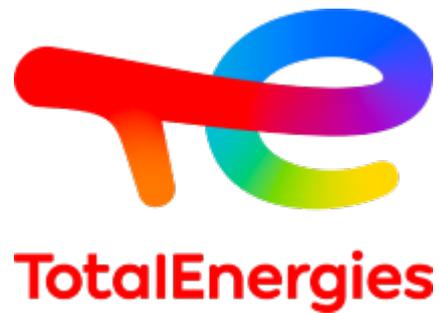


**PRIVATE & CONFIDENTIAL**

**GENERAL TERMS AND CONDITIONS FOR PURCHASE  
(GOODS & SERVICES)**



# TOTALENERGIES MARKETING MIDDLE EAST: GENERAL TERMS AND CONDITIONS FOR PURCHASE

## 1. DEFINITIONS

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In this Agreement, unless the context requires otherwise, the following words and phrases shall have the following meaning:

**Acceptance Notice** means a notice in writing issued by Customer to Supplier to confirm that a Deliverable has been Accepted;

**Acceptance Testing** means any acceptance tests required for the Deliverables as set out in the Delivery and Acceptance Procedure, and **Acceptance Tests** shall be construed accordingly;

**Accepted** means where Customer intends or requires to conduct Acceptance Testing, that the Deliverable has successfully passed those Acceptance Tests to the reasonable satisfaction of Customer as evidenced by the issuance of an appropriate Acceptance Notice;

**Administration Event** means an order that is made for the appointment of an administrator (or equivalent) to manage the affairs, business and property of a Party or documents are filed with a court of competent jurisdiction for the appointment of an administrator (or equivalent) of the other Party or notice of intention to appoint an administrator is given by a Party or its legal representative;

**Affiliate** means in relation to a Party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that Party from time to time;

**Agreement** means this agreement for the supply and delivery of Deliverables by Supplier to Customer comprising the Purchase Order together with these Terms & Conditions;

**Agreement Date** means the date stated as such in the Purchase Order;

**Anti-Bribery & Corruption Policy** means the anti-bribery and corruption policy of Customer as may be communicated from time to time), the current copy of which is attached at Schedule 8;

**Applicable Law** means all national, state, local, municipal legislation, regulations, statutes, by-laws, consents and/or other laws and any other instrument having the force of law as may be issued and in force from time to time (and any amendment or subordinate provisions) relating to or connected with the activities contemplated under this Agreement wherever so located or performed;

**Audit Items** means any books, systems, reports, practices, data, records and documents in the possession, custody or control of Supplier relating to Supplier's (or its approved sub-contractors) performance of its obligations under this Agreement;

**Auditors** means an auditor appointed by Customer to exercise its rights of audit under or in connection with this Agreement;

**Authorised Recipient** means any Person to whom a Party may disclose Confidential Information under this Agreement or as may be required by Applicable Law;

**Authorised Representative** means the authorised representative of the Parties specified in the Purchase Order, or as may be otherwise be notified by one Party to another;

**Business Day** means any day other than a weekend, official public holiday or a day when banks are closed for business in the Territory;

**Charges** means the amount payable by Customer to Supplier for the supply and delivery of the Deliverables under this Agreement, as set out in the Purchase Order;

**Claim** means any claim, action, suit or proceeding asserted by any Person;

**Confidential Information** means this Agreement and all information of any nature which a Party may have or acquire before or after the Agreement Date, however conveyed (whether in writing, verbally, in a machine readable format or by any other means and whether directly or indirectly), which relates to the business, products, price lists, developments, Personnel, suppliers and customers of a Party and

its Affiliates (whether or not designated as Confidential Information by the disclosing Party), and all information designated as confidential or which ought reasonably to be considered confidential;

**Consents** means any consents, licences and permissions that a Party may require to comply with Applicable Law, perform its obligations under this Agreement, or otherwise;

**Contract Management Requirements** means the contract management requirements that the Parties will assume to manage the implementation of this Agreement including as set out in Clause 39 and the Purchase Order (where relevant);

**Control** means:

- (a) the ownership or control (whether directly or indirectly) of more than 50% of the voting share capital of the relevant entity; or
- (b) the ability to direct the casting of more than 50% of the votes exercisable at general meetings of the relevant entity on all, or substantially all, matters; or
- (c) the right to appoint or remove directors of the relevant entity holding a majority of the voting rights at meetings of the board on all, or substantially all, matters;

and the terms Controlled or Controlling shall have the equivalent grammatical meaning;

**Corrupt Behaviour** means the offering or promising of any Inducement to induce any Person to perform their roles improperly, to influence them with the intention of obtaining or retaining business or an advantage in the conduct of business;

**Creditor Event** means where a Party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors in any way;

**Currency** means the currency in the relevant Purchase Order;

**Customer** means the Party described as such in the Purchase Order;

**Customer Group** means the TotalEnergies group of companies;

**Customer Group Policies** means any policies maintained by Customer Group in connection with its business and as may be notified to Supplier, including its Anti-Bribery & Corruption Policy;

**Defect** means any defective design, materials, workmanship, merchantable quality, unfitness for intended purpose in any Deliverable and/or any Deliverable which does not conform to the requirements of this Agreement;

**Defect Liability Period** means (unless otherwise set out in the Purchase Order) the period of one year from Acceptance of the relevant Deliverable;

**Defect Notice** means a notice issued by Customer to Supplier indicating that a Deliverable has a Defect and requiring Supplier to correct it in accordance with the Warranty Obligation and Clause 17;

**Delay Damages** means an amount equal to 20% of the relevant portion of the Charges that is to be paid in respect of Deliverables for each week (and any part of a week) of delayed delivery beyond the relevant Delivery Date;

**Deliverables** means the tangible or intangible Goods, Services or Documentation, that is the subject matter of this Agreement, as specified in Schedule 1 and shall be deemed to include any Incidental Items;

**Deliver** means the delivery of the Products at the Designated Site, according to the agreed INCOTERM, and **Delivery** shall be interpreted accordingly.

**Delivery and Acceptance Procedure** means the procedure specified in Schedule 2 which sets out Customer's specific requirements for delivery of Goods under this Agreement, including Acceptance Testing,

**Delivery Dates** means the date specified for delivery or performance of the Deliverables (or both, as the case may be) as set out in the Delivery Schedule;

**Delivery Schedule** means the agreed schedule for the delivery of the Deliverables specified in Schedule 3 or in the Purchase Order (as applicable) or (where no such dates are specified), as soon as reasonably practicable within the time frame that Customer may reasonably require and notify;

**Designated Site** means the specific location at a Site specified in the Purchase Order where specific Deliverables are to be delivered or performed, as the case may be;

**Direct Loss** means any loss or damage of whatever nature that flows naturally from the event giving rise to it and shall include Foreseeable Losses (as defined in Schedule 4) or as set out in the Purchase Order;

**Dispute** means any dispute, question or difference of opinion between Customer and Supplier arising out of or in connection with this Agreement;

**Dispute Notice** means a notice by a Party specifying the existence of a Dispute under or in connection with this Agreement and calling for its resolutions under Clause 35;

**Documentation** means any documentation (including the Specifications, user manuals, systems manuals, operating manuals, programming manuals and set up or installation guides) whether in hard copy or soft copy form, to be supplied by Supplier to Customer under the Agreement including as set out in Purchase Order and as is required by Good Industry Practice;

**Force Majeure Event** means any event or occurrence which prevents a Party from performing any or all of its obligations under this Agreement and which arises from, or is attributable to acts, events, omissions or accidents which are unforeseeable and beyond the reasonable control of the Party so prevented or affected and may include acts of God, governmental act, war, fire, flood, explosion or civil commotion;

**Fundamental Purchasing Principles** means the document in Schedule 5, as may be updated;

**Good Industry Practice** means the practices, methods and procedures and that degree of skill, diligence, prudence, foresight and judgment which would be expected to be observed by a highly skilled and experienced supplier of international repute engaged in the same or similar activities under the same or similar circumstances;

**Goods** means the goods (including Documentation) to be provided as set out in the Purchase Order;

**GST** means goods and services tax, value added tax or any other sales tax or any other similar taxes which may be payable relating to the supply and delivery of the Deliverables;

**Incidental Items** means such items as Supplier may need to supply or services Supplier may need to perform in order for the Deliverables to fully meet the Specifications and/or the requirements of this Agreement;

**INCOTERMS** means the International Chamber of Commerce INCOTERMS® 2010, and as updated;

**Indemnified Event** means the events designated as such under this Agreement, being those events where one Party has agreed to Indemnify the other Party;

**Indemnify** means the indemnification and holding harmless of one Party by the other against any losses, damages and Claims, of whatsoever nature, which the indemnified party may suffer, incur or sustain arising out of or in connection with a particular Indemnified Event;

**Indemnity Claim** means a Claim that relates to an Indemnity given under this Agreement;

**Indirect Loss** means all indirect loss of profit, loss of use, loss of revenue, loss of contracts, increased costs and expenses *and* all indirect, consequential or special loss or damage arising out of or in connection with this Agreement whether or not the possibility of such damage could have been reasonably foreseen;

**Inducement** means the making of any promise or any gift, transfer, payment, loan, reward, inducement, benefit or other advantage (whether directly or indirectly), which may be construed as being made to solicit any favour to or from any Person;

**Insolvency Event** means a Creditor Event, Receivership Event, Administration Event or a Winding-up Event;

**Instruction** means any reasonable instruction given by Customer to Supplier under or in connection with this Agreement;

**Invoice** means an invoice in the format approved by Customer an example of which is set out in the Purchase Order;

**IPR** means patents, inventions (whether patentable or not), copyrights, moral rights, design rights, trade marks, trade names, business names, service marks, brands, logos, service names, trade secrets, know-how, domain names, database rights and any other intellectual property or proprietary rights (whether registered or unregistered and whether in electronic form or otherwise) including rights in computer software, and all registrations and applications to register any of the aforesaid items, rights in the nature of the aforesaid items in any country or jurisdiction, any rights in the nature of unfair competition rights and rights to sue for passing off;

**Lien** means any lien, charge, security interest, attachment or encumbrance of whatever nature including material Personnel, labourers, mechanics, sub-suppliers, and sub-suppliers' and vendors' liens;

