



**GENERAL TERMS AND CONDITIONS
FOR
PURCHASING**

Mitsubishi Hitachi Power Systems Europe, Ltd

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1. DEFINITIONS

In these General Terms and Conditions for Purchasing:

- 1) "Buyer" means MITSUBISHI HITACHI POWER SYSTEMS EUROPE, LTD or its division, subsidiary, affiliate, or an entity authorized by the foregoing, as described in the Order.
- 2) "Seller" means the person or company who has accepted the Order issued by the Buyer in accordance with Clause 2 below.
- 3) "Party" or "Parties" means the Buyer and/or the Seller, or their permitted successors and assigns, as the context requires.
- 4) "Goods" means the plant, equipment, machinery, materials and related service (including technical advisory service, if applicable) thereof to be furnished by the Seller pursuant to the Contract.
- 5) "Order" means the purchase order, including its appendix (if any), issued by the Buyer for the supply of the Goods.
- 6) "Contract" means the entire agreement between the Buyer and the Seller as described in Clause 3 below.
- 7) "Specifications" means all technical descriptions, drawings of the Goods or packing instructions contained or referred in the Contract.
- 8) "Owner" means the person or company to which the Buyer furnishes a product, which may include Goods supplied by the Seller in accordance with the Contract.
- 9) "Technical Advisor(s)" means the person or persons to be provided by the Seller to render the Technical Advisory services as provided by the Contract.
- 10) "Intellectual Property Rights" means any and all tangible and intangible intellectual property rights, industrial property rights, proprietary rights or similarly protected rights in any country, now or in the future, whether or not registered or perfected, and whether arising by operation of law, contract, license, or otherwise, or technical information, data and processes whether tangible or intangible, including, without limitation:
 - (a) copyrights, (including without limitation, all copyrights with respect to)
 - (b) patent rights
 - (c) know-how and trade secret rights;
 - (d) trademark rights.

2. CONTRACT EFFECTIVENESS

- 1) The Contract between the Buyer and the Seller shall become effective at whichever is the earlier of
 - (a) The Buyer's receipt of the Seller's written acceptance of the Order within seven (7) days of the date of the Order, unless a different period of time is specified by the Buyer;
 - (b) The Seller's delivery of Goods purporting to conform to the Order; or
 - (c) The Seller's commencement of work on the Goods to be specifically manufactured pursuant to the Order.
- 2) Any acknowledgment or other form of the Seller containing terms and conditions submitted by the Seller shall not have any effect of modifying the terms and conditions of the Buyer's Order and/or of adding any different terms and conditions. No change shall be binding upon the Buyer unless explicitly accepted in writing.

3. CONTRACT

- 1) The Contract constitutes the entire agreement between the Buyer and the Seller. The Parties are not, and will not be, bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in the Contract. Any change, amendment, or modification of any of the terms and conditions of the

Contract or waiver of any of the terms hereof shall be made in writing and executed by the Parties.

- 2) If any conflict, inconsistency or ambiguity exists among any of the documents comprising or relating to the Contract or among any of the requirements or provisions thereof, the conflict, inconsistency or ambiguity shall be resolved by applying the order of precedence provided in the Order. If no such provision is included in the Order, the following documents shall constitute the Contract with the order of the precedence as set out below.
 - (a) The Order
 - (b) The General Terms and Conditions for Purchasing
 - (c) The General Conditions for Technical Advisory and/or Field Engineering Services, if applicable
 - (d) The Specifications
 - (e) The General Technical Conditions, if any
 - (f) Shipping Instructions, if any
- 3) If the Seller finds and notifies the Buyer of any conflict, inconsistency or ambiguity among any of the documents comprising or relating to the Contract or among any of the requirements or provisions thereof, the Buyer shall determine in writing the proper resolution of such conflict, inconsistency or ambiguity, and both Parties shall be bound by that determination. If the Seller resolves any conflict, inconsistency or ambiguity without the Buyer's written determination, the Seller shall be deemed to have so acted at its own risk and expense, and the Buyer shall be free thereafter to resolve at the Seller's expense the conflict, inconsistency or ambiguity in a manner different from the Seller without making any equitable adjustment in the price of the Contract or time of delivery and without incurring any liability to the Seller because of the Seller having proceeded in accordance with its own interpretation.

