIFICATIONS required by COMPANY or any default on COMPANY'S part, COMPANY shall be entitled to recover from VENDOR / CONTRACTOR all additional costs incurred by COMPANY hereunder and VENDOR / CONTRACTOR hereby agrees and authorizes COMPANY to deduct the same from any payment otherwise due to VENDOR / CONTRACTOR from COMPANY. Any sum due and payable to COMPANY by way of reimbursement hereunder shall be in addition to any sum due by way of liquidated damages under Article 18.

- 5.5 "In the event of:-
 - (a) changes in the SPECIFICATIONS required by the COMPANY;
 - (b) force majeure under Article 17; or
 - (c) for any other reasons as deemed fit by the COMPANY

and if the opinion of the COMPANY the occurrence of such event shall fairly and reasonable entitle the VENDOR/CONTRACTOR to an extension of time for the SCHEDULED DELIVERY DATE(S), then the COMPANY shall determine the amount of extension. Provided always that the VENDOR/CONTRACTOR has taken all steps to avoid or mitigate such delay and shall do all that may be required and the COMPANY is satisfied with the steps taken by VENDOR/CONTRACTOR to avoid or mitigate such delay.

VENDOR/CONTRACTOR shall not be entitled to any extension of time under this Article 5.5 unless it has within seven (7) days of the occurrence giving rise to the claim for an extension of time, delivered to the COMPANY a notice in writing giving particulars of the claim to extension of time which VENDOR/CONTRACTOR considers itself entitled. The granting of any extension of time under this Article 5.5

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per se shall not entitle VENDOR/CONTRACTOR to any financial claims. An extension of time in respect of one part of the Works shall not of itself entitle VENDOR/CONTRACTOR to an extension of time for any other parts of the Work”

5.6 It is a condition precedent to any entitlement of VENDOR/CONTRACTOR to an extension of time that, no later than ten (10) working days after VENDOR/CONTRACTOR'S notice given under ARTICLE 5.5, VENDOR/CONTRACTOR gives further written notice to COMPANY providing detailed particulars and supporting documents demonstrating the delay events and reasons why it occurred and an estimate of the extent of the expected delay beyond the SCHEDULED DELIVERY DATE(S).

5.7 Where an event that VENDOR/CONTRACTOR claims to be a delaying event has a continuing and delaying effect on the SCHEDULED DELIVERY DATE(S), or where VENDOR/CONTRACTOR is unable to determine whether the effect of such an event will actually cause delay on the SCHEDULED DELIVERY DATE(S), such that it is not practicable for VENDOR/CONTRACTOR to provide all of the details required under ARTICLE 5.6, VENDOR/CONTRACTOR shall submit to the COMPANY, at intervals of seven (7) working days, further interim written particulars until the actual delay caused (if any) is ascertainable, at which time VENDOR/CONTRACTOR shall as soon as practicable but in any event within seven (7) working days give a final notice to COMPANY including the particulars set out in (and subject to) ARTICLE 5.6.

5.8 For avoidance of doubt, if there is a delay to the SCHEDULED DELIVERY DATE(S) and there are two concurrent reasons why the delay would have occurred, then the VENDOR/CONTRACTOR shall not be entitled to claim for an EXTENSION OF TIME or recover any delay cost or profit.

ARTICLE 6 – PRICE

6.1 Prices agreed hereunder shall be fixed and firm in amount and currency inclusive of all TAXES that are applicable.

6.2 Prices shall also be inclusive of all fees, approvals, authorizations, permits, import, export licenses and the like in all the countries where the SERVICES will be performed or raw materials and components to manufacture the GOODS are sourced.

6.3 VENDOR / CONTRACTOR shall be fully liable for changes in law, regulations and orders by government authorities of country or countries where SERVICES will be performed or GOODS will be delivered. Additional requirements if any imposed by such authorities, shall be implemented by VENDOR / CONTRACTOR without any change whatsoever to the price.

ARTICLE 7 – INVOICING AND PAYMENT

7.1 Unless otherwise stated herein, payment shall be remitted sixty (60) days after receipt of the correct original invoice and appropriate supporting documents evidencing ACCEPTANCE or COMPLETION, whichever is later.

7.2 An incorrect invoice or an invoice without appropriate supporting documents will be returned to VENDOR / CONTRACTOR by COMPANY. The invoice shall be submitted upon ACCEPTANCE or upon COMPLETION (whichever is the later) or at any other time as may agree between the PARTIES.

7.3 Neither the presentation of an invoice nor the payment thereof shall constitute a settlement of a dispute or otherwise waive or affect the rights of the PARTIES hereunder.

7.4 Unless otherwise expressly agreed, all payment by COMPANY to VENDOR / CONTRACTOR shall be made in Ringgit Malaysia. Any amount stated on the invoice shall be inclusive of SST, where applicable, and shall cover payment for all costs incurred by VENDOR / CONTRACTOR in performing its obligations under the purchase of GOODS or provision of SERVICES.

7.5 COMPANY may withhold any payment due to VENDOR / CONTRACTOR to such extent as may be necessary to protect COMPANY from any loss arising or anticipated to arise out of VENDOR'S / CONTRACTOR'S failure to fulfill the requirements of the purchase of GOODS or provision of SERVICES.

ARTICLE 8 – CHANGES

8.1 COMPANY reserves the right, at any time to make changes to the purchase of GOODS or provision of SERVICES and the SPECIFICATIONS by reasonable notice in writing to VENDOR / CONTRACTOR, and VENDOR / CONTRACTOR agrees to comply with such changes, subject to reasonable and equitable adjustment agreed by COMPANY for any increase or decrease in price or time required for performance where applicable.

8.2 Such changes may include, but are not limited to amendments, additions, deletions, substitutions, alterations and modifications. In the event that there shall be disagreement between COMPANY and VENDOR / CONTRACTOR as to the quantum of such equitable adjustment, VENDOR / CONTRACTOR shall nevertheless proceed with the WORK (and the change in the WORK) with all due diligence.

ARTICLE 9 – TRANSFER OF TITLE AND PASSING OF RISK

9.1 The full and unencumbered title in the GOODS shall pass to COMPANY when the first of the following events:-

- on payment for the GOODS (in whole or in part); or
- on ACCEPTANCE by COMPANY at the specified delivery point.

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However such transfer of title will be without prejudice to COMPANY's right to refuse the GOODS in case of non-conformity with the requirements of the purchase of GOODS or provision of SERVICES or the SPECIFICATIONS.

9.2 Unless otherwise expressly stated and notwithstanding transfer of the title in the GOODS, VENDOR / CONTRACTOR shall remain responsible for risk of loss or damage until ACCEPTANCE.

ARTICLE 10 – WARRANTIES

10.1 All WORK shall be performed by suitably qualified, experienced and competent personnel. All personnel supplied by VENDOR / CONTRACTOR shall be competent, experienced and suitably qualified for the intended purpose which they are provided. COMPANY reserves the right to require the replacement by VENDOR / CONTRACTOR at VENDOR'S / CONTRACTOR'S cost, any personnel which in COMPANY'S opinion do not comply with the forgoing provisions.