**Mandatory Disclosure** means any announcement or disclosure of Confidential Information that a Party is required to make under Applicable Law or as otherwise required by any order of a court of competent jurisdiction;

**Manufacturer Warranties** means any warranty provided by the manufacturer and/or Supplier's suppliers of any Goods or any other item comprising part of the Deliverables;

**Material Breach** means either:

- (a) a breach of this Agreement that the breaching party fails to remedy within 30 days of that Party being notified in writing of the breach; or
- (b) a persistent pattern of minor breaches when taken as a whole constitute a material breach; or
- (c) any breach of any term in this Agreement which is designated as a Material Breach term and includes Clauses 7.5, 7.6, 8.2, 14, 15, 21, 34, 36, 38 and 42;

**Packing List** means a packing list which shows such details regarding the Deliverables being shipped as Customer may require including type and quantity of Goods (and balance to be delivered if delivered in instalments), Traceability Information and such other information as is communicated by Customer;

**Payment Schedule** means the authorised schedule for payment for the Deliverables by Customer to Supplier as set out in the Purchase Order;

**Person** means any natural person, corporate or unincorporated body (whether or not having separate legal personality) individual, corporation, partnership, limited liability company or similar entity;

**Personal Information** means any information relating to an identified or identifiable person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

**Personnel** means all employees, agents and sub-contractors of a Party who are assigned, engaged or otherwise employed from time to time to work in connection with the performance or discharge of a Party's obligations under this Agreement;

**PO Acceptance** means an event that signifies or is deemed to signify the acceptance by Supplier to unconditionally accept a Purchase Order issued by a Customer under Clause 6;

**Processing** means collecting, holding, using, transferring, destroying and any other dealing in connection with Personal Information;

**Project Manager** means the operational lead appointed by a Party in respect of managing that Party's involvement or management of the operational aspects of this Agreement, such person being separate and distinct from a Party's Authorised Representative, and as being set out in the Purchase Order;

**Purchase Order** means a purchase order issued by Customer in the form in Schedule 7 or any form agreed to between the Parties;

**Reporting Requirements** means the reporting requirements specified in the Purchase Order (as applicable);

**Receivership Event** means where a receiver (or equivalent) is appointed over any Party's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager (or equivalent) of a Party or if any other Person takes possession of or sells a Party's assets;

**Scope Change** means a permissible revision to the quantities of Deliverables to be supplied under this Agreement;

**Service Credits** means the compensation payable by Supplier to Customer if an applicable Deliverable fails to meet the required Service Level specified in the Purchase Order;

**Service Levels** means any key performance indicator associated with any Deliverables specified in the Purchase Order or in Schedule 1;

**Services** means the services to be provided by Supplier including as set out in the Purchase Order;

**Site** means any site upon which the Deliverables (or any part of them) are to be performed and/or delivered under or in connection with this Agreement;

**Special Terms and Conditions** means the special terms and conditions as stipulated in a Purchase Order which may vary these Terms & Conditions

**Specifications** means any technical and functional specifications for the Deliverables as set out in Schedule 6 and includes any plans, drawings, data, specifications, quantities, description and other information relating to the Deliverables;

**Standards** means all industry standards applicable to the supply, delivery, installation and maintenance (as applicable) of the Deliverables;

**Statutory Warranties** means any statutory warranties in relation to the Deliverables that Customer is entitled to the benefit of under Applicable Law throughout the Term;

**Term** means the period of time running from and including the Agreement Date until the date which is the earlier of:

- (a) this Agreement being terminated in accordance with its terms, or
- (b) the completion by Supplier of all of its obligations under this Agreement;

**Termination Notice** means a notice to terminate this Agreement issued by a Party in accordance with this Agreement;

**Terms & Conditions** means these standard terms and conditions of Customer Group for the purchase of Deliverables;

**Territory** means the country or countries or other geographic areas as set out in the Purchase Order;

**Traceability Information** means accurate data regarding the traceability of the Goods, including their origin, date and place of manufacture of the Goods and their components, serial or batch numbers, the identity of the manufacturers, quality control tests performed and any other relevant information;

**Warranty Obligation** means, unless otherwise set out in the Purchase Order (as applicable), the redesigning, repairing, replacing or re-performing (as appropriate) of a Deliverable (by Supplier) which has experienced a Defect within the time specified, or where no such time frame is specified then within such time frame as may be set out in the Defects Notice;

**Winding-up Event** means an order is made or a resolution is passed for the winding-up of a Party or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of a Party; and

**Workplace Matters** means, for the purposes of Clause 25.1.2 matters relating to income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal that relates to Supplier's Personnel.

**2. INTERPRETATION PROVISIONS**

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- 2.1 In this Agreement, the following rules of interpretation shall apply:
  - 2.1.1 any reference to a **Party** shall be construed to include its successors and permitted assigns or transferees;
  - 2.1.2 any reference to **day** or **daily** shall be construed as a reference to a calendar day;
  - 2.1.3 the words **including** and **include** shall be construed without limitation, non-exhaustive and shall not be deemed to limit the general effect of the words, descriptions, definitions, phrases or terms which precede them;
  - 2.1.4 a reference to **writing** or **written** includes fax and email;
  - 2.1.5 reference to the singular includes the plural, and a reference to the plural includes the singular;
  - 2.1.6 references to this Agreement, or any Schedule or document referred to shall be construed as a reference to it as may be varied, supplemented or novated (other than in breach of this Agreement);
  - 2.1.7 references to **Deliverables** shall, unless otherwise provided, be a reference to the Deliverables being supplied and delivered (in the case of Goods) or provided and/or performed (in the case of Services);
  - 2.1.8 any reference to any statute or other legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation under it; and
  - 2.1.9 any obligation on a Party not to do something includes an obligation not to permit or otherwise allow others to do the same.

**3. DOCUMENTATION PRECEDENCE**

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- 3.1 In the event of any ambiguity, uncertainty or conflict between the Purchase Order and these Terms & Conditions, and any Schedules, then, the order of precedence shall be:
  - 3.1.1 the Special Terms and Conditions;
  - 3.1.2 the rest of the Purchase Order;
  - 3.1.3 these Terms & Conditions; and
  - 3.1.4 the Schedules.

**4. TERM**

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- 4.1 The Parties acknowledge and agree that this Agreement shall remain in full force and effect for the duration of the Term.

**5. SUPPLIER DUE DILIGENCE**

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- 5.1 Supplier acknowledges that it has made all enquiries as are required by Good Industry Practice and as otherwise required:

- 5.1.1 to fully inform itself as to all risks, contingencies and other circumstances (legal, political or otherwise) that may influence or affect the performance of its obligations under this Agreement;
  - 5.1.2 to fully inform itself of all issues associated with delivery of Goods to Sites and/or performance of Services thereon including location and access issues;
  - 5.1.3 for it to fully understand all matters associated with Customer's requirement for the Deliverables so that it is fully confident that it can deliver them under this Agreement; and
  - 5.1.4 so that it can fully perform all of its obligations under this Agreement.
- 5.2 Supplier acknowledges that:
- 5.2.1 it has received full and comprehensive responses to all clarifications that it has sought from Customer on matters which might impact its performance;
  - 5.2.2 it has satisfied itself as to the accuracy of all information given to it by Customer before the Agreement Date; and
  - 5.2.3 Customer has entered into this Agreement in full reliance upon Supplier's expertise in relation to all matters regarding the supply and delivery of the Deliverables.
- 5.3 Supplier's failure to have done any of the things required to have been done under this Clause 5 shall not entitle it to any relief for its failure to perform under this Agreement.

## **6. PURCHASE ORDERS**

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### **Purchase Order request**

- 6.1 Customer may during the Term raise a Purchase Order to Supplier in accordance with this Clause 6.
- 6.2 The Parties shall work together in good faith to promptly finalise each Purchase Order.
- 6.3 Within three Business Days of receipt of a Purchase Order, Supplier shall:
  - 6.3.1 confirm PO Acceptance of the relevant Purchase Order; or
  - 6.3.2 issue a request for any clarification as may reasonably be required so that it can issue PO Acceptance.
- 6.4 Upon receipt of the clarification received by Supplier under Clause 6.3 then Clause 6.2 shall again apply and the process shall continue under PO Acceptance has been achieved.

### **PO Acceptance**

- 6.5 A Purchase Order issued by a Customer constitutes an offer by the Customer to purchase the Deliverables from Supplier subject to and in accordance with the Terms & Conditions.
- 6.6 PO Acceptance shall be deemed to have occurred in any of the following ways:
  - 6.6.1 Supplier has expressly communicated acceptance pursuant to Clause 6.3;
  - 6.6.2 Supplier fails to issue a response as required pursuant to Clause 6.3; or
  - 6.6.3 Supplier engages in any act or conduct consistent with fulfilling the Purchase Order.
- 6.7 Supplier shall not unreasonably withhold, delay or condition its issuance of a PO Acceptance.
- 6.8 As of the date of PO Acceptance, a binding Supply Agreement between the relevant Customer and Supplier shall exist.

### **Supply Agreement Status**

- 6.9 Each Supply Agreement shall constitute a separate and binding agreement.

- 6.10 Any supply and delivery of Deliverables by Supplier to Customer shall always be governed by and subject to a Supply Agreement.
- 6.11 All of the Terms & Conditions shall apply to the supply and delivery of goods and services except where the application to one or the other is specified.

## **7. SCOPE OF DELIVERABLES**

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### **Scope of Deliverables**

- 7.1 Supplier shall do all things necessary so that the Deliverables are supplied or delivered with all required and relevant Documentation and in accordance with, and fully meet and comply with:
- 7.1.1 the Purchase Order;
  - 7.1.2 the Standards;
  - 7.1.3 the Specifications;
  - 7.1.4 the Delivery Schedule;
  - 7.1.5 Good Industry Practice;
  - 7.1.6 all Applicable Law;
  - 7.1.7 the Service Levels (if any);
  - 7.1.8 any Instructions; and
  - 7.1.9 these Terms & Conditions.
- 7.2 Supplier shall provide such Incidental Items as may reasonably be required to fully meet its obligations in Clause 7.1 and such supply shall be deemed to have been fully included in the Charges.

### **Specifications**

- 7.3 Where the Specifications are to be developed during the Term then Supplier must update them on a continuous basis.
- 7.4 For the purposes of Clause 7.3 no revisions to the Specifications shall be deemed Accepted until approved in writing by Customer (in its sole discretion but acting reasonably).
- 7.5 Customer shall own all IPR in the Specifications specifically produced in connection with this Agreement.