4. PRICE AND PAYMENT

- 1) Unless otherwise expressly stated in the Contract, all prices for the Goods are firm and are not subject to price escalation for any reason whatsoever and include any applicable sales, use or similar taxes, fees, or expenses levied in the country of manufacturing and/or delivery where the Goods are manufactured or from where the Goods are delivered, including, shipping expenses and all other charges.
- 2) Payment shall be made in accordance with the applicable provisions of the Contract. However, without waiver or limitation of any other right or remedy of the Buyer and/or the Owner the Buyer may at any time by a written notice deduct, or set-off any payment to the Seller by an amount of equal value to any claim that the Buyer may have for any reason against the Seller.

5. DELIVERY

- 1) Time of delivery is of the essence of the Contract and the Seller shall deliver the Goods in accordance with the requirements specified in the Contract.
- 2) Unless otherwise stated in the Contract, terms and conditions of delivery shall be interpreted in accordance with INCOTERMS 2010.
- 3) Except as provided otherwise in the Contract, delivery shall mean not only delivery of the Goods but also delivery of all the documents specified in the Contract.

6. TITLE AND RISK

- 1) Unless otherwise stated in the Contract, the Goods or any part thereof shall become the property of the Buyer free from all defects in title including but not limited to liens, claims, security interests and any other encumbrances at

whichever is the earlier of: (a) completion of delivery by the Seller in accordance with the terms of the Contract; or (b) when the Seller is entitled to payment of the value of the Goods or part thereof under the Contract. Notwithstanding the foregoing, the Seller shall remain responsible for and shall bear any and all risk of loss of or damage to the Goods until completion of delivery thereof in accordance with the terms of the Contract.

- 2) The Seller shall pass to the Buyer good title to the Goods. In the event of any defect in title, the Seller shall, at the request of the Buyer and at the Seller's expense, remove such defect in title or replace the Goods with other Goods free from such defect in title. The Seller shall bear all charges and expenses for such removal or replacement, including transportation charges.

7. PRODUCTION SCHEDULE

- 1) The Seller shall, pursuant to the provision of the Contract, or if there is no such provision upon request of the Buyer, provide the Buyer with complete and accurate information regarding the progress of the production schedule for the Goods showing the status of engineering, material procurement, manufacturing position of the Goods, the date(s) of test and inspection and the estimated time of shipment.
- 2) The Seller shall notify the Buyer in writing of any actual or anticipated or potential causes of delay whenever observed.
- 3) The Buyer may, for expediting purposes, send its own staff or other personnel whom the Buyer has retained to any place where the Goods are manufactured, packed or transported as provided in Clause 17 hereof. The Seller shall bear the cost of corrective measures or improvements reasonably required by the Buyer in order to enable or ensure delivery of the Goods in accordance with the requirements of the Contract, or as the case may be, to minimize any actual delay in the delivery of the Goods.
- 4) Nothing in this Clause 7 shall in any way relieve the Seller from its obligation of timely delivery of the Goods pursuant to Clause 5 hereof.

8. ERRONEOUS, EXCESS OR SHORTAGE OF DELIVERY

- 1) Unless otherwise instructed by the Buyer, the Seller shall withdraw, at its own expense and no later than the date designated by the Buyer, any and all items delivered in error or excess of the Contract.
- 2) In the event of the Seller's failure to accomplish a timely withdrawal of the erroneously delivered or excess items, the Buyer may arrange the return of such items to the Seller at the Seller's risk and expense.
- 3) In the event of any shortage of delivery of the Goods or parts thereof, the Seller shall:
 - a) pursuant to the instruction of the Buyer, promptly deliver the Goods which were not delivered, and shall bear all freight, courier costs, customs duties and all other expenses up to the final destination;
 - b) at the Buyer's request, bear the cost of installing such item(s); and
 - c) at the Buyer's request and at the Seller's expense, promptly dispatch the Seller's Technical Advisor(s) and/or field engineer(s) to the place named by the Buyer for technical assistance and engineering service for installation and/or commissioning.

9. PACKING

- 1) The Seller shall pack the Goods in accordance with the Specifications and/or instructions provided in the Contract. In the absence of specific instruction by the Buyer concerning the method of packing, the Seller shall, in accordance with

internationally accepted customary export packing and anti-rust standards suitable for the method of transportation specified by the Buyer or in the Contract, take all reasonable steps to prevent damage to or deterioration of the Goods in transit to their destination as specified in the Contract.

- 2) The Contract price includes the cost of packing required in paragraph 1), above.
- 3) Unless otherwise stated in the Contract, the Seller shall inform the Buyer of any special measures or procedures relating to the transportation of the Goods and submit a proforma packing list, which shows approximate dimensions and weight of packed Goods and place of shipment no later than one (1) month before delivery.
- 4) The Buyer may, with reasonable notice to the Seller dispatch its own personnel, or personnel retained by the Buyer such as a nominated carrier or a freight forwarder, to hold pre-shipment meetings with the Seller to confirm transport mode and procedures. The Seller shall provide such personnel with reasonable access and cooperation as necessary to facilitate smooth delivery.