10.2 VENDOR / CONTRACTOR warrants that the GOODS and SERVICES supplied shall:-

- (a) be new;
- (b) be free from defects;
- (c) conform strictly as to quality, quantity and description stated;
- (d) in compliance with all applicable laws, statutory requirements, codes and standards;
- (e) be of merchantable quality;
- (f) be fit for the purpose for which the GOODS and SERVICES are supplied, if no purpose is expressly specified, then for the normal or usual purpose for which such GOODS or SERVICES are supplied; and
- (g) be capable of the standards of performance specified.

The foregoing warranties shall be additional to and not in substitution of warranties of any other rights provided by law.

10.3 The GOODS and/or SERVICES are covered by warranty for the period of eighteen (18) months after ACCEPTANCE or COMPLETION or twelve (12) months after commissioning, whichever shall be the later.

10.4 VENDOR / CONTRACTOR further warrants that the GOODS are free and clear of all liens, encumbrances, taxes and claims.

10.5 VENDOR / CONTRACTOR shall obtain available warranties and guarantees from the manufacturers or vendors of materials of goods for incorporation into the GOODS. VENDOR / CONTRACTOR shall also obtain available warranties and guarantees from its sub-contractors whose WORK form part of the SERVICES. VENDOR / CONTRACTOR shall extend to COMPANY the benefit of such warranties and guarantees for the materials, goods and services.

ARTICLE 11 – DEFECTS

11.1 At the option of COMPANY, any defects or other faults relating to the GOODS and/or SERVICES shall be rectified or made good by VENDOR / CONTRACTOR at its own costs within seven (7) days after receipt of COMPANY's written notice or COMPANY may rectify or make good such defects or faults on its own or through a third party contractor, whereupon VENDOR / CONTRACTOR shall be liable for all costs and expenses incurred by COMPANY (or its third party contractor) whether direct or incidental, for such rectification, re-performance, repair or replacement.

11.2 If VENDOR / CONTRACTOR fails to rectify or make good any defects or faults within the time specified above, COMPANY may further do so at its own cost and VENDOR / CONTRACTOR shall be liable to COMPANY for all costs and expenses incurred by COMPANY (or its third party contractor), whether direct or incidental, in carrying out the re-performance, repair or replacement work.

11.3 Where the GOODS have been repaired or replaced or SERVICES re-performed, whether in whole or in part pursuant to this Article 11 by VENDOR / CONTRACTOR, then all the warranties stated in this Article 11 shall continue to apply to the re-performed SERVICES or the repaired or replaced GOODS:-

- (a) for a period of one (1) year from the date of successful re-performance, repair or replacement; or
- (b) for the remainder of the initial warranty period,

whichever is later.

11.4 COMPANY'S inspection, testing, witness of tests or payment of invoices shall not relieve VENDOR / CONTRACTOR from its warranty obligations.

ARTICLE 12 – TERMINATION

12.1 Termination for default

12.1.1 In the event of:-

- (a) any failure or refusal or inability of VENDOR / CONTRACTOR to perform the WORK or any part thereof in an efficient, workmanlike, skillful and careful manner or with the required promptness and diligence; or

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- (b) any failure or refusal or inability of VENDOR / CONTRACTOR to comply with any of the requirements of the purchase of GOODS or provision of SERVICES; or
- (c) any breach by the VENDOR / CONTRACTOR of any of the terms or conditions of the purchase of GOODS or provision of SERVICES; and if such breach is capable of remedy and VENDOR / CONTRACTOR fails or neglects to remedy such breach within the period set out by COMPANY; or
- (d) the making by VENDOR / CONTRACTOR of an assignment for the benefits of creditors, the filing by or against VENDOR / CONTRACTOR of a petition in winding-up or liquidation of bankruptcy or for corporate reorganization, or the appointment of a receiver or trustee for VENDOR / CONTRACTOR or the properties of VENDOR / CONTRACTOR;

COMPANY may give written notice to VENDOR / CONTRACTOR to terminate the purchase of GOODS or provision of SERVICES in whole or in part without prejudice to any rights or claims which COMPANY may have hereunder.

12.1.2 VENDOR / CONTRACTOR shall compensate COMPANY for any costs and damages incurred or suffered by COMPANY as a result of VENDOR'S / CONTRACTOR'S default pursuant to Article 12.1.1 hereof.

12.2 Termination for convenience

- 12.2.1 COMPANY may terminate the purchase of GOODS or provision of SERVICES in whole or in any part at any time without cause by giving fourteen (14) days written notice to VENDOR / CONTRACTOR.
- 12.2.2 VENDOR / CONTRACTOR is entitled to reimbursement of reasonably incurred, unavoidable, mitigated and documented costs for the GOODS and/or SERVICES up until termination, provided the same is duly incurred, documented and verified. Such payment by COMPANY shall be final and forms the exclusive remedy available to VENDOR / CONTRACTOR for the termination of the purchase order, in part or in whole, by Company. VENDOR / CONTRACTOR shall NOT be entitled to any anticipated or prospective profits or any other loss arising from such a termination.

ARTICLE 13 – LIABILITY AND INDEMNITY

- 13.1 VENDOR / CONTRACTOR shall be responsible for and shall indemnify, defend and hold harmless COMPANY and their respective joint ventures, controlled, affiliated, parent and subsidiary companies and the shareholders, directors, agents, employees and representative of each (“the Indemnified Parties”) from and against any and all claims, demands and causes of action brought by any third party including but not limited to officers, agents, representatives of VENDOR / CONTRACTOR sub-contractors of either the Indemnified Parties or VENDOR / CONTRACTOR and against any and all judgements in respect thereto, on account or personal injury or death or on account of property damage, destruction, or loss arising out of any act or omission of VENDOR / CONTRACTOR, its officers, employees, representatives or sub-contractors, related to the purchase of GOODS or provision of SERVICES or the GOODS and/or SERVICES without regard to whether any negligent act or omission of the Indemnified Parties contributed to such injury, death or property damage. However, VENDOR / CONTRACTOR shall not be responsible for, nor indemnify or hold the Indemnified Parties harmless from injury, death or property damage caused solely by the gross negligence of COMPANY.
- 13.2 VENDOR / CONTRACTOR shall be responsible for and shall indemnify, defend and hold harmless the Indemnified Parties against any liability, claims, demands, loss or expenses on account of
 - (a) Personal injury or death of any director, employee, agent or representative of VENDOR / CONTRACTOR or its sub-contractors; and/or
 - (b) Damage, destruction, or loss of any property owned, hired or in the control of VENDOR / CONTRACTOR or its sub-contractors;
 - (c) Damage, destruction or loss of any property of the Indemnified Parties in the care, custody and control of VENDOR / CONTRACTOR regardless of any negligence or faults of the Indemnified Parties.
- 13.3 For the purposes of this Article 13, “gross negligence” means any act or failure to act which was intended to cause or which was reckless disregard of or in wanton indifference to, which cause harmful consequences that such person knew, or should have known, such act or failure would have, including on the safety or property of another person or entity.
- 13.4 The indemnities in this Article 13 shall survive the termination or discharge of the purchase of GOODS or provision of SERVICES.
- 13.5 In no event shall either PARTY be liable to the other way by way of indemnity nor by reason of any breach of the terms of the purchase of GOODS or provision of SERVICES or for termination of the purchase of GOODS or provision of SERVICES or by reason of law, and howsoever arising for any indirect, special, punitive, remote or consequential losses or damages of any kind or nature, including but not limited to, loss of profit, loss of earnings or for any financial or economic loss of damages whatsoever that may be suffered by the PARTY.