### **No impact performance**

- 7.6 In performing its obligations under this Agreement, Supplier shall ensure that during the Term:
- 7.6.1 it has obtained and maintains all Consents as are required to perform its obligations;
  - 7.6.2 it does not do or omit to do anything which may cause Customer to lose any Consent on which it relies to conduct its business; and
  - 7.6.3 its performance of its obligations does not place Customer (or its Affiliates) in breach of any of Customer Group Policies that have been communicated to it.

### **Co-operation with Third Parties**

- 7.7 Where performance by Supplier of its obligations under this Agreement requires interaction with a third party engaged by Customer, Supplier shall provide such reasonable co-operation as Customer may require to the third party.

## **8. DELIVERY**

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- 8.1 Supplier shall do all things that are necessary to provide or perform the Deliverables to or at the Designated Site in accordance with the Delivery Schedule and the Delivery and Acceptance Procedure.
- 8.2 The Delivery Schedule and each Delivery Date shall, unless otherwise provided, be 'time of the essence' and failure of Supplier to deliver or perform by the Delivery Date shall be a Material Breach.
- 8.3 Supplier shall not deliver Goods (including Documentation) in instalments without Customer's prior written consent.
- 8.4 Unless otherwise specified in this Agreement, all Goods (including Documentation) shall be delivered at the Designated Site according to the DDP INCOTERM and otherwise in accordance with this Agreement.

## **9. INSPECTION OF GOODS**

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- 9.1 Customer or its nominated representative shall have the right to inspect any Good at any time to determine whether they are in accordance with and to the Standards and Specifications.
- 9.2 If as a result of an inspection Customer is not satisfied that the Good comply with the Standards or Specifications Supplier shall at its own expense take necessary corrective steps.
- 9.3 Supplier shall pay any associated costs and Customer may treat them as a deduction.

## **10. REJECTION OF DELIVERABLES**

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- 10.1 Customer shall be entitled to reject any Deliverables (or any part of them) which are not delivered by Supplier in accordance with this Agreement, or which are not Accepted.
- 10.2 Customer shall not be deemed to have Accepted any Deliverables until Customer has issued an Acceptance Notice.
- 10.3 Where Customer rejects Deliverables (in whole or part) in accordance with this Clause 10 then:
  - 10.3.1 Supplier shall promptly do all things that are necessary to re-supply the Deliverables as is required under this Agreement;
  - 10.3.2 risk of loss or damage (or both) to any rejected Goods shall pass back to Supplier;
  - 10.3.3 Supplier shall pay all Customer's reasonable costs for storing any rejected Goods before collection by Supplier, such costs which may be treated by Customer as a deduction; and
  - 10.3.4 Supplier shall at its own expense remove any rejected Goods from the Designated Site as soon as reasonably practicable in compliance with any Instructions from Customer.

## **11. PACKING DISPATCH AND TRANSPORT (OF GOODS)**

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- 11.1 Supplier is responsible at its own cost for packing and transporting the Goods to the Designated Site in a good and undamaged condition, and where applicable, obtaining all required import permits or clearances.
- 11.2 Supplier shall ensure that all Goods (including associated Documentation) comply with the following packing and identification requirements:
  - 11.2.1 include a complete Packing List;

- 11.2.2 Applicable Law;
  - 11.2.3 a certificate of conformity with the Standards (where required/or applicable);
  - 11.2.4 shipped with all relevant and required Documentation;
  - 11.2.5 any carrier requirements engaged for transportation;
  - 11.2.6 properly packaged, stored and secured so as to be delivered undamaged at the Designated Site; and
  - 11.2.7 any other Customer Instruction.
- 11.3 Supplier shall pack and protect items ready for dispatch in accordance with Good Industry Practice and having in regard methods of carriage and handling and weather conditions through which they will pass.
- 11.4 Supplier shall notify Customer of the date of dispatch of each item and the estimated date of arrival at the Designated Site, not less than seven days before the scheduled Delivery Date.
- 11.5 If required by Customer, Supplier shall at its own expense collect and take back any packaging used for Goods for recycling or re-use (wherever possible) or otherwise for disposal in accordance with Applicable Law.

## **12. DELAY DAMAGES**

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- 12.1 Supplier shall pay to Delay Damages to Customer for any delayed, incorrect or incomplete receipt of a Deliverable by its corresponding Delivery Date until the actual date on which Delivery is fully achieved.
- 12.2 Supplier agrees and acknowledges that the Delay Damages are a genuine pre-estimate of the loss likely to be suffered by Customer due to Supplier's failure to meet the relevant Delivery Date.
- 12.3 For the purpose of Clause 12.1, Customer may at its discretion treat the Delay Damages as a deduction or invoice Supplier for the Delay Damages in accordance with Clauses 22.18 to 22.21.
- 12.4 The payment of Delay Damages shall not relieve Supplier from the obligation to provide the Deliverables and/or from any other liabilities or obligations under this Agreement.
- 12.5 Unless otherwise agreed, the overall maximum liability of Supplier under this Clause 12 shall be an amount equal to 20% of the total Charges payable under this Agreement (before any deductions being applied).
- 12.6 Customer's rights as set out in this Clause 12 shall be without prejudice to any other rights and/or remedies Customer may have under Applicable Law or otherwise.

## **13. ACCEPTANCE**

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- 13.1 Unless otherwise provided by Customer, all Deliverables must be subject to Acceptance Testing in accordance with the Delivery and Acceptance Procedure.
- 13.2 Where Acceptance Tests have not been agreed by the Parties as at the Agreement Date Supplier shall prepare them for the approval of Customer within five Business Days after the Agreement Date.
- 13.3 If the Parties fail to agree Acceptance Tests within five Business Days after the Agreement Date, this Agreement shall automatically terminate, unless Customer waives that requirement.
- 13.4 The Parties will work together co-operatively and in good faith to ensure that Acceptance Testing is carried out in accordance with this Agreement.

- 13.5 Subject to the satisfactory completion of the Acceptance Testing (that is Deliverables have fully passed them), Customer shall issue any Acceptance Notice as may be required. Deliverables shall never be deemed accepted.
- 13.6 Customer will not unreasonably delay, withhold or condition any Acceptance Notice that it might be required to issue pursuant to the Delivery and Acceptance Procedure.
- 13.7 Supplier shall be responsible for any costs and expenses that Customer reasonably incurred as a result of any Acceptance Testing that is carried out where a Deliverable did not pass them.
- 13.8 Acceptance shall always be subject to and evidenced by the issuance of an Acceptance Notice.
- 13.9 Customer shall be entitled to reject any Deliverable that does not pass any Acceptance Test or has otherwise not been delivered in accordance with the terms of this Agreement. Clause 10 shall then apply.

#### **14. SUPPLIER PERSONNEL**

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- 14.1 Supplier must supply all Personnel necessary and in suitable numbers for the proper performance of its obligations under this Agreement.
- 14.2 Supplier shall ensure that its Personnel engaged to supply or provide any part of the Deliverables:
  - 14.2.1 are suitably skilled, qualified and experienced to work always in accordance with Good Industry Practice;
  - 14.2.2 are employed under valid employment arrangements which comply with Applicable Laws including in relation to minimum age, minimum wage and benefits and no discrimination between employees;
  - 14.2.3 do not interfere with Supplier's property or Personnel (or that of any other third party) and business operations at any Site; and
  - 14.2.4 comply with and otherwise do not cause Supplier to be in breach of this Agreement or any of Customer Group Policies as are notified to it throughout the Term.
- 14.3 Customer's Project Manager may object to any of Supplier's Personnel who, in their reasonable opinion, lacks appropriate skills or qualifications, engages in misconduct, is incompetent or negligent.
- 14.4 Where reasonably requested by Customer or where Supplier's Personnel do not comply with Clause 14.2, Supplier shall at its own expense:
  - 14.4.1 immediately remove that Personnel and not re-employ them in connection with this Agreement or any other arrangement or agreement involving Customer; and
  - 14.4.2 replace any removed Personnel with suitably qualified, competent, skilled and approved Personnel as is required under this Agreement.
- 14.5 Unless otherwise agreed the working language of all Personnel carrying out obligations under this Agreement on behalf of Supplier shall be English.

#### **15. SITE ACCESS RIGHTS**

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- 15.1 Subject to Clause 15.2, Customer shall provide Supplier with such access to Sites as may be reasonably requested and required to facilitate Supplier fully performing its obligations in this Agreement.
- 15.2 Supplier's access to a Site shall always be strictly subject to and conditional upon the following:

- 15.2.1 access is only to provide the Deliverables;
  - 15.2.2 during Customer's normal Business Hours, unless otherwise provided under this Agreement; and
  - 15.2.3 subject to and consistent with all applicable Customer Group Policies.
- 15.3 If Supplier or its Personnel fails to comply with any of the requirements of this Agreement then Customer may in its discretion:
- 15.3.1 deny that Person access to the Site; or
  - 15.3.2 permit such access subject to terms and conditions Customer Project Manager thinks appropriate.
- 15.4 If Supplier enters a Site it does so at its own risk. Supplier shall also ensure that its Personnel are aware their entry onto a Site is entirely at their own risk.

## **16. SERVICE LEVELS**

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- 16.1 Supplier shall ensure that the Deliverables meet or exceed the relevant Service Levels.
- 16.2 If Supplier fails to achieve a Service Level then Supplier shall pay or make available Customer Service Credits.
- 16.3 If a Service Level is not met, notwithstanding any other provision of this Agreement, Supplier shall:
- 16.3.1 arrange all such additional equipment, resources and/or materials as are reasonably necessary to meet the Service Levels; and
  - 16.3.2 take all necessary remedial action to correct such a failure to meet the relevant Service Level.
- 16.4 Any actions required of Supplier under Clause 16.3 shall be entirely at its own cost.
- 16.5 Payment or provision of any Service Credits under this Agreement shall not relieve Supplier of its obligations to meet or exceed the Service Levels.
- 16.6 Customer's rights under this Clause 16 shall be without prejudice to any other rights or remedies Customer may have under this Agreement, Applicable Law or otherwise.
- 16.7 The payment or provision of the Service Credits is not a penalty and the amounts of the Service Credits do not exceed what is a genuine pre-estimate of the minimum loss likely to be suffered by Customer.
- 16.8 Unless otherwise agreed, the total amount of Service Credits payable shall not exceed 20% of the value of the Charges for Deliverables to which the Service Credits relate.
- 16.9 Customer shall be entitled, in its sole discretion, to treat any Service Credit as a deduction or to otherwise require Supplier to pay the value of the Service Credit to Customer on demand.