10. DELAY IN DELIVERY

- 1) In the event that the delivery of the Goods is delayed beyond the delivery time specified in the Contract, and such delay is not excusable pursuant to Clause 22 hereof, the Seller shall:
 - a) at the Buyer's request, and pursuant to the instructions of the Buyer, send the Goods by air at the Seller's expense to the place named by the Buyer; and
 - b) promptly pay to the Buyer liquidated damages calculated at the rate of one percent (1%) of the Contract price for each and every week or a part thereof from the date of delivery provided in the Contract until the date of completion of the delivery. However, the Seller's total liability for liquidated damages of delay in delivery shall not exceed ten percent (10%) of the total Contract price.
- 2) Unless the Buyer expressly waives its right to recover liquidated damages in writing, the Seller shall not in any way be released from the payment of the liquidated damages.
- 3) Payment of the liquidated damages by the Seller in no way releases the Seller from any obligations to deliver the Goods as set forth in the Contract.
- 4) The Buyer and the Seller hereby agree that the liquidated damages set forth herein are a reasonable estimate of the Buyer's probable loss and are not a penalty.

11. INSPECTION AND TEST BY SELLER

- 1) Before shipping, the Seller shall carefully inspect and test the Goods for compliance with all requirements of the Contract including, without limitation, the inspection of quantities and packing conditions. The Seller shall, in accordance with the inspection and test requirements in the Contract, give the Buyer reasonable notice of such inspection or test and the Buyer (or personnel retained by the Buyer) and/or the Owner shall be entitled to attend such inspection or test. The Seller shall also submit to the Buyer, at the Buyer's request, all data and other records relating to the inspection or test.
- 2) The Buyer's and/or the Owner's attendance or non-attendance at such inspection or test does not, in any way, constitute acceptance of the Goods or the inspection or test results, and in no way relieves the Seller of any liability or responsibility for any defects.

12. INSPECTION AT THE DESTINATION

- 1) If, as a result of the inspection carried out after receipt of purported Goods, it is found that the items do not comply with the Contract, the Buyer may by written

notice to the Seller reject such non-complying items and may require the Seller, at the Seller's expense to repair or replace the rejected items with Goods that comply with the Contract.

- 2) However, such inspection is only of the general and visual condition of the Goods, and therefore, the Buyer's final decision as to whether or not the Goods are acceptable shall be subject to placement of the Goods in service, and the Seller shall be responsible for any and all latent defects not found during such inspection.

13. CHANGES

- 1) The Seller shall make no change to, nor deviate from any requirements of the Contract, including without limitation, those requirements relating to inspection, testing, quality control, quantities, methods of shipment, schedule or places of delivery, without the prior written consent of the Buyer.
- 2) The Buyer may at any time by written notice to the Seller, direct changes to the Contract, and the Seller shall thereby be bound, unless the Seller demonstrates to the Buyer that such changes will make the Goods unsafe or unsuitable for the Buyer's intended purpose.
- 3) If the Buyer directs any such changes, the Seller shall submit in writing, as soon as practicable but within ten (10) days of the Buyer's notice of such changes, its proposal for adjustment in the price of the Contract and/or in the time of delivery of the Goods. The Buyer shall then, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. In the event the Seller fails to submit its proposal within ten (10) days, the Buyer may adjust the price and the time of delivery at its sole discretion. The Seller shall not delay or suspend any work under the Contract while awaiting a response or a price adjustment to be reached.

14. SELLER'S DOCUMENTS

The Seller shall submit documents such as drawings for approval, drawings for installation, drawings showing the finished condition of the Goods, shipping documents, instruction books and operation manuals, etc. to the Buyer in accordance with any requirements stated in the Contract. The Seller shall be responsible for any inconsistencies, errors or omissions in such documents and shall be liable for any damage arising from the Seller's failure to comply with the requirements under the Contract. The Buyer's approval of the Seller's documents shall not relieve the Seller from any of its obligations and responsibilities under the Contract.

15. WARRANTIES

- 1) The Seller warrants that the Goods conform to the requirements of the Contract and that the Goods are new, merchantable, of good design, material and workmanship, free from defects, and fit and safe for the purpose intended. All services performed by the Seller under the Contract shall meet the requirement set forth in the Contract and be completed in an professional and competent manner. These warranties shall be in addition to all other warranties, expressed, implied or statutory. Payment for, inspection of, or receipt of the Goods shall not release the Seller from any of its warranty obligations.
- 2) Unless otherwise stated in the Contract, the Seller warrants that the Goods will meet the Seller's representations and will conform to any and all of the provisions of the Contract for a period of twelve (12) months from the date when the Goods are placed in commercial operation or twenty four (24) months from the date of completion of delivery, whichever period expires earlier.