ARTICLE 14 – INSURANCE

- 14.1 Without prejudice to the provisions of Article 13, VENDOR / CONTRACTOR shall at its own cost, effect and maintain during the performance of the WORK adequate insurance in relation to the following:
 - (a) Workmen's compensation (employers' liability) in respect of all employees and other personnel engaged by or providing services to VENDOR / CONTRACTOR.
 - (b) Motor vehicles, third party and passenger liability in respect of any owned or rented motor vehicles.
 - (c) Owned or rented plant and equipment including vessels or other floating equipment.
 - (d) General third party liability insurance covering legal and contractual liability for loss, damage, injury or death to third parties.

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- (e) If specifically requested by COMPANY, construction all risks insurance to an amount required by COMPANY.
- (f) Any other insurance which may be required by under law in connection with the WORK.

The level of insurance cover shall in each case be adequate to fully protect against the respective risks.

- 14.2 VENDOR / CONTRACTOR shall produce the relevant Certificates of Insurance for inspection plus proof of payment of premiums whenever requested by COMPANY.
- 14.3 VENDOR / CONTRACTOR shall ensure that all such Insurance:-
 - (a) waive all rights of subrogation against COMPANY and all their joint ventures, all their respective controlled, subsidiary companies and all their respective agents, directors and employees; and
 - (b) name COMPANY and all their joint ventures, all their respective controlled, subsidiary companies and all their respective agents, directors and employees as co-assured.

ARTICLE 15 – BANK GUARANTEE

- 15.1 VENDOR / CONTRACTOR shall provide within fourteen (14) days of the date of issuance of the purchase order or contract, an irrevocable and unconditional bank guarantee payable to COMPANY on demand by COMPANY, in a form acceptable to COMPANY from a licensed bank operating in Malaysia acceptable to COMPANY for a sum of ten percent (10%) of the value of the WORK. The bank guarantee shall remain valid from the date of the purchase order or contract until one (1) month after expiry of any applicable warranty period.
- 15.2 Any payments to be made by COMPANY to VENDOR / CONTRACTOR shall subject to VENDOR / CONTRACTOR having first delivered the bank guarantee to COMPANY, and in addition, failure to deliver the bank guarantee to COMPANY within stipulated time shall give COMPANY the right to terminate purchase of GOODS or provision of SERVICES in which event COMPANY shall not be liable in any way for costs, damages or any other losses suffered by VENDOR / CONTRACTOR.
- 15.3 COMPANY may call upon the bank guarantee in the event VENDOR / CONTRACTOR breaches any of the terms of the purchase of GOODS or provision of SERVICES or fails to perform or adhere to any of its obligations stated hereunder.

ARTICLE 16 – PERFORMANCE GUARANTEE

- 16.1 VENDOR / CONTRACTOR shall provide COMPANY a parental performance guarantee in a form acceptable to COMPANY from VENDOR'S / CONTRACTOR'S foreign supplier, parent or ultimate parent company as required by COMPANY.
- 16.2 Any payments to be made by COMPANY to VENDOR / CONTRACTOR shall be subject to VENDOR / CONTRACTOR having first delivered the performance guarantee to COMPANY, and in addition, failure to deliver the performance guarantee to COMPANY within the stipulated time shall give COMPANY the right to terminate the purchase of GOODS or provision of SERVICES in which event COMPANY shall not be liable in any way for costs, damages or any other losses suffered by VENDOR / CONTRACTOR.

ARTICLE 17 – FORCE MAJEURE

- 17.1 Any delay or failure in performance by either PARTY hereto shall not constitute default hereunder or give rise to any claim for damages or losses to the extent that such delay or failure result from the PARTY being prevented from performing by causes not foreseeable and beyond the reasonable control such PARTY and which by the exercise of reasonable diligence that PARTY could not have prevented or provided against, all of which causes are hereinafter called "Force Majeure" including but without being limited to, strikes, lockouts or other industrial disturbances (other than strikes, lock outs or other industrial disturbances by the personnel of VENDOR / CONTRACTOR, its parent subsidiary or associate and its sub-contractors of any tier), riots, fires, floods, storms, Acts of God, war (declared or undeclared), acts of the enemy, blockades, insurrections, revolutions, compliance with any regulation, order or requirement of any governmental or military agency, but specially excluding the financial distress of such PARTY. The PARTY prevented from performing for any such cause shall notify the other PARTY as soon as reasonably practicable and shall do all things reasonably necessary to remove such cause and shall resume performance hereunder in written notice as soon as such cause is removed, provided that this shall not require such PARTY to settle labour disputes on terms not acceptable to such PARTY.
- 17.2 VENDOR / CONTRACTOR shall not be entitled to any compensation for the suspension of performance as a result of Force Majeure.
- 17.3 If either PARTY consider the event of Force Majeure to be such severity or that it has continued for a period of thirty (30) days that it effectively frustrates the original intention of the purchase of GOODS and provision of SERVICES, then COMPANY may terminate the purchase of GOODS and provision of SERVICES in accordance with Article 12.2.

ARTICLE 18 – LIQUIDATED DAMAGES

- 18.1 Time shall be of the essence and VENDOR / CONTRACTOR recognizes that failure to meet and SCHEDULED DELIVERY DATE(S) may have a serious consequential effect on COMPANY'S WORK program. VENDOR / CONTRACTOR hereby agrees that the amounts payable to COMPANY by way of liquidated damages pursuant to this Article 18 constitute reasonable compensation to COMPANY for such delay and VENDOR'S / CONTRACTOR'S liability to COMPANY as specified in this Article 18 shall be conclusive irrespective of loss or damage actually suffered by COMPANY. VENDOR / CONTRACTOR and COMPANY hereby agree that Section 75 of the Malaysian Contract Acts, 1950 (as may be amended from time to time) shall not apply to the transaction under the provision of GOODS or SERVICES.

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18.2 If VENDOR / CONTRACTOR fails to deliver the GOODS or achieve COMPLETION on or before the SCHEDULED DELIVERY DATE(S), then it is agreed that VENDOR / CONTRACTOR shall pay COMPANY:

- where GOODS alone are to be purchased under the purchase order, an amount equal to one percent (1%) of the value of the GOODS for each week or part thereof of delay, but only up to a maximum of ten percent (10%) of the value of the GOODS;
- where SERVICES alone are to be performed under the purchase order, an amount equal to one percent (1%) of the value of the SERVICES for each day or part thereof of delay, but only up to maximum of ten percent (10%) of the value of the SERVICES; or
- where both GOODS are to be purchased and SERVICES are to be performed under the purchase order, an amount equal to one percent (1%) of the value of the GOODS for each week or part thereof of delay in delivery of the GOODS and in addition, an amount equal to one percent (1%) of the value of the SERVICES for each day or part thereof of delay, but only up to maximum of ten percent (10%) each of the value of the GOODS and SERVICES respectively; by way of liquidated damages.

18.3 COMPANY'S rights hereunder shall be without prejudice to any of its other rights and/or to terminate the purchase of GOODS or provision of SERVICES under Article 12 or otherwise VENDOR / CONTRACTOR hereby agrees and authorizes COMPANY to deduct the amount by way liquidated damages hereunder from any payment otherwise due to VENDOR / CONTRACTOR from COMPANY recover the same by any other means available.