## **17. DEFECTS LIABILITY PERIOD**

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- 17.1 Supplier warrants and undertakes that each item of the Deliverables shall be free from any Defect during the Defect Liability Period.
- 17.2 The Defect Liability Period shall commence on and from the date that the relevant Deliverable has been Accepted.
- 17.3 Upon receipt of a Defects Notice from Customer that an item of Deliverable has a Defect, Supplier shall immediately perform the Warranty Obligation at its sole cost and expense.

- 17.4 If Supplier fails to remedy the Defect according to the Warranty Obligation then Customer may do so itself at Supplier's risk and cost and any such costs and expenses can be treated by Customer as a deduction.
- 17.5 Where a Warranty Obligation has not been agreed before the Agreement Date, Customer may upon occurrence of a Defect during the Defect Liability Period, issue a Defect Notice requiring Supplier to:
- 17.5.1 promptly undertake the repair or re-performance of, and bear all costs resulting from, any changes in design or other alterations, re-supply, changes or developments (as the case may be) necessary to resolve the Defect; or
  - 17.5.2 promptly (and in any event within not less than ten days) supply replacement Deliverables; or
  - 17.5.3 repay of any part of the Charges for the Deliverables which has been paid.
- 17.6 The Defect Liability Period for any Deliverable shall be deemed extended by the period from which the Defect Notice was issued through until such time as the Defect was remedied.
- 17.7 Supplier shall action each Defect Notice without delay. Where Supplier can show that there is no Defect, the Parties shall discuss Supplier's reasonable costs in good faith.
- 17.8 Customer's rights in this Clause 17 shall be without prejudice to any other rights or remedies Customer may have under this Agreement, Applicable Law or otherwise.
- 17.9 The Defect Liability Period for any Deliverable repaired, replaced or resupplied shall be deemed to restart on the date of final repair, resupply or replacement of such Deliverable.

## **18. GENERAL WARRANTIES**

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- 18.1 Supplier warrants to Customer that:
- 18.1.1 Customer may rely on all information supplied by Supplier as being true and accurate and without need for further verification;
  - 18.1.2 all materials, goods, standards and techniques used to supply the Deliverables are of the best quality and free from defect in workmanship, installation and design;
  - 18.1.3 the Goods shall be of a satisfactory and merchantable quality and free from defects and otherwise and fit for the purpose for which they are intended;
  - 18.1.4 it has good and marketable title to the Goods and Customer will receive such title free of any Lien;
  - 18.1.5 it will obtain at its cost and expense all usual trade warranties and any warranties requested by Customer, and will assign the benefit of any unexpired warranties to Customer promptly on request;
  - 18.1.6 it will obtain and pass on to Customer the benefit of any Manufacturer Warranties when so requested and not later than the date of Acceptance for the relevant Deliverable;
  - 18.1.7 sufficient spare parts as are required to support the Goods throughout the Term (and for two years afterwards) shall be available;
  - 18.1.8 it will comply with Applicable Law;
  - 18.1.9 the Deliverables shall always be rendered by appropriately experienced, qualified and trained Personnel with all due skill, care and diligence;
- 18.2 Customer has not agreed to exclude or waive its rights to any Statutory Warranties to which it may be entitled.

## **19. DUTY TO INFORM**

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- 19.1 If for any reason Supplier believes that it is reasonably likely that it will be unable to perform any of its obligations under this Agreement it shall immediately notify Customer's Project Manager as follows:
- 19.1.1 what obligations are likely to be impacted;
  - 19.1.2 the reasons why it is likely unable to perform them;
  - 19.1.3 what steps it has, and will continue to take, to achieve performance; and
  - 19.1.4 when it expects that performance in accordance with this Agreement can be achieved.
- 19.2 Supplier shall not be relieved from the performance of its obligations under this Agreement even after giving notice under Clause 19.1.
- 19.3 Upon receipt of notice under Clause 19.1 Customer may, in its sole discretion, elect to carry out the impacted obligations itself at Suppliers cost and expense (which can be treated as a deduction).

## **20. RIGHT TO INSTRUCT SUPPLIER**

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Supplier must comply with any Instructions to facilitate the smooth receipt of the Deliverables and to minimise disruption at Sites that Customer communicates to it sufficiently in advance.

## **21. AUDIT RIGHTS**

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- 21.1 Customer and its Auditors may audit or inspect the performance of Supplier's obligations under this Agreement in accordance with this Clause 21 upon giving two Business Days notice.
- 21.2 Supplier shall maintain a complete audit trail of all financial and non-financial transactions relating to the performance of its obligations under or in connection with this Agreement.
- 21.3 Supplier shall keep such Audit Items in relation to the Deliverables which are required to comply with:
- 21.3.1 all Applicable Law;
  - 21.3.2 and any reasonable written requests made by Customer and its Auditors; and
  - 21.3.3 its obligations under this Clause 21.
- 21.4 Supplier shall fully co-operate with Customer and its Auditors and promptly provide such Auditors with or access to the Audit Items.
- 21.5 Where the audit shows that Supplier has not performed its obligations under this Agreement then Supplier shall:
- 21.5.1 pay Customer's reasonable audit costs and expenses and Customer may treat them as a deduction; and
  - 21.5.2 within five Business Days of notification of Customer's request, provide to Customer an action plan setting out the proposed corrective measures to be taken by Supplier to correct any such non-performance.
- 21.6 Any failure by Supplier to comply with the provisions of or rectify any non-performance of its obligations identified pursuant to the operation of this Clause 21 shall constitute a Material Breach of this Agreement.

## 22. PAYMENT TERMS

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### General

- 22.1 Subject to Supplier's performance of its obligations in accordance with this Agreement, Customer will pay Supplier the Charges in accordance with this Clause 22 upon receipt of an Invoice.
- 22.2 Supplier agrees that the Charges are adequate as full consideration for all of its obligations under or in connection with this Agreement.
- 22.3 The Charges shall be paid in the Currency, and unless otherwise agreed, made by electronic transfer to Supplier's bank account as notified to Customer from time to time.
- 22.4 Each Party shall be responsible for paying its own bank charges.

### Approved Invoices

- 22.5 Supplier may invoice Customer in accordance with the Payment Schedule or if no schedule has been agreed then within 15 Business Days of Acceptance of the relevant Deliverables. In case of delay in submitting the invoice by the Supplier, the Customer shall have the right to delay the payment.
- 22.6 Customer shall only pay Invoices that are in the form attached to the Purchase Order.
- 22.7 Payment by Customer of an Invoice shall be without prejudice to any Claims and/or rights which Customer may have against Supplier under this Agreement, Applicable Law or otherwise.
- 22.8 Unless agreed otherwise, an invoice (if correct and approved) shall be payable by Customer within a period 90 days from receipt.

### Disputed Invoices

- 22.9 Customer will notify Supplier within 30 days of the receipt of an Invoice if Customer:
  - 22.9.1 Disputes (in good faith) any part or all of the Charges amounts as stated in the invoice; or
  - 22.9.2 considers such invoice to be incorrect or incorrectly issued for any reason.
- 22.10 Customer shall not be required to pay any disputed amount until the Dispute has been resolved and the Parties agree that the amount is valid and properly due to Supplier.
- 22.11 Customer shall for the purposes of Clause 22.10 make payment of any undisputed amount within 30 days of receipt of the Invoice that is Disputed.
- 22.12 Where Supplier agrees with Customer in relation to the Disputed Invoice it shall promptly issue a credit note for the Disputed portion or if the whole invoice is disputed, it shall cancel it and re-issue a correct Invoice.
- 22.13 If the Parties are unable to resolve Disputes related to Invoices by reference to the procedure in this Clause 22, then (and only then) it shall be considered a Dispute which is subject to the procedure at Clause 35.

### Charges

- 22.14 Supplier undertakes:
  - 22.14.1 not to increase the Charges throughout the Term unless expressly agreed by Customer in writing in accordance with this Agreement; and
  - 22.14.2 all prices, rates and discounts specified in this Agreement are and shall continue to be firm and valid and shall not be increased during the Term.

- 22.15 Clause 22.16 shall apply where Supplier offers any new or existing customer:
- 22.15.1 any similar deliverables to any of the Deliverables at a price lower than the relevant Charges; or
  - 22.15.2 offers additional or more comprehensive services than any of the Deliverable, at the same price, or lower price as the relevant Charges.
- 22.16 Where Clause 22.15 applies then Supplier shall offer such lower prices, discounts or more comprehensive services to Customer on the same terms as provided to such other customers of Supplier.
- 22.17 In determining what constitutes similar deliverables Supplier shall have regard to similar volumes of deliverables and terms and conditions upon which they are made available to such other customers.

#### **Other payments**

- 22.18 Any amounts owed by Supplier to Customer, including those owed pursuant to any Indemnity given by Supplier under this Agreement shall be payable within 14 days of demand.
- 22.19 For the purpose of Clause 22.18 and where Supplier fails to make payment within such time then Customer may treat such sum as a deduction.
- 22.20 Customer shall be entitled to treat any Delay Damages or Service Credits payable by Supplier to it under this Agreement as a deduction.
- 22.21 Supplier shall not be entitled to set-off any rights and Claims it may have against any rights or Claims of Customer under this Agreement.

#### **Taxes**

- 22.22 Supplier shall give all notices and pay all taxes (including withholding tax), duties and fees that it is required of it by Applicable Laws in relation to its provision of the Deliverables.
- 22.23 Supplier must pay all stamp duty which may apply in the Territory in connection with this Agreement.
- 22.24 The Parties acknowledge and agree that the Charges shall be exclusive of GST. Where GST must be paid, the Party liable to pay GST shall bear the cost of any GST payments.
- 22.25 Supplier shall Indemnify Customer in relation to any Claim it receives in relation to Supplier's failure to perform its obligations under this Clause 22.