- 3) Goods, or any part thereof, in which any weakness, deficiency, failure, breakdown or deterioration (beyond normal wear and tear for the intended service) appears or is discovered within the period set forth in paragraph 2) of this Clause¹⁵ shall be repaired or replaced or otherwise made good by the Seller at the Seller's expense within the time designated by the Buyer. Without limiting the generality of the foregoing, and without prejudice to any rights of the Buyer under the Contract or otherwise, the Seller shall pursuant to the instruction of the Buyer deliver any repaired and/or replacement Goods or any part thereof and shall bear all freight, courier costs, customs duties and all other expenses up to the final destination. If requested by the Buyer, the Seller shall also dispatch, at the Seller's cost and expense, its field engineer(s) and/or Technical Advisor(s) for engineering and technical assistance for installing and/or commissioning thereof. The Seller shall reimburse the Buyer all damages, cost and expenses arising out of or resulting from the Seller's breach of any of the foregoing warranties including, without limitation, costs of removal, inspection, transportation, installation and/or warehousing.
- 4) When the Buyer determines at its sole discretion that the Seller cannot repair or replace within the time designated by the Buyer, the Buyer or the Owner may undertake to repair or replace at the Seller's expense. The Buyer may, at its option, elect to accept the defective Goods, whereupon an equitable adjustment in the price of the Contract shall be made.

16. SPARE AND REPLACEMENT PARTS

The Seller warrants that all maintenance, spare and operation parts for the Goods shall be available to the Buyer at commercially reasonable costs for a period of seven (7) years from the delivery of the Goods.

17. THE BUYER'S REPRESENTATIVE

The Buyer may, with a written notice to the Seller, send its own staff or other personnel retained by the Buyer to monitor the Seller's performance of the Contract or to provide the Seller with expediting or quality assurance advice. The Seller shall provide these personnel with reasonable and free access to the plants of the Seller and its subcontractors and to any other places where the Goods, in whole or in part, are manufactured, packed or stored.

18. SUSPENSION

The Buyer may, by written notice, suspend all or part of the work to be performed under the Contract for any period not to exceed ninety (90) days. Within such period, or any extension thereof to which the Parties may agree, the Buyer shall either cancel such suspension or terminate the work covered by the suspension in accordance with Clause 19 or Clause 20 hereof. The Seller shall immediately resume the work whenever a suspension is canceled or expires. An equitable adjustment shall be made in the delivery schedule or the price of the Contract, or both, if the suspension results in a change in the Seller's cost of performance or ability to maintain the delivery schedule, provided the Seller asserts a claim for adjustment within twenty (20) days after the end of the period of suspension, and provided the suspended work is not terminated in accordance with Clause 19 hereof.

19. TERMINATION FOR DEFAULT

- 1) If the Seller (a) fails to deliver the Goods at the time specified in the Contract, (b) fails to perform any other obligations under the Contract, (c) fails to make progress

so as to endanger timely and proper delivery of the Goods and does not cure such failure within a period of ten (10) days (or such shorter period of time as commercially reasonable under the circumstances) after receipt of written notice from the Buyer specifying such failure, (d) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, (e) is merged into another company and/or is expropriated or nationalized, or (f) the Buyer has reasonable grounds to believe that the Seller is unable to deliver the Goods in accordance with the Contract, the Buyer may, by written notice to the Seller, terminate the Contract, in whole or in part, without any liability to the Seller, and may, without prejudice and in addition to any other rights and/or remedies which it may have hereunder or at law or equity or otherwise, return part or all of any shipment of the Goods delivered prior to the date of such termination at the Seller's expense.

- 2) Upon such termination the Buyer shall have the right, upon notice to the Seller, to:
 - (a) take title to and possession of all or any part of Goods supplied by the Seller under the Contract;
 - (b) have the Seller return to the Buyer any payments previously made by or on behalf of the Buyer; and
 - (c) purchase alternative goods from another source that meet approximately the same Specifications of the Goods to be furnished hereunder and, in such event, the Seller shall pay all excess costs and other expenses incurred by the Buyer in excess of the purchase price specified in the Contract .
- 3) In the event of termination under this Clause 19, all obligations of the Buyer to make payments hereunder shall forthwith cease and be canceled. However, the Buyer shall pay for the value of the Goods (or part thereof) which have been received by the Buyer strictly in accordance with Seller's Contractual obligations and not returned to Seller (in accordance with subclause 1 hereof), or otherwise become the property of Buyer at the time of termination, offset by any costs, expenses or damages that have been incurred or will be incurred by reason of Seller's default.