ARTICLE 19 – STORAGE, REJECTION, REPAIR AND REPLACEMENT OF GOODS

19.1 Any part of the GOODS ready for delivery before COMPANY has authorized delivery shall be stored by VENDOR / CONTRACTOR at its own risk and expense for at least 45 days.

19.2 At COMPANY'S request, VENDOR / CONTRACTOR shall repair or replace GOODS and/or re-perform the SERVICES not complying with the SPECIFICATIONS or supply any shortfall in the event of shortfall in delivery or COMPANY may at its option re-perform such SERVICES and/or repair or replace such GOODS or supply any shortfall in the event of shortfall in the delivery. VENDOR / CONTRACTOR shall bear all costs and expenses incurred by either VENDOR / CONTRACTOR or COMPANY as a result of the re-performance of the SERVICES, rejection, repair or replacement of the GOODS or supply of shortfall in delivery including but not limited to costs of transportation, labour and customs duties.

ARTICLE 20 – TAXES AND DUTIES

20.1 All customs duties, taxes, assessments, royalties and any other charges levied by any government authority in connection with the GOODS and/or SERVICES supplied hereunder shall be borne by VENDOR / CONTRACTOR unless otherwise stated in writing by COMPANY.

20.2 The VENDOR/CONTRACTOR shall be responsible for arranging and bearing the cost of any stamp duties applicable to this Agreement and any documents associated with or contemplated under this Agreement, in accordance with the relevant stamp duty laws and regulations of the jurisdiction(s) in effect at the time of execution.

20.3 COMPANY shall have the right to withhold taxes on payments due to VENDOR / CONTRACTOR whether in respect of GOODS or SERVICES, in the event such withholdings are required by law. The payment by COMPANY to the relevant government authority of the amount of money so withheld shall relieve COMPANY from any further obligation to VENDOR / CONTRACTOR with respect to any amount so withheld and shall be deemed payment by COMPANY to VENDOR / CONTRACTOR. The term "custom duties" as used under this Article 20 shall include all import duties, surtax, sales tax, service tax and all other statutory imposts. For any withholding tax, VENDOR/CONTRACTOR shall provide certificate of residence of the applicable country (if applicable), as necessary. VENDOR / CONTRACTOR shall indemnify COMPANY against all claims, demands and causes of action based on any actual taxes for which they are liable or any failures by VENDOR / CONTRACTOR to comply with applicable tax reporting, return or other procedural requirement with respect to the GOODS or SERVICES. This indemnity shall include without limitation all penalties, awards and judgments; court and arbitration costs; attorney's fees; and other reasonable expenses associated with such claims, demands and causes of action.

20.4 Where Sales and Services Tax ("SST") is applicable to any GOODS or SERVICES supplied by VENDOR / CONTRACTOR, then

- VENDOR / CONTRACTOR shall:-
 - Provide to COMPANY information that may be reasonably require to establish its liability for SST;
- Where a taxable supply has been made but applicable SST has not been charged, the price increase in the consideration required under SST law shall be paid by COMPANY upon provision of invoice by VENDOR / CONTRACTOR in accordance with the SST law.

VENDOR/CONTRACTOR agrees that no SST shall be due and payable by COMPANY unless COMPANY has satisfied that VENDOR/CONTRACTOR has complied with the provisions of this Article.

ARTICLE 21 – AUDIT

21.1 VENDOR / CONTRACTOR shall keep accurate and complete records of its performance for the purchase of GOODS or provision of SERVICES and such records shall be available for inspection by COMPANY at all reasonable times from date of the purchase of GOODS

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or provision of SERVICES for a minimum period of Six (6) years after the date of COMPLETION or ACCEPTANCE whichever is the later.

21.2 Pursuant to the Credit Reporting Agencies (CRA) Act 2010, Central Bank of Malaysia Act 2009 and Personal Data Protection Act 2010, the VENDOR/CONTRACTOR hereby give consent to the COMPANY to obtain and/or disclose any Credit Information (as defined in the Act) relating to the VENDOR/CONTRACTOR from and/or to any reliable licensed credit reporting agencies or any source deemed appropriate to verify the VENDOR/CONTRACTOR credit history as may deemed fit under any applicable law, regulation, guidelines, regulatory requirements or directive in relation to both parties' credit application or transaction for the purposes of (but not limited to) opening of account, credit evaluation, credit/account review, credit/account monitoring, debt recovery purposes, scoring solutions, legal documentation and/or action consented to a contract or services granted. Such consent shall remain applicable throughout the term of the said purposes.

ARTICLE 22 – ASSIGNMENT

22.1 COMPANY may assign any of its rights and obligations under the purchase of GOODS or provision of SERVICES, in whole or in part, or any benefit or interest therein to any party without VENDOR'S / CONTRACTOR'S consent but subject to notification thereof to VENDOR / CONTRACTOR.

22.2 VENDOR / CONTRACTOR is prohibited from assigning the purchase of GOODS or provision of SERVICES or any part hereof or any benefit or interest hereunder without the written approval of COMPANY, who shall be entitled at its absolute discretion to grant or refuse such approval or grant such approval subject to such conditions as it deems fit. Any purported assignment without the written approval of COMPANY shall be absolutely void against COMPANY and COMPANY in such event shall have no obligation whatsoever to the purported assignee. Any assignment shall not release or relieve VENDOR / CONTRACTOR of any its obligations hereunder.

ARTICLE 23 – SUB-CONTRACTING

VENDOR/CONTRACTOR shall not subcontract any of its duties hereunder without the prior approval of COMPANY. In the event COMPANY approves a subcontract, VENDOR / CONTRACTOR shall be fully responsible for any acts, defaults, and omissions of any sub-contractor(s), to the same extent as it is for the acts and omissions of persons directly or indirectly employed by COMPANY. VENDOR / CONTRACTOR shall not bind or purport to bind COMPANY in the subcontract in any manner.

ARTICLE 24 – RELATIONSHIP OF PARTIES/INDEPENDENT CONTRACTOR

Nothing in these GTC's will be construed to place VENDOR / CONTRACTOR and COMPANY in an agency, employment, franchise, joint venture or partnership relationship. Neither PARTY has the authority to obligate or bind the other in any manner, and nothing contained in the purchase of GOODS or provision of SERVICES will give rise or is intended to give rise to rights of any kind to any third parties. The PARTIES agree that VENDOR / CONTRACTOR will perform its obligations under the purchase of GOODS or provision of SERVICES as any independent contractor.

ARTICLE 25 – INTELLECTUAL PROPERTY RIGHTS

25.1 VENDOR / CONTRACTOR warrants that the GOODS and SERVICES do not infringe or violate any patent, copyright, trade secret or proprietary right. VENDOR / CONTRACTOR will defend and hold COMPANY harmless from actions at law or in equity brought against COMPANY arising from a claim that COMPANY'S use of the GOODS or SERVICES infringes a patent, copyright, trade secret or proprietary right and will pay or shall ensure that there is paid on behalf of COMPANY, all costs, damages, lawyers' fees and other reasonable expenses associated with such claim that a court finally awards as a result of such claim. If such claim is directed towards COMPANY, COMPANY shall notify VENDOR / CONTRACTOR promptly in writing of the claim, allow VENDOR / CONTRACTOR to participate in the defence of such claim and VENDOR / CONTRACTOR shall not agree to any settlement of such claim without COMPANY written consent. If such claim is directed towards VENDOR / CONTRACTOR, VENDOR / CONTRACTOR shall have the right to control and direct through lawyers of its own selection, the investigation, defence and settlement of such claim. If COMPANY so desires, COMPANY may also participate in its own defence, at COMPANY'S own expense with lawyers of its own selection. Should the GOODS or SERVICES provided under the purchase of GOODS or provision of SERVICES become the subject of any claim of infringement, VENDOR / CONTRACTOR shall procure for COMPANY the right to continue to use the GOODS or SERVICES.