### **23. TITLE**

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- 23.1 Title to each item of Goods shall pass and title shall vest in and become the absolute unencumbered property of Customer upon Acceptance.
- 23.2 Customer shall be entitled to use each Deliverable, and may incorporate Deliverables in its own products or services upon Delivery.
- 23.3 For the purposes of Clause 23.1, Supplier shall deliver good title to all of the Goods free from any Liens and Customer shall enjoy quiet possession of the Goods.
- 23.4 Where title in Goods passes before delivery, Supplier shall separate such Goods as they are produced, so that they cannot be confused with Supplier's own stock or deliverables for other customers.
- 23.5 Supplier shall require its suppliers and sub-contractors to comply with Clause 23.4.
- 23.6 If after Delivery Goods subsequently fail any Acceptance Testing or are otherwise rejected by Customer, title shall pass back to Supplier upon Customer receiving a refund or replacement for such Goods.

## **24. RISK**

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- 24.1 Risk of loss or damage to Goods (including Documentation) shall in all cases pass upon Delivery.
- 24.2 Supplier accepts and acknowledges that it bears all risk of losses to the Goods (or any part of them) until delivery at the Designated Site.
- 24.3 Customer is under no liability to insure the Goods before risk in the Goods passing to it.
- 24.4 If after delivery Goods subsequently fail any Acceptance Testing or are otherwise rejected by Customer, risk of loss or damage to Goods shall pass back to Supplier in accordance with Clause 10.

## **25. INDEMNIFIED MATTERS**

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- 25.1 Subject to Clause 26, Supplier shall Indemnify Customer (and its Personnel) from and against all loss or damage of whatever nature suffered, sustained or incurred, arising from any one or more of the following:
  - 25.1.1 any negligent act or omission or wilful misconduct by Supplier or its Personnel in connection with this Agreement; or
  - 25.1.2 any Claim made against Customer by any Personnel of Supplier in respect of any Workplace Matters; or
  - 25.1.3 any physical loss or damage caused by Supplier's Personnel at any Site; or
  - 25.1.4 any Claim brought by a third party for a breach of that third party's IPR as a result of Supplier performance under or in connection with this Agreement.
- 25.2 The events identified in Clause 25.1 shall each be considered as Indemnified Events.
- 25.3 Each Indemnity in this Agreement is a continuing obligation separate and independent from Supplier's other obligations and survives termination of this Agreement.
- 25.4 It is not necessary for Customer to incur any expense or make payment before enforcing an Indemnity right under this Agreement.
- 25.5 Supplier shall not be liable under Clause 25.1 to the extent that the Indemnified Event arose directly as a result of Customer's negligent acts or omissions or wilful misconduct.
- 25.6 This Clause 25 shall survive the expiry or earlier termination of this Agreement.

## **26. CONDUCT OF PROCEEDINGS**

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- 26.1 A Party Claiming an Indemnity under this Agreement shall deliver to the indemnifying Party notice of the Indemnity Claim as soon as is reasonably practicable after becoming aware of the Indemnity Claim.
- 26.2 The indemnifying Party shall, at its option, cost and expense, have conduct of all negotiations and proceedings (including the right to appoint legal counsel of its choice) regarding the Indemnity Claim.
- 26.3 Notwithstanding Clause 26.2,
  - 26.3.1 the indemnified Party shall provide such assistance as may be reasonably required by the indemnifying Party in respect of the Indemnity Claim.
  - 26.3.2 Customer may, at its cost and expense, appoint its own legal counsel in connection with the Indemnity Claim where it deems it necessary in its sole and absolute discretion.

- 26.4 Neither Party shall make any admission on behalf of the other Party regarding the Indemnity Claim which is reasonably likely to be prejudicial to the defence of such proceedings without the other Party's prior consent.
- 26.5 Subject to Clause 26.6, neither Party shall compromise or settle such proceedings in relation to the relevant Claim without the prior consent of the other Party.
- 26.6 If such option is exercised, the indemnifying Party undertakes to conduct negotiations and proceedings diligently and to endeavour in so doing not to materially adversely affect the indemnified Party's reputation or goodwill.

## **27. LIABILITY**

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### **Liability not limited**

- 27.1 Nothing in this Agreement shall exclude or limit either Party's liability to the other in relation to:
- 27.1.1 death or personal injury caused by negligence or wilful or reckless misconduct of that Party; and/or
  - 27.1.2 any fraud or fraudulent misrepresentation of that Party; and/or
  - 27.1.3 any liability which cannot be lawfully excluded by that Party; and/or
  - 27.1.4 in the case of Supplier, any liability pursuant to an Indemnified Event, and/or a breach of Clauses 6, 8, 11, 16 and 42.
- 27.2 Supplier shall be solely responsible for the loss of and/or damage to any equipment used by it in the performance of its obligations under this Agreement, however caused.

### **Indirect Loss**

- 27.3 Except in relation to Clause 27.1, neither Party shall be liable to the other for any Indirect Loss arising out of in connection with this Agreement.

### **Direct Loss**

- 27.4 Any specific loss scenarios in the Purchase Order shall be considered Direct Loss under this Agreement.
- 27.5 Supplier unconditionally acknowledges that it has actual knowledge of the likelihood of those Direct Loss scenarios.

### **Physical damage**

- 27.6 Supplier accepts liability for damage or loss to Customer's physical property and/or equipment arising from the performance or non-performance of Supplier's obligations under this Agreement.
- 27.7 Any loss claimed by Customer in relation to damage caused by Supplier to its physical property and/or equipment shall be calculated on a replace as new basis.
- 27.8 Supplier shall always be solely responsible and liable for any injury, loss or damage sustained by or caused by Supplier or its Personnel of any nature in performing its obligations in this Agreement.

## **28. INSURANCE**

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- 28.1 Supplier shall always during the Term insure and keep itself insured with a reputable insurance provider acceptable to Customer against all insurable liabilities:
- 28.1.1 required by Applicable Law; and

- 28.1.2 is customary in accordance with Good Industry Practice.
- 28.2 Supplier shall provide Customer upon request proof of existence of the insurance contemplated above which shall include the Approved Insurance Certificate and a receipt for the current year's premium.
- 28.3 The requirements stated in this Clause 28 shall not be construed in any way as a limit of liability or as constituting acceptance by Customer of any liability in excess of such amounts specified in this Clause 28.
- 28.4 Supplier shall ensure any third party used or engaged by it to discharge its obligations maintain sufficient insurance to comply with this Clause 28. Supplier shall be liable for any deficiencies in cover or policy limit.
- 28.5 Supplier shall Indemnify Customer for all amounts it may be required to pay, on any grounds whatsoever, due to the failure to comply with this Clause 28.

## **29. AUTOMATIC TERMINATION**

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This Agreement shall automatically terminate with immediate effect if Customer ceases to be a member of Customer Group.

## **30. MUTUAL TERMINATION RIGHTS**

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- 30.1 Either Party may serve a Termination Notice to terminate this Agreement with immediate effect if the other Party:
- 30.1.1 commits a Material Breach; or
  - 30.1.2 is subject to a change in Control (and in the case of Customer it receives notice of potential change in Control of Supplier pursuant to Clause 52); or
  - 30.1.3 experiences, or is reasonably likely to experience, an Insolvency Event; or
  - 30.1.4 is prevented from performing its obligations as a result of a Force Majeure Event for a period in exceeding 10 Business Days; or
  - 30.1.5 ceases to trade or threatens to cease trading.

## **31. CUSTOMER SPECIFIC TERMINATION RIGHTS**

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### **No fault termination**

- 31.1 Customer may terminate this Agreement at any time and without cause by issuing a Termination Notice to Supplier giving not less than 30 days notice of such termination.

### **Fault based termination**

- 31.2 Customer may issue a Termination Notice to Supplier terminating this Agreement with immediate effect if:
- 31.2.1 the Customer has claimed the maximum amount of Delay Damages or Services Credits; or
  - 31.2.2 Supplier has failed to obtain or maintain any Consent; or
  - 31.2.3 Customer reasonably apprehends that any of the events mentioned in Clause 30 are about to occur in relation to Supplier and notifies Supplier accordingly.

## **32. CONSEQUENCES OF TERMINATION**

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- 32.1 Upon receipt of a Termination Notice, the Parties shall immediately:

- 32.1.1 return all Confidential Information to the Party that disclosed such Confidential Information;
  - 32.1.2 take all possible action at its own cost to ensure the safety of all Personnel and the protection of all Goods (including Documentation);
  - 32.1.3 take all possible action to mitigate any liabilities which may arise as a result of such termination; and
  - 32.1.4 cease performance of its obligation in accordance with, and to the extent specified in, the Termination Notice.
- 32.2 Upon receipt of a Termination Notice for whatever reason, Supplier shall:
- 32.2.1 provide Customer with a detailed report in such form as Customer may require in relation to the Deliverables performed up to and including the date of receipt of the Termination Notice;
  - 32.2.2 return to Customer any items or equipment issued to Supplier by Customer during the Term;
  - 32.2.3 offer Customer a first right of refusal to purchase any of Supplier's equipment used for the sole purposes of this Agreement at its depreciated value or such other value as agreed by the Parties;
  - 32.2.4 refund to Customer (or Customer may treat as a deduction) any portion of the Charges that have been paid but where delivery of Goods and/or performance of Services has not occurred; and
  - 32.2.5 take any other action relating to the termination of this Agreement as Customer may reasonably require.
- 32.3 Notwithstanding any other provision of this Agreement, where Customer terminates this Agreement under:
- 32.3.1 Clause 31.1 then it shall pay to Supplier all outstanding amounts for Services performed and/or Goods supplied and delivered in accordance with this Agreement up and including the termination date; or
  - 32.3.2 Clause 30 or Clause 31.2 then it shall have no further liability to Customer whatsoever.
- 32.4 The termination or expiry of this Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued under this Agreement or Applicable Law up to the date of termination or expiry thereof.
- 32.5 The provisions of Clauses 25, 26, 27, 32, 34, 35, 36, 37, 38, 40, 43, 46, 53, 55, 58, 59, 60 and 61 shall survive the termination and / or expiry of this Agreement together with such other Clauses expressed to so survive.