20. TERMINATION AT THE BUYER'S OPTION

- 1) The Buyer shall have the right to terminate the Contract in whole or in part at any time by giving written notice to the Seller. Upon receipt of any such notice, the Seller shall, unless the notice requires otherwise:
 - (a) Immediately discontinue work on the date and to the extent specified in the notice;
 - (b) Place no further orders for materials other than those required for completion of such portion of the work that is not terminated;
 - (c) Promptly make every reasonable effort to obtain cancellation on terms satisfactory to the Buyer of all orders to subcontractors or, if the Buyer so requests, assign (or cause its subcontractors to assign) those orders to the Buyer; and
 - (d) Assist the Buyer, upon request, in maintenance, protection, and disposition of property acquired by the Buyer as a result of termination.
- 2) If claimed in writing within thirty (30) days after the notice of termination and proved to the satisfaction of the Buyer, the Buyer will pay to the Seller an adjustment of the price of the Contract which consists of
 - (a) All amounts due to the Seller for the Goods completed in accordance with the Contract prior to such notice;
 - (b) A reasonable amount for any Goods and materials then in production, provided that no such adjustment be made in favor of the Seller with respect to any Goods which are the Seller's standard stock; and
 - (c) Cost of settling and paying claims arising out of the canceled orders.

- 3) Payment under this Clause constitutes the Buyer's only obligation to the Seller in the event that the Contract shall be terminated as provided in this Clause. The Seller's acceptance of such payment constitutes an acknowledgment that the Buyer has discharged that obligation under the Contract. The provisions of this Clause do not apply to any termination by the Buyer for the default of the Seller or for any other cause allowed by law or under this Contract.

21. RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE

- 1) When reasonable grounds for insecurity arise with respect to the Seller's performance, the Buyer may in writing demand adequate assurance of due performance and, until it receives such assurance, may suspend any of its performance under the Contract in whole or in part.
- 2) Acceptance of any improper delivery does not prejudice the Buyer's right to demand adequate assurance of future performance.
- 3) When, after receipt of such a demand, the Seller has failed to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case, the Buyer may by written notice to the Seller terminate the Contract, in whole or in part, without any liability to the Seller, and may, without prejudice and in addition to any other rights or remedies which it may have hereunder or at law or otherwise, return part or all of any shipment of the Goods delivered prior to the date of such termination at the Seller's expenses. Sub-clause 19- 2) and 3) the Contract will also apply in case of termination in accordance with this provision.

22. FORCE MAJEURE

- 1) "Force Majeure" means unforeseeable and unavoidable causes beyond the reasonable control and without fault or negligence of the Seller and/or the Buyer, including but not limited to, acts of God, war (declared or undeclared), acts of any governmental authorities, riot, revolution, civil commotion, fires, or epidemic, but shall not include unforeseen difficulties in manufacture, difficulty in obtaining raw materials or supplies (unless itself due to Force Majeure), shortage of labor, or non-performance by the Seller's subcontractors, strike, inclement weather, difficulty in transportation or failure of suppliers to deliver.
- 2) Should Force Majeure prevent the total or partial performance required under the Contract, the Party claiming Force Majeure shall advise the other Party of the beginning and the expected period of such Force Majeure with reasonable evidence within ten (10) days after the occurrence of Force Majeure and furnish the other Party with convincing evidence, such as an official certificate from competent authorities substantiating the occurrence and nature of the alleged contingencies, within seven (7) days after the end thereof.
- 3) In the event a condition of Force Majeure is declared and substantiated as set forth in paragraph 2), the Parties shall consult with each other to extend the delivery date of the Goods; however, such delivery date shall not be extended beyond sixty (60) days from the delivery date set forth in the Contract. For delays and/or non-performance of the obligations due to Force Majeure, neither Party shall be entitled to claim against the other Party any penalty, interest, damage or any other compensation arising from Force Majeure for such period of Force Majeure.

In the event that the delay and/or non-performance of the obligations exceeds sixty (60) days due to Force Majeure, the Buyer, without any obligation to pay any termination charge, shall be entitled to terminate the Contract by so notifying the Seller in writing.