25.2 VENDOR / CONTRACTOR agrees that COMPANY shall be allowed to make free unfettered use of any information made available by VENDOR / CONTRACTOR to COMPANY at any time.

ARTICLE 26 – CONFIDENTIALITY

26.1 VENDOR / CONTRACTOR shall treat as secret and confidential all information acquired by VENDOR / CONTRACTOR during the performance of the WORK including, without limitation, the policies of COMPANY and the results of any investigation or enquiry carried out or report and recommendation made by VENDOR / CONTRACTOR hereunder, and VENDOR / CONTRACTOR shall not disclose any such information to any other person or use any such information for any other purpose other than performance of the WORK under the purchase order/ contract without obtaining the prior written consent of COMPANY.

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26.2 VENDOR / CONTRACTOR shall not divulge any information with regard to the purchase of GOODS or provision of SERVICES or with regard to COMPANY in any publicity release or advertising without securing the prior written consent of COMPANY which consent shall not be unreasonably withheld.

26.3 Each party must comply, and ensure that its employees, agents and representatives comply, with any other applicable laws relating to confidentiality, including in relation to the GOODS and/or SERVICES.

26.4 VENDOR / CONTRACTOR represents and warrants that it has adopted all reasonable physical, technical and organizational safeguards against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure, access, use processing of confidential information. VENDOR / CONTRACTOR will immediately notify COMPANY in the event of any known or suspected unauthorized access to or use of the confidential information.

26.5 VENDOR/CONTRACTOR shall, on a full indemnity basis, indemnify COMPANY and its officers, employees and agents, against all actions, claims, demands, losses, damages, statutory penalties, expenses and cost (including legal costs on an indemnity basis), in respect of any act, omission or negligence of VENDOR/CONTRACTOR that causes or results in COMPANY being in breach of any applicable laws relating to confidentiality.

26.6 The obligations of VENDOR / CONTRACTOR under this Article 26 shall continue notwithstanding the termination or expiration of the purchase of GOODS or provision of SERVICES.

ARTICLE 27 – COMPLIANCE WITH LAWS

27.1 VENDOR/CONTRACTOR shall abide by and comply and secure compliance with all applicable laws of any governmental or regulatory body having jurisdiction over the performance of the Work, supply of GOODS and/or SERVICES. All operations, including equipment or vehicles used, necessary for the performance of the WORK and/or supply of the GOODS and/or Services (including that of any sub-contractors as agreed to by COMPANY) shall be carried out in compliance with all applicable laws. For the purposes of this Article “laws” include any law, act ordinance, regulation, rule, by-law, order, directive, policy and guideline of the government (whether federal, state, local, municipal or others) of any country in which any part of the purchase of GOODS or provision of SERVICES is performed.

27.2 VENDOR / CONTRACTOR shall ensure compliance of the same by its agents and sub-contractors. This requirement shall include the securing by VENDOR / CONTRACTOR of all necessary import licenses or permits wherever applicable. If VENDOR / CONTRACTOR or any of its agents or sub-contractors perform any part of the WORK hereunder contrary to law, then VENDOR / CONTRACTOR shall bear any additional costs resulting from said violation and correction thereof. Under no circumstances shall VENDOR / CONTRACTOR enter into any negotiation with any governmental authority or agency to develop ACCEPTANCE or variations or revisions to law, without COMPANY'S prior written approval.

27.3 VENDOR/CONTRACTOR shall defend, indemnify and hold COMPANY harmless (such indemnity to include the full amount of all costs and expenses associated therewith) from all forms of (i) penalty or fine which may be imposed on COMPANY by reason of any actual breach or violation or alleged breach or violation of law by the CONTRACTOR or its sub-contractors or their respective employees, servants or agents; (ii) loss or damage suffered by COMPANY by reason of such breach non-compliance or violation with the laws or loss or damage suffered by COMPANY resulting from any action taken by the relevant authority by reason of such breach non-compliance or violation of the laws; (iii) claims, suits or proceedings that may be brought against COMPANY in any way related to, arising under, or by reason of such breach, non-compliance or violation, whether brought by the employees servants or agents of the Contractor or its sub-contractors or by any third parties or by the relevant authority.

27.4 VENDOR / CONTRACTOR shall at VENDOR's / CONTRACTOR's own expense, defend, indemnify and hold COMPANY harmless from all forms of penalty which may be imposed on COMPANY by reason of any alleged violation of law by VENDOR / CONTRACTOR and also from all claims, suits, or proceedings that may be brought against COMPANY arising under or by any reason of the performance of the purchase of GOODS or provision of SERVICES with respect to such alleged or violation of law whether brought by employees of VENDOR / CONTRACTOR or by third parties or by any relevant authority.

27.5 VENDOR'S / CONTRACTOR'S obligations under this Article shall include, without limitation, obtaining all necessary or appropriate import licenses, customs clearances or permits whenever applicable.

ARTICLE 28 – HEALTH AND SAFETY, WASTE MANAGEMENT & DRUG AND ALCOHOL

28.1 VENDOR / CONTRACTOR shall comply with all health and safety requirements of COMPANY and all other code of conduct and ethics of COMPANY. Under the circumstances, the COMPANY shall have the right to prohibit commencement of the WORK or to stop any WORK in progress on health and safety grounds if (without limitation) materials, construction equipment, the VENDOR/CONTRACTOR's personnel (whether procured by the VENDOR/CONTRACTOR from third parties or supplied by the VENDOR/CONTRACTOR) or work conditions are considered to be unsafe or not in compliance with health and safety requirements of COMPANY.

28.2 VENDOR/CONTRACTOR shall be liable for (i) removal and, when appropriate, marking and lighting of any wreck or debris or unsafe materials arising from the performance of the Work, supply of GOODS and/or SERVICES, and/or (ii) proper control, removal, transportation, and disposal of or otherwise the management of waste (including scheduled waste, hazardous waste etc) under the care, custody, control, protection and/or preservation of VENDOR/CONTRACTOR or arising from the performance of the Work, supply of GOODS and/or SERVICES and VENDOR/CONTRACTOR shall defend, indemnify and hold harmless COMPANY and its group in respect of any and all losses, damages, liabilities, claims, demands, actions, proceedings, payments, costs, expenses (including with no limitation legal costs, tribunal costs, experts' and investigative fees), fines, penalties, and interest arising out of, or relating to, the foregoing. If required,

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the VENDOR/CONTRACTOR shall promptly provide all necessary supporting documentation and certifications pertaining to the obligations set forth herein, in a format and manner acceptable to the COMPANY and/or any applicable regulatory authorities.

28.3 VENDOR / CONTRACTOR warrants that its employees, agents and sub-contractors shall not perform any WORK while under the influence of alcohol or drugs or any controlled substance. VENDOR / CONTRACTOR, its employees, agents and sub-contractors shall at all times comply with any drug and alcohol policy may be issued by COMPANY from time to time.