### **33. FORCE MAJEURE**

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- 33.1 Subject to Clause 33.2, no Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising as a direct result of a Force Majeure Event.
- 33.2 A Party impacted by a Force Majeure Event shall:
- 33.2.1 promptly notify the other Party as soon as reasonably practicable (and in any event within 15 Business Days) of its existence and clearly communicate how its performance is impacted;
  - 33.2.2 inform the other Party of the measures it has taken or intends to take to find an alternative solution;

- 33.2.3 use reasonable efforts to mitigate the impact of the Force Majeure Event and promptly resume the performance of the obligations that are impacted; and
- 33.2.4 produce any necessary documentation that the non-affected Party might need to validate the existence of the Force Majeure Event.
- 33.3 Without prejudice to any other obligation, when notice of a Force Majeure Event is given, the Parties shall initiate discussions in good faith with a view to adopting appropriate measures in light of the circumstances.
- 33.4 Subject to compliance with Clause 33.2.1, where a Force Majeure Event lasts for more than 60 Business Days then the non-impacted party may terminate this Agreement at its election in accordance with Clause 30.1.4.
- 33.5 If Supplier Claims a Force Majeure Event then Customer may (but is not obliged) to obtain from a third party such quantity of Deliverables as Supplier is unable to deliver.
- 33.6 Neither Party shall Claim a Force Majeure Event in the following circumstances:
  - 33.6.1 a shortage of or increased price of labour, materials or utilities, save in the event of a natural disaster or outbreak of war or other civil disturbance; or
  - 33.6.2 labour strikes and/or disputes (and the like) involving a Party's Personnel or that of its sub-contractors; or
  - 33.6.3 any delays, inefficiencies, late performance or similar occurrence of sub-Suppliers; or
  - 33.6.4 after the expiration of the delivery time stipulated in the Delivery Schedule; or
  - 33.6.5 for any actions or circumstances caused by a Party's own fault or negligence.
- 33.7 Each Party shall bear all costs and expenses that it incurs as a result of the Force Majeure Event.
- 33.8 A Force Majeure Event shall not excuse Customer from any payment obligations under this Agreement unless such an event is the cause of non-payment.

#### **34. IPR**

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- 34.1 Subject to Clause 34.2, the IPR owned by a Party before the Agreement Date and made available to the other Party under or in the connection with this Agreement shall remain the absolute property of the granting Party.
- 34.2 Clause 34.1 shall not apply where title to that IPR is intended to pass to the other Party or that other Party is intended to enjoy a licence or right to use that IPR post termination as result of this Agreement.
- 34.3 Ownership of all rights in and to Customer's IPR shall always remain vested in and belong to Customer and that all use accrues for the sole benefit of Customer.
- 34.4 Supplier shall not use or permit the use of any IPR belonging to Customer or any of its Affiliates for any purpose whatsoever, without the express prior written consent of Customer.
- 34.5 Each Party shall grant to the other Party a non-exclusive, royalty free licence to use its IPR for the Term to the extent required so that the Party's may deliver or receive the Deliverables, as relevant.
- 34.6 Upon termination or expiry of this Agreement, each Party shall return to the other all materials and IPR contemplated in Clause 34.5 made available to it by the other Party under this Agreement.
- 34.7 Unless otherwise agreed all IPR created by a Party during the Term of this Agreement shall vest unconditionally and immediately upon its creation with that Party.

- 34.8 Subject to Clause 26, Supplier shall Indemnify Customer for any Claim brought by any third party for a breach (or alleged breach or infringement) of that third party's IPR where such a Claim is related to:
- 34.8.1 the receipt and/or use by Customer (or its Affiliates) of any Deliverables; or
  - 34.8.2 Customer asserting its full right to enjoy the use and/or exploitation of any IPR; or
  - 34.8.3 the performance by Supplier (or its Personnel as the case may be) of its obligations under this Agreement.
- 34.9 Upon receipt of an Indemnity Claim Supplier shall, where requested by Customer and in addition to the indemnity obligation at Clause 34.8, cause the infringement to end by:
- 34.9.1 resupply the infringing element so that the infringement ceases; and/or
  - 34.9.2 obtaining for Customer, at Supplier's expense, the right to continue to use the infringing element; or
  - 34.9.3 If neither of above can be accomplished within a time period compatible with Customer's business activity, by reimbursing Customer all amounts paid in relation to it.
- 34.10 The operation of this Clause 34 shall be without prejudice to any other right that Customer has under this Agreement, Applicable Law or otherwise.

## **35. DISPUTES**

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- 35.1 This Clause 35 relates to all Disputes except for those that related to Invoices which must first be dealt with by reference to Clauses 22.9 to 22.13.
- 35.2 If there is a Dispute (or an Invoice subject to a Dispute cannot be resolved first by reference to Clauses 22.9 to 22.13) a Party may give to the other Party a Dispute Notice requiring its resolution under this Clause 35.
- 35.3 If the Dispute is not resolved within 30 Business Days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute.
- 35.4 If the Dispute is not resolved within 30 Business Days of the Dispute being referred as contemplated in Clause 35.3, then either Party may commence legal proceedings in an appropriate court to resolve the matter.
- 35.5 During the existence of any Dispute, the Parties shall (and shall procure its Personnel shall):
- 35.5.1 continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree; and
  - 35.5.2 act in good faith and in a fair and equitable manner in accordance with Good Industry Practice with a view to resolving the Dispute without the requirement for formal proceedings.
- 35.6 Nothing in this Clause 35 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to this Agreement.

## **36. CONFIDENTIALITY**

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- 36.1 During the Term and for five years afterwards each Party shall keep the other Party's Confidential Information confidential.
- 36.2 Each Party shall keep any IPR confidential without limit in time.
- 36.3 Each Party shall use Confidential Information solely in accordance with its performance of its obligations under this Agreement.

- 36.4 Neither Party shall disclose Confidential Information to any Person other than an Authorised Recipient and then only on a 'need to know' basis.
- 36.5 Each Party to whom Confidential Information is disclosed shall procure that its Authorised Recipients are aware of and fully comply with its obligations under this Clause 36 as if that Authorised Recipient was itself a Party.
- 36.6 This Clause 36 does not apply to Confidential Information which:
- 36.6.1 is a Mandatory Disclosure noting save that Clause 36.7 shall nevertheless apply;
  - 36.6.2 is in or comes into the public domain other than by breach of this Agreement or of any obligation of confidence owed under this Agreement;
  - 36.6.3 the receiving Party can show it knew before disclosure;
  - 36.6.4 was subsequently disclosed to the receiving Party lawfully by a third party who did not acquire the information under an obligation of confidentiality;
  - 36.6.5 is independently developed by or for the receiving Party at any time by Persons who have had no access to or knowledge of the said information; or
  - 36.6.6 is required to be disclosed to effect any initial public offering or listing of shares in Customer.
- 36.7 Where a Party is required to make a Mandatory Disclosure (and where giving the other Party notice of a request to provide the information is itself not prohibited by Applicable Law), then that Party shall:
- 36.7.1 give the other Party as much notice of such disclosure as is reasonably practicable; and
  - 36.7.2 take into account the reasonable requests of the other Party in relation to the content of such disclosure before it is made.

## **37. PUBLICITY AND PRESS RELEASES**

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- 37.1 Subject to Clause 37.3, neither Party shall issue any press release nor other public document about the entering into of this Agreement or its content without the prior written approval of the other Party.
- 37.2 Supplier shall not use or refer to Customer's trade names or trademarks, for any purpose whatsoever, including as a commercial reference, without Customer's prior express written authorisation.
- 37.3 Clause 37.1 shall not apply to any announcement, public statement or circular by any Party required by Applicable Law (including by way of a Mandatory Disclosure).

## **38. DATA PROTECTION**

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- 38.1 In addition to its general obligations to comply with provisions relating to data protection and/or privacy associated with Applicable Law, Supplier agrees to:
- 38.1.1 only Process Customer's Personal Information for the purposes of this Agreement;
  - 38.1.2 not disclose Customer's Personal Information to any other Person without Customer's prior written consent, unless the disclosure is required by Applicable Law;
  - 38.1.3 immediately notify Customer that the disclosure of Customer's Personal Information may be required by Applicable Law;

- 38.1.4 put into place and maintain appropriate technical and organisational measures against, unauthorised access, misuse, destruction and unlawful Processing of Customer's Personal Information; and
- 38.1.5 take all necessary steps to ensure that its Processing of Customer's Personal Information will be fair and lawful and, for this purpose.
- 38.2 If an individual complains to Supplier that Supplier (or any of its Personnel) has, in the performance of this Agreement, handled his or her Personal Information inappropriately, Supplier shall:
  - 38.2.1 promptly inform Customer of the complaint; and
  - 38.2.2 provided the individual has consented, provide Customer with the Personal Information that is the subject of the complaint; and
  - 38.2.3 inform Customer as to the manner in which Supplier obtained Customer's Personal Information.
- 38.3 Without limiting Clause 25, Supplier shall Indemnify Customer against any loss or damage (of whatever nature) incurred by or awarded against Customer relating to any breach of this Clause 38.
- 38.4 The Parties acknowledge and agree that any breach by Supplier of this Clause 38 shall be considered an Indemnified Event and the obligations under this Clause 38 shall survive the termination of this Agreement.

## **39. CONTRACT MANAGEMENT**

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- 39.1 The Parties shall implement and otherwise comply with the Contract Management Requirements in this Clause 39 (or in the Purchase Order if and where applicable).
- 39.2 The Parties shall ensure that their performance complies with anti-trust regulations.
- 39.3 Where requested by Customer, the Parties shall establish a steering committee which shall be charged with monitoring the implementation of this Agreement and chaired by Customer's Project Manager.
- 39.4 For the purpose of Clause 39.2, the steering committee shall observe the following requirements:
  - 39.4.1 convene as frequently as is reasonably required to oversee the correct performance of this Agreement and as may be requested be reasonably requested by Customer;
  - 39.4.2 comprise suitability qualified and empowered representatives of each Party, including each Party's Project Manager;
  - 39.4.3 promptly prepare and agree accurate meeting minutes (draft to be prepared by Supplier) for each meeting;
  - 39.4.4 convene to discuss all issues associated with the performance of Supplier's obligations under this Agreement;
  - 39.4.5 ensure all meeting minutes are signed by both Parties so as to indicate mutual agreement of content; and
  - 39.4.6 meet at such locations and times as is reasonably acceptable to both Parties.
- 39.5 Unless otherwise agreed, all meeting minutes prepared by Supplier must be produced within five Business Days of the steering committee meeting to which they relate.
- 39.6 Any operational decisions made during or at the conclusion of the steering committee meetings shall be adopted by the persons authorised by each Party.
- 39.7 Customer shall comply with the Reporting Requirements.