23. CONTRACT CONSTRUCTION

- 1) The failure of the Buyer to enforce any of its rights under the Contract shall in no way be construed as a waiver of such rights by the Buyer, nor in any way affect the right of the Buyer thereafter to enforce any such rights.
No waiver by the Buyer of any default of the Seller hereunder constitutes a waiver of any subsequent default, regardless of the nature of the subsequent default.
- 2) The rights and remedies herein reserved to the Buyer are cumulative and are in addition to any other or further rights or remedies available to the Buyer under the law or equity or otherwise.
- 3) The provisions of the Contract are severable. If and to the extent that any provision of the Contract proves to be, or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the other provisions of the Contract will not be affected or impaired in any way.
- 4) The Seller's relationship with the Buyer shall be that of an independent contractor and nothing in the Contract should be deemed or construed to create a partnership, joint venture, agency or employer-employee relationship between the Parties.
- 5) The following clauses shall survive the expiration or earlier termination (for any reason) of the Contract: 1. DEFINITIONS; 15. WARRANTIES; 19. TERMINATION FOR DEFAULT; 20. TERMINATION AT THE BUYER'S OPTION; 23 CONTRACT CONSTRUCTION; 24. INDEMNITIES; 25. CONFIDENTIALITY; 26. INTELLECTUAL PROPERTY; 28. ARBITRATION; 29. GOVERNING LAW.

24. INDEMNITIES

- 1) The Seller shall defend, indemnify and hold harmless the Buyer, the Owner and their Related Entities from and against any and all Liabilities, arising out of breach by the Seller of any of the terms and conditions of or obligations under the Contract, or any act or omission or negligent work of the Seller or its officers, employees, agents or subcontractors in connection with performing any work relating to the Contract.
- 2) The Seller shall defend, indemnify and hold harmless the Buyer, the Owner and their Related Entities from and against any and all Liabilities arising out of any claim that the Goods (or any part of the Goods or process related to the Goods) purchased by the Buyer and/or the Owner from the Seller infringe or allegedly infringe any Intellectual Property Right.
 - a) In the event the Buyer and/or the Owner, and/or their Related Entities are enjoined from the possession or use of the Goods in connection with any such claim, the Seller at its sole expense shall take all reasonable steps to procure for the Buyer and/or the Owner the right to possess and use the Goods (or any part of the Goods or process related to the Goods). If the Seller cannot promptly obtain such a right, the Seller shall at its sole expense and in accordance with the instructions of the Buyer or the Owner either:
 - (i) modify the Goods so as to avoid infringement of any Intellectual Property Right with substantially equal quality to the satisfaction of the Buyer and the Owner; or
 - (ii) replace the Goods with substantially equal Goods that do not infringe or violate any Intellectual Property Right.
 - b) In addition, the Seller shall reimburse the Buyer and/or the Owner for any and all losses and/or damages incurred by the Buyer and/or the Owner as a result of being enjoined from the possession or use of the Goods.
- 3) For purposes of this Clause 24 "Related Entities" shall mean in the case of Buyer and Owner their respective officers, directors, employees, agents and subcontractors.

- 4) For purposes of this Clause 24 "Liabilities" shall mean any and all losses, costs, damages, expenses (including expenses and fees of attorneys), claims, actions, and judgments, of any kind whatsoever, whether groundless or not, including any and all claims for personal injuries or death, for loss of or damage to property and for consequential or special damages.

25. CONFIDENTIALITY

- 1) The Seller shall keep confidential the Specifications and any other drawings, designs, technical data, know-how, commercial data, and other information of a confidential or proprietary nature (whether in written, oral or presentation form) furnished by the Buyer and/or by the Owner through the Buyer to the Seller (collectively "Confidential Information"). Confidential Information shall include any notes, summaries, reports, analyses or other material created by Seller that contains or is based upon Confidential Information (collectively "Notes"). Except as expressly provided herein, the Seller shall not disclose, disseminate, provide or otherwise make available, in whole or in part, any Confidential Information to any third party. The Seller shall use Confidential Information exclusively for the purpose of performing the Seller's obligations under the Contract, and the Seller shall not use, disclose, disseminate or reproduce Confidential Information in whole or in part for any other purpose. The Seller shall limit access to Confidential Information to its directors, officers, employees, attorneys and permitted subcontractors who reasonably have a need to know such information in connection with the Seller's performance of its obligations under the Contract (collectively "Authorized Recipients"), provided that each such Authorized Recipient shall be under a separate written obligation to treat Confidential Information as confidential and not to use Confidential Information other than in the manner and to the same extent as specified in the Contract. As between the Parties, all Confidential Information shall be the sole and exclusive property of the Buyer. Nothing contained herein shall be deemed or construed as granting to the Seller any license, directly or indirectly, in said Confidential Information.
- 2) At the Buyer's request, the Seller shall return all Confidential Information, including any copies thereof, to the Buyer, and shall destroy all Notes and any copies thereof, together with a letter certifying the Seller's compliance with the requirements of this Clause 25(2) within thirty (30) calendar days of the date of expiration or earlier termination of the Contract.
- 3) The Seller shall comply with and shall ensure compliance by all Authorized Recipients with the confidentiality requirements set out in this Clause 25 and shall be responsible for any failure by its Authorized Recipients to comply with such requirements.