28.4 Right to Withhold Payment on Health and Safety Ground

- (a) In the event the VENDOR/CONTRACTOR fails to comply with any of the health and safety requirements of COMPANY, without affecting the COMPANY's right under this Agreement or under the law, the COMPANY shall be entitled to withhold amounts from payments due to the VENDOR/CONTRACTOR under this Agreement until the VENDOR/CONTRACTOR rectifies such non-compliance which are capable of remedy to the satisfaction of the COMPANY whereupon the COMPANY shall release such sums withheld to the VENDOR/CONTRACTOR (without any interest imposed thereon).
- (b) In the event VENDOR/CONTRACTOR fails to take appropriate remedial action or refuses to remedy or remove the causes for withholding such payments after delivery of written notice to the VENDOR/CONTRACTOR by the COMPANY, the COMPANY shall be entitled to cause the same to be remedied or removed on its own and may deduct the costs including the expenses thereby incurred by the COMPANY from any amounts due or owing or which may become due or owing to the VENDOR/CONTRACTOR under this Agreement provided always that this provision shall not affect any other rights or remedies to which the COMPANY may be entitled hereunder this Agreement or at LAW or otherwise for the recovery of such sums.

28.5 If health and safety non-compliances of a major category as prescribed were committed by the VENDOR/CONTRACTOR, the COMPANY shall have the right to terminate this Agreement in accordance with the provisions of Article 12 – TERMINATION and claim for any loss and/or damages suffered by the COMPANY as a result thereof.

28.6 If either:

- (a) The COMPANY reasonably forms the opinion there is or is likely to be a material risk
 - (i) to the environment;
 - (ii) to the health or safety of any person; or
- (b) The VENDOR/CONTRACTOR breaches an obligation under this Article 28 and fails within a reasonable time to either remedy that breach (or overcome its effects), or to commence and continue to diligently pursue the remedy of the breach (or the overcoming of its effects), as applicable,

then the COMPANY may, giving notice to the VENDOR/CONTRACTOR to that effect:

- (c) temporarily take or assume partial (having regard to the nature of the issue to be addressed) management and control of the WORK; and
- (d) take such other steps or action that, in the reasonable opinion of the COMPANY, are necessary or desirable to:
 - (i) minimize the risk to the environment, the general public or of damage to the WORK; or
 - (ii) remedy or overcome the effects of the breach by the VENDOR/CONTRACTOR.

(each a "STEP-IN RIGHT")

28.7 If the COMPANY elects to exercise a STEP-IN RIGHT, the VENDOR/CONTRACTOR must assist the COMPANY wherever and however possible to ensure that the COMPANY is able to exercise that STEP-IN RIGHT effectively and expeditiously, including giving COMPANY all rights or access to the WORK that the COMPANY may reasonably require.

28.8 Upon the COMPANY exercising its STEP-IN RIGHTS, the VENDOR/CONTRACTOR'S rights under the Agreement are suspended to the extent necessary to permit the exercise of those STEP-IN RIGHT. The VENDOR/CONTRACTOR must continue to undertake the WORK in accordance with its obligations under the Agreement to the extent that the matters which are the subject of those obligations are not being addressed by the exercise of the STEP-IN RIGHT. Any uncertainty as to the interface between the obligations which are the responsibility of the VENDOR/CONTRACTOR and those which are the responsibility of the COMPANY will be resolved by the COMPANY acting reasonably.

28.9 The COMPANY may cease to exercise STEP-IN RIGHT at any time and, in any event, will cease to exercise those STEP-IN RIGHT as soon as practical after the reason for exercising the STEP- IN RIGHT has been remedied or its effects overcome. Upon the COMPANY ceasing to exercise any STEP-IN RIGHT, the VENDOR/CONTRACTOR must immediately recommence performance of the VENDOR/CONTRACTOR'S obligations which were suspended.

28.10 The VENDOR/CONTRACTOR acknowledges and agrees that the COMPANY is not obliged to remedy or overcome the effects of any breach, or to overcome or mitigate any risk or risk consequences, in respect of which the COMPANY exercises STEP-IN RIGHT.

28.11 The CONTRACTOR is not entitled to any reimbursement or other payment or relief arising from or connected with the COMPANY's suspension of all or any portion of the WORKS where such suspension:

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- (a) has arisen as a result of the breach or negligence of the CONTRACTOR;
- (b) is necessary for the proper execution of the WORK or for the safety of the WORK or any part thereof

ARTICLE 29 – PAYMENT OF CREDITORS

COMPANY may, at its sole discretion, make direct payments to any of VENDOR'S / CONTRACTOR'S creditors in the event of non-payment by VENDOR / CONTRACTOR to such creditors. If COMPANY make such direct payments, COMPANY may retain out of any amount it otherwise owes VENDOR / CONTRACTOR an amount sufficient to offset such payments. In the event the amount COMPANY otherwise owes VENDOR / CONTRACTOR is insufficient to offset such payments, VENDOR / CONTRACTOR shall reimburse such sum to COMPANY as soon as VENDOR / CONTRACTOR receives a written request for reimbursement from COMPANY. In any event, COMPANY shall have available to it all rights and remedies provided in law or equity.

ARTICLE 30 – RETENTION FOR VENDOR DATA REQUIREMENT

Ten percent (10%) of the value of the WORK shall be retained by COMPANY until VENDOR / CONTRACTOR has provided all data and drawings listed in the vendor data requirement list (if any) and all other requirements as per SPECIFICATIONS.

ARTICLE 31 – GOVERNING LAW

- 31.1 For VENDORS/CONTRACTORS incorporated in Malaysia, all the terms and conditions relating to the purchase of GOODS or provision of SERVICES hereunder shall be governed by and construed according to the laws of Malaysia.
- 31.2 For VENDORS/CONTRACTORS incorporated outside Malaysia, all the terms and conditions relating to the purchase of GOODS or provision of SERVICES hereunder shall be governed by and construed according to Singapore laws.

ARTICLE 32 – ARBITRATION

For VENDORS/CONTRACTORS incorporated in Malaysia:

- 32.1 Subject to clause 31.1 above, all disputes, controversies or claims arising out of or in connection with the purchase of GOODS or provision of SERVICES or the breach, termination or invalidity thereof unless settled by mutual agreement, shall be referred to the senior management of the PARTIES for resolution within 30 days failing which such dispute shall be referred to arbitration in accordance with the Asian International Arbitration Centre Arbitration Rules under the auspices of the Asian International Arbitration Centre, Kuala Lumpur (AIAC). VENDOR / CONTRACTOR shall proceed with the WORK with due expedition notwithstanding any dispute.

The dispute shall be referred to a board of three (3) arbitrators. Each of the PARTIES hereto shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators shall agree on a third arbitrator. In the event agreement on the third arbitrator cannot be reached, the third arbitrator shall be appointed by the Director for the time being of AIAC.

Such arbitration shall be conducted in the English language and held in Kuala Lumpur, Malaysia. The award of the arbitrators shall be final and binding upon the PARTIES. The costs of the arbitration shall be borne by the PARTY whose contention was not upheld by arbitration tribunals, unless otherwise provided in the arbitration award.