#### **40. CO-OPERATION AND FURTHER ASSURANCE**

---

- 40.1 Supplier shall, at the request and cost of Customer, do or procure the doing of all such things (including execution of documents) as may from time to time be necessary in Customer's opinion to:
- 40.1.1 give full effect to this Agreement as intended; and
  - 40.1.2 to vest in Customer the full benefit of the assets, rights and benefits to be transferred to Customer under this Agreement.

#### **41. AUTHORISED REPRESENTATIVES**

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- 41.1 For the purposes of this Agreement, the Authorised Representative for each Party shall be as set out in the Purchase Order and any related changes must comply with Clause 58.

#### **42. ANTI-BRIBERY AND CORRUPTION MATTERS**

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- 42.1 Supplier undertakes to comply with and cause any sub-contractors it may use to comply with the anti-bribery and corruption provisions in the Anti-Bribery & Corruption Policy.
- 42.2 Supplier shall not under any circumstances offer any Inducement to either Customer or any of its Personnel.
- 42.3 Supplier warrants that neither it nor its Personnel have engaged in any Corrupt Behaviour to induce Customer into this Agreement or will do so during the Term.

#### **43. INTERNATIONAL ECONOMIC SANCTIONS**

---

- 43.1 Neither Party shall be obliged to perform any obligation under the Contract if such performance would be non-compliant with, in violation of, inconsistent with, or expose a Party to punitive measures under Sanctions Laws / Regulations.
- 43.2 In the event that performance by a Party (the "Affected Party") of the Contract (in whole or in part) results or would result in non-compliance with, a violation of, or be inconsistent with Sanctions Laws / Regulations, the Affected Party shall, as soon as reasonably practicable, give a written notice to the other Party indicating the details of the non-compliance with, violation of, or inconsistency with Sanctions Laws / Regulations.
- 43.3 Customer may then:
- (a) suspend the Contract in full or in part until the Affected Party may lawfully perform the affected obligation under the Contract. In such case, the Affected Party shall as soon as possible (i) notify the other Party if the non-compliance, violation of, or inconsistency with Sanctions Laws / Regulations has ceased; (ii) resume performance of its obligations under the Contract, if and when requested by Customer; and/or
  - (b) initiate discussion with the Supplier on whether amendments can be made to the Contract allowing the Contract to be performed in compliance with Sanctions Laws / Regulations; and/or
  - (c) terminate in full or in part the Contract by giving to Supplier a written notice.
- 43.4 In case of Customer's suspension (in full or in part) or termination (in full or in part) of the Contract as set forth in Section 43.2, no compensation shall be due to Supplier.
- 43.5 For purposes of clarification, if the Supplier is or becomes a Restricted Person, Customer shall be entitled not to make payments (outstanding or not) to Supplier unless or until such payments can lawfully be made under the applicable Sanctions Laws / Regulations.

Supplier shall defend, indemnify and hold Customer and its Affiliates harmless from and against any claim or loss resulting from any non-compliance with, violation of, or inconsistency with Sanctions Laws / Regulations by Supplier Group.

#### **44. REPUTATION**

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- 44.1 Neither Party shall do anything, or engage in any activity, which is likely to adversely affect, or damage, the other Party's good name or reputation.
- 44.2 For the purposes of this Clause 44, each Party shall procure that its Personnel that are involved in the implementation of this Agreement, do not do any such thing or engage in any such activities.

#### **45. CUSTOMER BUSINESS PRACTICES**

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- 45.1 Supplier shall read and shall comply with the Fundamental Purchasing Principles document, and Customer reserves the right to monitor and audit Supplier's adherence to it.

#### **46. NON SOLICITATION**

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- 46.1 During the Term, and for six months afterwards, Supplier shall not directly or indirectly:
- 46.1.1 hire or seek to hire any Personnel of Customer; or
  - 46.1.2 contact or solicit any client of Customer; or
  - 46.1.3 in any way interfere with the relationship between any client or business counterparty of Customer.

#### **47. HEALTH AND SAFETY AND ENVIRONMENT**

---

- 47.1 Supplier agrees to comply, and to ensure that its Personnel comply, with Customer's Health Safety and Environmental Policy as provided to it from time to time.
- 47.2 Supplier shall bear all consequences of non-compliance by it or its Personnel with this Clause 47, including any corrective measures that Customer must take to address the same.

#### **48. CHANGES TO SCOPE OF DELIVERABLES**

---

- 48.1 Customer may at any time during the Term request a Scope Change.
- 48.2 Where a Scope Change does not reduce the overall quantity of the Deliverables by more than 10%. Supplier shall:
- 48.2.1 be deemed to have immediately accepted the Scope Change; and
  - 48.2.2 promptly update the relevant Purchase Order, Delivery Schedule and Payment Schedule for approval by Customer, such approval not to be unreasonably withheld, delayed or conditioned.
- 48.3 Without prejudice to any other term, where a Scope Change reduces the Deliverables by more than 10%.::
- 48.3.1 the Parties shall meet to discuss and agree the change in writing (acting in good faith) with a view to promptly implementing the Scope Change; and
  - 48.3.2 Supplier shall not perform or implement the Scope Change before having obtained the prior written agreement of Customer in accordance with this Clause 48.3.

- 48.4 Notwithstanding any in this Agreement, where Customer ceases to operate at a Site (either in whole or part) the Deliverables applicable to it shall be deemed to have been automatically removed from this Agreement.
- 48.5 For the purpose of Clause 48 Customer shall give not less than three months notice that a Site is to be impacted by a down scoping.
- 48.6 Subject to Customer's compliance with Clause 48.5 Supplier shall not be entitled to any compensation whatsoever in relation to the contemplated down scoping of the Deliverables.

#### **49. ENTIRE AGREEMENT AND COUNTERPARTS**

---

- 49.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute a single instrument.
- 49.2 This Agreement (and any document referred to in it) constitutes the entire agreement of the Parties relating to the supply and delivery of the Deliverables, to the exclusion of all other terms and conditions.

#### **50. RIGHT TO ASSIGN**

---

- 50.1 Supplier shall not be entitled to assign, novate or otherwise transfer all or any of its rights, benefits or obligations under this Agreement without the prior written consent of Customer.
- 50.2 Customer may assign, transfer or deal in any way with its rights under this Agreement including to an Affiliate or any third party in connection with an outsourcing transaction.
- 50.3 Where Customer gives its consent for the purpose of Clause 50.1, Supplier shall nevertheless remain jointly and severally liable with the relevant third party to whom this Agreement has been assigned.

#### **51. RIGHT TO SUB-CONTRACT**

---

- 51.1 Supplier shall not sub-contract any of its obligations set out under this Agreement without the prior consent in writing of Customer, which shall not be unreasonably withheld, conditioned or delayed.
- 51.2 Customer reserves the right to investigate the qualifications of any proposed sub-contractor before giving such consent under Clause 51.1 and Supplier shall provide any such information as is reasonably requested.
- 51.3 The performance of this Agreement (or any part of it) by a sub-contractor shall not relieve Supplier of any of its obligations in this Agreement and Supplier shall remain strictly liable for the same.

#### **52. CHANGE IN CONTROL**

---

- 52.1 Supplier shall promptly notify Customer if it undergoes or is likely to undergo a change in Control.
- 52.2 Upon receipt of notice under Clause 52.1, and for a further 90 days afterwards, Customer shall be free, at its sole election, to terminate this Agreement without any consequences whatsoever.

## **53. WAIVERS**

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Any waiver by a Party of any right under this Agreement must be given in writing by each Party's Authorised Representative.

## **54. SEVERABILITY AND ILLEGALITY**

---

- 54.1 If any provision of this Agreement is determined to be invalid, illegal or void by any court or administrative body of competent jurisdiction then the rest of this Agreement shall still remain in full force and effect.
- 54.2 Where Clause 54.1 applies, the Parties shall co-operate to promptly amend or replace the affected provision with a new provision that achieves a legal result that is as similar as possible.

## **55. RELATIONSHIP BETWEEN THE PARTIES**

---

- 55.1 Customer and Supplier are and shall remain independent Parties.
- 55.2 Nothing in this Agreement shall be construed to make either Party an agent, employee, franchisee, joint venture or legal representative of the other Party.
- 55.3 Neither Party shall have, or represent itself to have, any authority to bind the other Party or act on its behalf.

## **56. NON-EXCLUSIVITY**

---

Supplier it is not being appointed as an exclusive supplier of any Deliverable or similar items that Customer may require during the Term.

## **57. RIGHTS OF THIRD PARTIES**

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This Agreement does not create any rights which are enforceable by any Person who is not a Party to this Agreement.

## **58. NOTICES**

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- 58.1 Any notice or other communication given under or in connection with this Agreement must be in writing and shall be delivered by:
- 58.1.1 hand to the Party due to receive it at the Party's address; or
  - 58.1.2 email to the Party due to receive it at the email address; or
  - 58.1.3 fax to the Party due to receive it at the fax number.
- 58.2 The Parties' addresses (physical and email) and fax numbers for the purposes of this Agreement are as set out in the Purchase Order, as may be updated by giving notice in accordance with this Clause 58.
- 58.3 Any notice or communication which is not delivered on a Business Day, or which is delivered after 5pm (local time of the recipient) on a Business Day shall be deemed to have been delivered on the next Business Day.
- 58.4 No change to a Party's Authorised Representative or Project Manager shall be effective until the other Party has been notified of the change in writing in accordance with this Clause.

58.5 Any notice not served in accordance with this Clause shall be deemed defective. Any Party receiving a defective notice shall be entitled to ignore such notice as though it was never received.

## **59. GOVERNING LANGUAGE**

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59.1 This Agreement is drawn up in the English language and the English language version of this Agreement shall always prevail over any translation. This Agreement shall be construed, interpreted and administered in English.

59.2 All documents and/or notices documents provided under this Agreement must be in English or accompanied by a certified English translation.

## **60. CUMULATIVE RIGHTS**

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Unless otherwise stated, the rights and remedies of a Party under this Agreement do not exclude any other right or remedy provided by Applicable Law.