26. INTELLECTUAL PROPERTY

1) Ownership

The Buyer shall own exclusively all ideas, inventions, works of authorship, formulae, methods, data, drawings and test results (collectively "Technology") created in the course of Seller's performance of the Contract, including all Intellectual Property Rights therein, whether created solely by Seller or jointly by Seller and Buyer. Seller hereby irrevocably grants, conveys and transfers and assigns its right, title and interest in such Technology and Intellectual Property Rights to Buyer. All such Technology that is protectable by copyright shall be deemed a work(s) made for hire to the greatest extent permitted by applicable law or Seller shall give Buyer first owner status for such work(s) under local law where such work(s) was created. If by operation of law Buyer does not automatically own such Technology and Intellectual Property Rights in their entirety upon creation,

then Seller hereby agrees to execute and deliver promptly any written instruments to the Buyer and to perform any other acts necessary to carry out the intent of this Clause 26 1).

2) License

To the extent that any intellectual property owned or licensed by the Seller is necessary to enable Buyer to use the Goods in connection with the manufacture, assembly, certification, display, distribution, maintenance, modification, qualification, repair, sale, offer to sell, testing, use or upgrade of the plant, equipment and/or facilities furnished by Buyer to Owner (collectively "Buyer's Needs") then Seller hereby grants to the Buyer a non-exclusive, worldwide, perpetual, transferable and royalty-free right and license (with the right to sublicense) to use such intellectual property for Buyer's Needs.

27. COMPLIANCE

1) The Seller shall comply with any and all laws, regulations, and lawful orders that are effective in the place of manufacture of the Goods and in the place(s) of intermediate and/or final delivery of the Goods, and that are applicable to the Goods or to the performance of the Contract, including without limitation those laws, regulations, and lawful orders relating to environmental protection, health and safety, employment conditions, retention and protection of records, transportation and storage of materials, anti-corruption and export/re-export control. The Seller shall obligate any and all sub-suppliers to do the same.

2) Restricted Materials

(a) Without limiting the Seller's obligations under any of the terms of the Contract, in the event that the Goods include substances which are classified as hazardous and/or are subject to environmental, health or safety laws, regulations or lawful orders and/or laws, regulations or lawful orders concerning registration, disclosure or labeling of such substances (collectively "Restricted Materials"), then the Seller shall provide the Buyer with written notice of the intended inclusion of Restricted Materials in the Goods (hereafter referred to as "Provisional Notice of Restricted Materials") no later than fourteen (14) calendar days after entry into the Contract. The Seller shall promptly notify the Buyer if the Seller becomes aware of any need to update the Provisional Notice of Restricted Materials.

(b) No later than four (4) weeks prior to the delivery date set forth in the applicable Order, the Seller shall provide the Buyer with: (i) written disclosure of all Restricted Materials included in the Goods; (ii) all information and documentation necessary to demonstrate the Seller's compliance with all laws, regulations and lawful orders applicable to such Restricted Materials; and (iii) all information and documentation necessary to enable the Buyer and/or the Owner to comply with such laws, regulations and lawful orders. The Seller shall not charge the Buyer any additional amounts for the Seller's agreement to undertake these obligations.

However, if after delivery of the Goods is completed in accordance with the requirements of the Contract the Buyer requests the Seller to provide any additional information or documentation to enable the Buyer and/or the Owner to comply with any new laws, regulations or lawful orders that were not in effect at the time of such delivery, the Seller may be entitled to recover as a change under Clause 13 direct costs incurred in the preparation and submission of such information and documentation to the Buyer.

3) Access to Goods

The Seller shall ensure the security of the Goods and restrict access to the Goods to authorized personnel in accordance with the requirements of Clause 25 and applicable laws, regulations and lawful orders until delivery has been completed in

accordance with the requirements of the Contract. The Seller shall obligate any and all sub-suppliers to do the same.