For VENDORS/CONTRACTORS incorporated outside Malaysia:

- 32.2 Subject to clause 31.2 above, all disputes, controversies or claims arising out of or in connection with the purchase of GOODS or provision of SERVICES or the breach, termination or invalidity thereof unless settled by mutual agreement, shall be referred to the senior management of the PARTIES for resolution within 30 days failing which such dispute shall be referred to arbitration administered by the Singapore International Arbitration Centre (SIAC) in accordance with the Arbitration Rules in the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference to this clause.

The dispute shall be referred to a board of three (3) arbitrators. Each of the PARTIES hereto shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators shall agree on a third arbitrator. In the event agreement on the third arbitrator cannot be reached, the third arbitrator shall be appointed by the Director for the time being of SIAC.

Such arbitration shall be conducted in the English language and held in Singapore. The award of the arbitrators shall be final and binding upon the PARTIES. The costs of the arbitration shall be borne by the PARTY whose contention was not upheld by arbitration tribunals, unless otherwise provided in the arbitration award.

ARTICLE 33 – WAIVER

No indulgence or concession granted by COMPANY in relation to any of the terms of the purchase of GOODS or provision of SERVICES shall in any affect or prejudice COMPANY'S right hereunder and any such indulgence or concession may be withdrawn at any time by the purchase of GOODS or provision of SERVICES shall not constitute or be construed as a waiver of any succeeding breach or non-observance of the same or any other terms and conditions.

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ARTICLE 34 – SEVERABILITY

In the event that any Article contained in these GTCs or any other terms and conditions applicable to the purchase of GOODS or provision of SERVICES is invalid then such Article/terms or part of such Article/terms, as the case maybe shall be deemed to be excluded from these GTCs and such invalidity shall not prejudice the validity or enforceability of the remaining GTCs or other applicable terms and conditions.

ARTICLE 35 – ANTI-BRIBERY

35.1 VENDOR/ CONTRACTOR confirms and agrees that it shall not and shall procure that its Affiliates, employees, agents, and sub-contractors shall not offer, give, promise to give, or authorise giving, or solicit, accept or agree to accept to or from any person, including public and private individuals and entities, either directly or indirectly, anything of value, monetary or non-monetary, without limitation, in order to obtain, influence, induce or reward any improper advantage in connection with this Agreement.

35.2 VENDOR/ CONTRACTOR shall (and shall procure that its Affiliates, employees, agents, and sub-contractors) comply with all anti-bribery and corruption and anti-money laundering laws, rules, regulations or equivalent applicable including, but not limited to, the United Kingdom's Bribery Act 2010, the United States of America's Foreign Corrupt Practices Act of 1977, the OECD Convention on Combating Bribery of Foreign Public Officials, the Malaysian Anti-Corruption Commission Act 2009 ("MACC Act"), the Malaysian Penal Code, and the Malaysian Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, and all applicable successor legislation ("Anti-Corruption Laws").

35.3 VENDOR / CONTRACTOR represents and warrants that:

- (a) in connection with this Agreement, except as otherwise disclosed in writing to the other PARTY, neither it nor any of its Affiliates, employees, agents, or sub-contractors have, in the last five years:
 - been convicted of any offence involving bribery, corruption, money laundering, fraud or dishonesty; or
 - been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence involving bribery, corruption or money laundering;
- (b) in connection with this Agreement and except as otherwise disclosed in writing to the other PARTY, at the date of this Agreement and throughout the term of this Agreement, no Public Official that is a natural person will receive a direct or indirect personal benefit in connection with this Agreement;
- (c) VENDOR/ CONTRACTOR has in place and will maintain and enforce policies and procedures which are designed and reasonably expected to ensure compliance with Anti-Corruption Laws; and
- (d) VENDOR/ CONTRACTOR maintains an internal accounting controls system sufficient to ensure proper authorisation, recording and reporting of all transactions and payments made in connection with this Agreement to ensure compliance with Anti-Corruption Laws.

35.4 VENDOR/ CONTRACTOR warrants that, in connection with this Agreement, it shall not, and will procure that its Affiliates, employees, and agents shall not, employ or engage any sub-contractor to act in connection with any of the matters set out in the Agreement, unless the relevant employing or engaging party has conducted appropriate, risk based anti-corruption and other due diligence to ensure that the sub-contractor is duly qualified to perform the tasks for which it is proposed to be employed or engaged, that the sub-contractor is of good reputation and that the sub-contractor would present no corruption related or other compliance risk or liability for the matters set out in this Agreement. The VENDOR / CONTRACTOR shall impose on and secure from the sub-contractors, the terms equivalent to those imposed under this Article 35 in the relevant agreement/contract it had with the said sub-contractors.

35.5 VENDOR/ CONTRACTOR shall immediately report to COMPANY if, at any time during the term of this Agreement there are any changes or violations, including any actual or suspected breach of the provisions herein or breach of Anti-Corruption Laws in connection with this Agreement by VENDOR/ CONTRACTOR or any of its Affiliates, employees, agents and/or sub-contractors.

35.6 COMPANY shall have the right to suspend all further services and payments under and/or terminate this Agreement, in whole or in part with immediate effect if COMPANY reasonably believes in good faith that VENDOR/ CONTRACTOR or its Affiliates or employees, agents or sub-contractors has failed to comply with or breached, in any material respect, any of the requirements set out in this Article.

ARTICLE 36 – WORKERS WELFARE AND HUMAN RIGHTS

36.1 VENDOR/ CONTRACTOR are required to uphold and comply with the following principles in respect of employment of its employees and workers. VENDOR/ CONTRACTOR hereby confirms that it has carefully reviewed, and undertakes to act consistently with, the Policy of Workers' Welfare and Human Rights attached below. In connection with the performance of this Agreement and consistent with the policy, VENDOR/ CONTRACTOR shall conduct its respective business and treat all members of its respective employees and workers in a manner that respects the rights and dignity of all people and internationally recognised human rights.

36.2 Our expectations are that the following principles will be upheld, in each case within the framework of applicable laws:

- (a) The rights and dignity of all workers should be respected and upheld
 - no abusive or inhumane treatment of workers
 - provision of equal opportunities for workers
 - no discrimination between workers

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- freedom of association of workers
- VENDOR/ CONTRACTOR to avoid or mitigate adverse human rights impacts to communities arising from their activities

(b) No unnecessary restriction on freedom of movement

- except for safety, security and other relevant requirements, no direct or indirect restriction should be imposed on the free movement of any worker
- travel and identity documents should not be withheld; where workers elect for their travel and identity documents to be preserved by their employers they should have access to them at all times on an appropriate basis

(c) No worker should be subject to forced or trafficked labour practices

- no payment of charges or fees by workers under any pretext in consideration for employment nor deductions being imposed on the workers' remuneration as collateral for continued service, including without limitation payment of recruitment fees to secure a job, payments in connection with obtaining visas or work permits
- no use by VENDOR/ CONTRACTOR of unlicensed labour brokers, recruitment agents or equivalent
- no exploitative child labour under any circumstances

(d) Each worker to have clear terms of employment which he or she understands

- each worker should be provided with a written employment contract containing all material terms of his or her employment
- all letters offering employment and employment contracts should be in a language the worker understands
- if the worker cannot read and understand his or her employment contract, it should be read to him or her
- VENDOR/ CONTRACTOR to honour all terms and rights of workers' employment, and not directly or indirectly to discourage workers from exercising them

(e) All workers to take appropriate rest periods and leave entitlement

- workers to follow established shift patterns, with deviations to be by exception only
- working of overtime to be appropriately compensated, and not used excessively
- workers should be entitled to take leave in accordance with local law and may not be forced to roll their entitlement over

(f) Appropriate living and working conditions to safeguard the health and wellbeing of workers

- VENDOR/ CONTRACTOR should take all reasonable measures to protect and monitor the health and wellbeing of workers

ARTICLE 37 – SANCTIONS, TRADE CONTROLS AND BOYCOTTS

37.1 In this Article, “Trade Restrictions” shall mean any law, regulation, decree, ordinance, order, demand, request, rule or requirement of Malaysia, the United States of America, the European Union, any European Union member state and the United Nations, in each case as having the force of law or otherwise being binding on or applicable to any PARTY or its group, and which relate to international boycotts of any type, trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and/or similar laws.