## **61. GOVERNING LAW AND JURISDICTION**

---

61.1 This Agreement shall be governed by, and construed in accordance with, the law of the UAE.

### **Exclusive jurisdiction**

61.2 The Parties submit to the exclusive jurisdiction of the courts of the UAE in relation to any Disputes.

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## **Schedule 1 Deliverables and Service Levels**

## **Schedule 2      Delivery and Acceptance Procedure**

## **Schedule 3      Delivery Schedule**

## Schedule 4      Foreseeable Losses

## Schedule 5 Fundamental Purchasing Principles

TotalEnergies integrates all aspects of sustainability at the heart of its strategy, projects and operations, and aims to be a reference with regard to commitments to the Sustainable Development Goals (SDG). Our Fundamental Principles of Purchasing, derived from our Code of Conduct, are the cornerstone of the long-term relationship we intend to forge with our suppliers. We therefore require all suppliers of goods and services to comply with these principles and ensure compliance by their own suppliers in turn.

Suppliers are required to comply with and to ensure their own suppliers and subcontractors comply with applicable laws, as well as principles equivalent to those set forth in the Universal Declaration of Human Rights, the fundamental Conventions of the International Labour Organization, the United Nations Guiding Principles on Business and Human Rights, United Nations Global Compact, the Voluntary Principles on Security and Human Rights, and the OECD Guidelines for Multinational Enterprises. Effective policies and procedures must be implemented, in particular with respect to the principles set out below. We also expect our suppliers to continuously improve their performance on these subjects.

### **Principle 1: Respect human rights at work**

Ensure that working conditions and remuneration of workers preserve human dignity and are consistent with the principles defined by the Universal Declaration of Human Rights and by the fundamental Conventions of the International Labour Organization.

#### ***Prohibition and prevention of child labour***

- Prohibit employment of workers under the age of 18 for hazardous and night work and prohibit employment of workers under the age of 15, except where local law provides for greater protection for the child.

#### ***Prohibition and prevention of forced labour***

- Ensure that no worker is coerced to work against her/his will through the use of violence, intimidation, financial coercion or threat of penalty or sanction.
- Prohibit confiscation of workers' identity documents, provided that where local law requires such document to be retained, workers must have immediate and automatic access to such documents.
- Ensure that no recruitment fees are charged to the worker.

#### ***Working conditions, remuneration and compensation***

- Establish an employment contract.
- Provide a living wage and ensure compliance with a maximum number of working hours, adequate rest time and parental leave.
- Document compliance with such requirements.

#### ***Health and Safety at work***

- Provide a healthy and safe workplace where workers are protected from accidents, injuries, and work-caused illness.
- When accommodation is provided by the employer, ensure that it is safe, clean and adequate as a living space.

#### ***Prohibition and prevention of discrimination and harassment at the workplace***

- Prohibit harassment and practices resulting in discriminatory treatment of workers with particular attention to recruitment, compensation, benefits, or termination.

#### ***Freedom of speech, association and collective bargaining, freedom of thought, conscience, and religion***

- Allow workers to choose whether to be member of a collective bargaining organization. In countries where such right is restricted, ensure employees have the right to participate in a dialogue about their collective work situation.

#### ***Grievances and Concerns***

- Ensure workers can express grievances and concerns without fear of reprisal.

#### **Principle 2: Protect health, safety, and security**

Put in place an appropriate health, safety and security management system:

- Perform risk analysis and implement appropriate means and action plans to prevent those risks.
- Establish a system for monitoring events that occurred in these areas.
- Implement incident response plans and means of intervention designed to face different types of events the supplier may encounter.
- Carry out a periodic review of the relevant policies and measures and institute suitable control measures.

#### **Principle 3: Act in favor of climate**

- Implement an energy efficiency management system.
- Continuously seek to reduce greenhouses gas emissions from operations, products, and services.

#### **Principle 4: Preserve the environment**

##### ***Protection of the environment***

- Limit the impact of industrial activities on the environment, including possible impacts on air quality, water resources and soils.
- Implement a systematic approach to define measurable environmental objectives, achieve them, and demonstrate that they have been achieved.
- Implement an appropriate environment risk management system based on the Avoid-Reduce-Compensate mitigation hierarchy in order to identify and control the environmental impact of activities, products or services.
- More generally, undertake the improvements needed for protecting the environment.

##### ***Promotion of circular economy and responsible use of natural resources***

- Ensure that natural resources (water, soil, forests...) are used efficiently.
- Continuously seek to minimize waste production.
- Apply the “reduce, reuse, recycle, valorize” principles.

##### ***Protection of biodiversity***

- Ensure that no production site possibly having detrimental impact on the environment is located in natural protected areas listed as categories I to IV by the International Union for Conservation of Nature, in wetlands designated under the Ramsar International Convention or in sites inscribed on the inventory of the World Heritage Natural Sites of UNESCO.
- Continuously seek to minimize biodiversity impact of operations, products and services applying the Avoid-Reduce-Compensate mitigation hierarchy.

#### **Principle 5: Prevent corruption, conflict of interests, and fight against fraud**

- Prevent and ban any form of corruption: active or passive, private or public, direct or indirect.
- Fight against fraud.
- Avoid conflicts of interest, in particular, when personal interests may influence professional interests.

**Principle 6: Respect competition law**

- Comply with the applicable competition law.

**Principle 7: Promote economic and social development**

- Create a climate of trust with stakeholders, engaging in a dialogue with local communities.
- Promote local sustainable development initiatives.
- Give local companies the opportunity to develop their business.

Compliance with these laws and principles may be audited.

Suppliers are required to cooperate with the audit process.

## Schedule 6 Specifications

## Schedule 7 Purchase Order

## Schedule 8 Anti-Bribery and Corruption Policy

### 1. ANTI-CORRUPTION

#### DEFINITIONS

**Public Official** means an elected or appointed official, employee or agent of any national, regional or local government or state; any department, agency or instrument of any such government or state; any enterprise in which such a government or state owns, directly or indirectly, a majority or controlling interest; an official of a political party; a candidate for public office; or any official, employee or agent of any public international organization.

**Close Family Member of a Public Official** means a spouse or partner, one of his or her children, siblings or parents; the spouse or partner of his or her children or siblings; or any household member.

#### PREVENTION OF CORRUPTION

In recognition of the principles enshrined in applicable international and regional conventions on combating corruption and to ensure compliance with the anti-corruption laws applicable to the Agreement and any other anti-corruption laws otherwise applicable to the Parties or their ultimate parent company,

- 1 In respect of the Agreement and the matters that are the subject of the Agreement, the Supplier warrants that neither it, nor to its knowledge anyone on its behalf, has made or offered (nor will make or offer) any payment, gift, promise or advantage (whether directly or through an intermediary) to or for the use of any Public Official, where such payment, gift, promise or advantage would be for purposes of:
  - (a) influencing any act or decision of the Public Official;
  - (b) inducing the Public Official to do or omit to do any act in violation of his or her lawful duties;
  - (c) securing any improper advantage; or
  - (d) inducing the Public Official to use his or her influence to affect any act or decision of any department, agency or instrumentality of any government or public enterprise.
- 2 The Supplier, in respect of the Agreement and the matters that are the subject of the Agreement, warrants that it has not made or offered, and will not make or offer, any payment, gift, or promise or give any advantage, whether directly or through intermediaries, to or for the use of any person (other than a Public Official) insofar as such payment, gift, promise or advantage would be for purposes of inducing that person to do or omit to do any act in violation of his or her lawful duty or to secure any improper advantage, or otherwise to do or refrain from doing something that would violate the laws applicable to the activities under the Agreement.
- 3 The Supplier shall cause the Supplier's personnel and subcontractors to undertake the obligations in this Attachment and to warrant them under the terms of its agreements with any subcontractors. In particular, the Supplier shall perform compliance due diligence on all major subcontractors to ensure that they act in strict compliance with applicable anti-corruption laws. The Client reserves the right to request proof of such due diligence.
- 4 All financial settlements, billings and reports sent to the Client shall accurately and in reasonable detail reflect all activities and transactions undertaken in the performance of the Agreement. The Supplier also shall maintain adequate internal controls to ensure that all payments made in performance of the Agreement are authorized and comply with the Agreement. The Client reserves the right to perform (itself or through a representative) audits at the Supplier's premises of all payments made by or on behalf of the Supplier for services performed under the Agreement. The Supplier agrees to cooperate fully in any such audit, including by making the relevant books and records available to the Client or its representative and by answering any relevant questions relating to the Supplier's performance under this Agreement.
- 5 All payments by the Client to the Supplier shall be made in accordance with the terms of payment specified in Article "Price and pricing terms and conditions" of the Agreement. The payment indications notified in the Supplier's invoices shall be deemed to constitute a representation and warranty by the Supplier that the bank account so notified is owned solely by the Supplier and that no person other than the Supplier has any ownership of or interest in such account.

- 6 The Supplier represents and warrants that no Public Official or Close Family Member of a Public Official owns or possesses (directly or indirectly) shares or any other beneficial interest in the Supplier (other than through ownership of publicly traded securities that is not sufficient to constitute a controlling interest), or is a director, officer or agent of the Supplier, except for any ownership, interest or position that the Supplier has disclosed to the Client in writing. The foregoing representation and warranty will continue so long as this Agreement remains in effect. The Supplier agrees to notify the Client promptly and in writing of any developments that would or might affect the accuracy of the representation or warranty. In any case, if a Public Official or Close Family Member of a Public Official owns or acquires (directly or indirectly) shares or any other beneficial interest in the Supplier, or is or becomes a director, officer or agent of the Supplier, the Supplier shall take appropriate steps to ensure that the Public Official or Close Family Member of a Public Official avoids any conflict of interest, complies with the legislation applicable in accordance with the place of performance of the Agreement prohibiting conflicts of interest on the part of Public Officials and complies with the anti-corruption provisions described in this Attachment.
- 7 Without prejudice to any other rights or remedies the Client otherwise may have, including (but not limited to) damages for breach of the Agreement, if the Supplier does not comply with any of its obligations in this Attachment, the Client shall have the right to:
- (a) suspend payment and require reimbursement of any advance payment made under the Agreement, and/or
  - (b) suspend or terminate the Agreement for default with immediate effect.