4) Export Licenses

The Seller shall be responsible for obtaining approvals, licenses, permits or authorization in a timely manner from the competent authorities necessary for the exportation of the Goods (and, as the case maybe, the Specifications and any other drawings, technical data, technologies and information) to the country of destination.

5) Notice of Restrictions

In the event that the Goods or the Specifications or any part thereof are, or are likely to be, subject to any restriction arising from such applicable laws, regulations or otherwise as stated herein, the Seller shall so notify the Buyer and shall, at its cost, take any and all necessary actions to ensure the strict compliance with the same and submit upon the request from the Buyer and/or the Owner the certificate or instrument certifying such compliance.

6) Regulatory Action

The Seller shall notify the Buyer immediately of the discovery of any regulatory action taken or initiated against the Seller, whether or not such action relates to or arises out of the Contract, that may result in fines, penalties or prosecution or that may impact the Seller's ability to deliver Goods in accordance with the requirements set forth in the Contract. Such regulatory compliance and management of the Seller's employees, facilities and processes shall be solely the Seller's responsibility.

28. ARBITRATION

The Parties shall exercise their best efforts to resolve by negotiation any and all disputes, controversies or differences between the Buyer and the Seller arising out of or relating to the Contract, or the breach thereof. All disputes, controversies or differences between the Buyer and the Seller arising out of or relating to the Contract, or breach thereof, that are not settled by negotiation shall be settled by arbitration in London, UK, in accordance with the Rules of Arbitration (the "Rules") of the International Chamber of Commerce. The arbitration will be conducted in the English language. The arbitration panel will be appointed in accordance with the Rules. The Seller agrees to continue production pending resolution of any such dispute at the Buyer's sole election.

The award rendered by the arbitrator(s) shall be final and binding upon both Parties, and judgment upon the award may be entered in any court having jurisdiction thereof.

29. GOVERNING LAW

This Contract shall be interpreted under and governed by the laws of England and Wales without reference to its rules concerning conflict of law.

This Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

30. ASSIGNMENT

The Seller shall not assign or transfer the Contract or any part thereof to any third party without prior written approval by the Buyer. Notwithstanding the foregoing, in no event does any approval by the Buyer or any (subsequent) assignment by the Seller relieve the Seller of any of its obligations under the Contract.

Any attempted assignment or transfer by the Seller in violation of this Clause 30 shall constitute a breach of Contract and shall not relieve the Seller of any of its obligations under the Contract.

31. LANGUAGE

The language to be used in all documents comprising or relating to the Contract, and in all other communications relating to the Contract shall be English, unless otherwise agreed by the Parties.

32. PUBLICITY

The Seller shall not issue any news release nor permit any publicity or advertisement concerning the Contract or the Buyer and Seller's relationship without the Buyer's prior written approval.

33. SUBCONTRACTING

The Seller shall not subcontract any substantial portion of its obligations under the Contract without the prior written approval of the Buyer.

Upon the Buyer's request, the Seller shall, submit the Seller's complete subcontractors' list for the Buyer's approval. The subcontractors' list shall include the name and scope of work of each subcontractor.

In no event does the Buyer's approval or disapproval of the Seller's subcontractors relieve the Seller of any of its obligations under the Contract.

34. BUYER'S SUPPLIES

In the event that the Buyer furnishes the Seller with any materials and/or finished or semi-finished parts to be built or assembled into the Goods or tools and/or equipment (hereinafter collectively referred to as the "Buyer's Supplies") to facilitate the Seller's manufacture of the Goods, the terms and conditions relating to the delivery of and any payment for such Buyer's Supplies will be set forth in the Order. If no such terms and conditions are included in the Order, the following terms and conditions apply:

- 1) The risk of damage to or loss of the Buyer's Supplies shall be transferred from the Buyer to the Seller upon delivery of them in accordance with the terms of the Contract
- 2) Notwithstanding the paragraph 1) above, the Buyer's Supplies shall remain the sole property of the Buyer and clearly be identified and marked as such until the Goods incorporating such Buyer's Supplies have been duly delivered in accordance with the terms of the Contract;
- 3) Any of the Buyer's Supplies that remain following completion of the required manufacturing or work shall be returned by the Seller to the Buyer upon such completion, unless otherwise provided in the Contract
- 4) The Seller shall protect and safeguard any and all of the Buyer's Supplies in the Seller's possession, shall keep them all insured and recorded, and shall take all measures reasonably necessary to prevent deterioration, damage and/or loss to any of Buyer's Supplies, including loss by confiscation or seizure; and
- 5) The Seller shall not use any Buyer's Supplies for any purpose other than the performance of the Contract, and shall not sell, lend or pledge them without the Buyer's prior written consent.