37.2 VENDOR/ CONTRACTOR is required to comply with all Trade Restrictions.

- (a) VENDOR/ CONTRACTOR undertakes to co-operate in good faith and to do all things reasonably practicable which are necessary or desirable to implement any mitigation efforts or solutions arising from the illegality caused by the Trade Restrictions
- (b) if COMPANY reasonably believes that VENDOR/ CONTRACTOR is in breach of any Trade Restrictions for which there is no exemption, then the PARTIES agree to use reasonable efforts to cure such breach and to discuss mitigating actions if necessary; and
- (c) the PARTIES agree that any breach of this Article may lead to the right to terminate this Agreement which shall be only exercised after the PARTIES have in good faith complied with the requirements of Article 37.2 (a) and (b) above.

ARTICLE 38 - PERSONAL DATA PROTECTION

38.1 Terms used in this Article 38 shall have the following meanings:

“Data Breach” shall mean (i) any act or omission that compromises either the security, confidentiality, availability or integrity of Personal Data or the physical, technical, administrative or organisational safeguards put in place by VENDOR/CONTRACTOR (or any of its permitted sub-processors) that relate to the protection of the security, confidentiality, availability or integrity of Personal Data, or (ii) such other meaning as ascribed to this term in Data Protection Laws.

“Data Protection Laws” shall mean any applicable law, rule, statute, regulation, order, standard and other similar instrument or other enactment pertaining to data protection or the Processing of Personal Data, in each case as amended, consolidated, re-enacted or replaced from time to time.

“Personal Data” shall mean any data which, directly or indirectly identifies a living individual or such other meaning as ascribed to this term in Data Protection Laws.

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"Process" shall mean any operation or set of operations which is performed on Personal Data, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, cross-border transfer, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, or such other meaning as ascribed to this term in Data Protection Laws.

38.2 VENDOR/CONTRACTOR hereby represents, warrants and undertakes to fully comply with Data Protection Laws with respect to the Processing of Personal Data in connection with this Agreement.

38.3 VENDOR/CONTRACTOR agrees to immediately notify, reasonably cooperate with and assist the COMPANY in the event of any request, claim or complaint from any individual to whom the Personal Data relates or where there has been an event of non-compliance with Data Protection Laws by VENDOR/CONTRACTOR, whether discovered by VENDOR/CONTRACTOR or forming the subject of an investigation or action by the relevant authorities. VENDOR/CONTRACTOR also agrees to notify in writing to the COMPANY without undue delay from the time it becomes aware that an actual or suspected Data Breach has occurred. VENDOR/CONTRACTOR shall cooperate fully with any investigation regarding the actual or suspected Data Breach and take all necessary measures to manage such actual or suspected Data Breach as requested by the COMPANY.

38.4 VENDOR/CONTRACTOR shall cooperate to the extent reasonably necessary to enable the COMPANY to adequately discharge its responsibility under Data Protection Laws.

38.5 VENDOR/CONTRACTOR shall indemnify the COMPANY against all proceedings, costs, expenses, liabilities or damages arising from VENDOR/CONTRACTOR's failure to comply with Data Protection Laws and the terms herein. The remedies available to the COMPANY contained herein are without prejudice to and in addition to any warranties, indemnities, remedy or other rights provided by law, any prior agreement or any other terms of this Agreement.

38.6 Without affecting the generality of Article 38.2 to 38.5 above:

(a) Where VENDOR/CONTRACTOR discloses Personal Data to the COMPANY, VENDOR/CONTRACTOR shall:

- (i) ensure that all necessary consents have been obtained from and all necessary notifications have been provided to individuals whose Personal Data may be or have been disclosed to the COMPANY ("VENDOR/CONTRACTOR Data") and to also notify individuals in respect of such disclosure to and Processing by the COMPANY;
- (ii) ensure that VENDOR/CONTRACTOR is not subject to any restrictions or prohibitions which would prevent or restrict VENDOR/CONTRACTOR from Processing the VENDOR/CONTRACTOR Data or disclosing or transferring the VENDOR/CONTRACTOR Data to the COMPANY in connection with performance of VENDOR/CONTRACTOR's obligations under this Agreement;
- (iii) always furnish the COMPANY with up-to-date, complete and accurate VENDOR/CONTRACTOR Data; and
- (iv) procure any third party that Processes VENDOR/CONTRACTOR Data for or on behalf of the VENDOR/CONTRACTOR to agree in writing to the same terms that the VENDOR/CONTRACTOR agrees to herein.

(b) Where the COMPANY discloses Personal Data to the VENDOR/CONTRACTOR, the VENDOR/CONTRACTOR shall:

- (i) employ appropriate safeguards to ensure compliance with Data Protection Laws, including the implementation of administrative, physical, and technical safeguards to reasonably and appropriately protect Personal Data which may be disclosed by the COMPANY ("COMPANY Data");
- (ii) fully comply with Data Protection Laws with respect to the Processing of the COMPANY Data;
- (iii) only Process COMPANY Data for purposes relating to the Agreement and shall comply strictly with all directions given by the COMPANY in respect of the same;
- (iv) refrain from disclosing any COMPANY Data to any third party, or transfer any COMPANY Data outside of the COMPANY's country of origin, without the COMPANY's prior written consent. When that written consent is given, it will be conditional upon any transfer being done in compliance with the lawful cross-border transfer mechanism under applicable laws including Data Protection Laws, and VENDOR/CONTRACTOR hereto agrees to enter into any necessary agreement to comply with such laws;
- (v) cease to retain all COMPANY Data or remove means by which COMPANY Data can be associated with particular individuals upon COMPANY's request or termination of the Agreement; and
- (vi) procure any third party that Processes COMPANY Data for or on behalf of VENDOR/CONTRACTOR to agree in writing to the same terms that the VENDOR/CONTRACTOR agrees to herein.

GENERAL TO ALL OF THE ABOVE ARTICLE 35, 36 AND 37

- (a) VENDOR/ CONTRACTOR shall ensure that all of the terms above relating to Policy of Workers Welfare and Human Rights, Sanctions, Trade Controls and Boycotts and Anti-Bribery provisions above shall also apply to its sub-vendor/ sub-contractor.
- (b) COMPANY may require VENDOR/ CONTRACTOR to certify to COMPANY in writing and signed by an officer of VENDOR/ CONTRACTOR that it and its Affiliates, employees, agents, and sub-contractors in connection with this Agreement have at all times during the relevant preceding period complied with the Anti-Corruption Laws and the Policy of Workers Welfare and Human Rights Policy above.