

Date of release 01 May 2024

## TERMS AND CONDITIONS OF SUPPLY

### 1. DEFINITIONS

1.1. In these Terms and Conditions of Supply:

"Buyer" means a person to whom Seller is to supply Goods pursuant to an order;

"Conditions" means the standard Terms and Conditions of Supply set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between Seller and Buyer.

"Contract" means the contract between Seller and Buyer for the sale and purchase of the Goods and/or performance of the Services, incorporating these Conditions.

"Goods" means goods and/or materials which Seller supplies to Buyer pursuant to a Contract;

"GST" means goods and services tax under the Goods and Services Tax Act, Chapter 117A of Singapore, as amended from time to time;

"Seller" means CDI Energy Products Pte Ltd.

"Seller's Group" means CDI Energy Products Pte Ltd. and its affiliates, parent and subsidiary companies; and

"Services" means any services agreed in the Contract to be performed for Buyer by Seller (including any part or parts of the Services).

1.2. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3. Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

### 2. APPLICATION

2.1. These Conditions shall govern the Contract for the supply or sale of the Goods and/or performance of the Services. The parties acknowledge that any documents emanating from Buyer which contain printed or standard conditions that have been sent by Buyer and received by Seller on the understanding that they appear on Buyer's documents because they are printed thereon shall have no legal effect whatsoever and Buyer waives any rights which Buyer otherwise might have to rely on such conditions.

2.2. These Conditions shall cancel and supersede any earlier version or edition of Conditions of Sale of Seller.

2.3. The occurrence of any of the following shall constitute unqualified acceptance of these conditions by Buyer:

2.3.1 acceptance by Buyer of a quotation from Seller;

2.3.2 acceptance by Buyer of delivery of the Goods; or

2.3.3 issuance of a purchase order by Buyer.

2.3.4 A variation or waiver of these Conditions is valid only if it is in writing and signed by a director of Seller and a director (or an authorised representative) of Buyer.

### 3. DESCRIPTION, QUOTATIONS AND ACCEPTANCE

3.1. A quotation by Seller does not constitute an offer and Seller may withdraw or revise a quotation at anytime before acceptance of Buyer's purchase order.

3.2. Seller's acceptance of any oral or written order from Buyer shall be effective only where such acceptance is in writing on Seller's order acceptance form and signed by an authorised representative of Seller.

3.3. All Goods are supplied subject to reasonable availability to Seller of suitable materials and components Seller reserves the right to substitute suitable alternative materials and components where necessary.

3.4. All designs, drawings, descriptive matter, weights, dimensions, specifications and other information contained in or published on Seller's brochures, catalogues websites and advertising material are approximate and provided for informational purposes only, and are intended merely to present a general idea of the goods or services described therein and shall not form part of the Contract, or give rise to any independent or collateral liability of any kind. All prices/discounts specified or listed in or on such media are subject to alteration or withdrawal from time to time without notice.

3.5. Buyer:

3.5.1 acknowledges that selecting goods and/or services requires Buyer to use its own skill and judgement as to which of Seller's goods and/or services meets Buyer's requirement;

3.5.2 warrants that it has such skill and judgement and undertakes to exercise it at all times in selecting goods and/or services;

3.5.3 agrees it will be responsible for ensuring that goods and/or services selected are fit or suitable for Buyer's purpose; and

3.5.4 agrees that Seller shall not be responsible for any selection made by Buyer and will not have any liability to Buyer for any loss, damages, costs or expenses suffered by Buyer as a result thereof.

3.6. Samples are sent solely to enable Buyer to judge the quality of the bulk goods and shall not render any sale by sample.

3.7. All samples are to remain the property of Seller and shall be returned to Seller on request.

3.8. All designs drawings, specifications, brochures, catalogues, websites, price lists, advertising material and computer software are the copyright of and shall remain the property of Seller and must not be copied, reproduced or divulged either directly or indirectly to any other person without Seller's prior written permission.

3.9. Buyer shall have no right to make any changes or to cancel an order after Seller commences the production of any specially manufactured goods for Buyer or Seller prepares the Goods to be provided under such order for shipment, unless agreed upon in writing by Seller and provided that Buyer pays Seller for any costs incurred prior to the cancellation and/or any increased costs as a result of any modification.

### 4. DELIVERY

4.1. Any time or date quoted by Seller for delivery of Goods or performance of Services is given and intended as an estimate only and subject to availability of stock or availability of labour. Seller shall not be liable under any circumstances for any loss or damage of any kind caused by a failure to deliver or perform within such time.

4.2. Delivery shall be at Buyer's expense unless otherwise agreed by Seller.

4.3. Unless otherwise agreed in writing, Seller is entitled to make deliveries by installments or partial deliveries. Each instalment shall be construed as constituting a separate contract to which all the provisions of these Conditions shall (with any necessary alterations) apply.

4.4. Any delay in delivery or defect in an installment shall not entitle Buyer to cancel any other instalment.

4.5. Buyer shall take delivery of the Goods promptly upon the delivery date or dates or at the intervals stated in the Contract or as soon thereafter as Buyer is notified by Seller that the Goods are available for delivery. If for any reason Buyer fails to call off or give delivery instructions, or take delivery of the Goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then, without prejudice to any other rights of Seller hereunder, Seller shall be entitled to store or arrange for the storage of the Goods and if it does so it shall so inform Buyer in writing;

4.5.1. Buyer shall pay or reimburse the reasonable costs (including insurance) of such storage from the due date, or the date of notification as aforesaid, until delivery to Buyer; and

4.5.2. If 30 days after the day on which Seller notified Buyer that the Goods were ready for delivery, Buyer has not taken delivery of them, Seller may resell or otherwise dispose of part or all of the Goods and, charge Buyer for any shortfall below the quoted or list (as applicable) price of the Goods.

4.6. Notwithstanding any other provision of these Conditions, if Buyer refuses or fails to take delivery of Goods tendered in accordance with the Contract, Seller may terminate the Contract with immediate effect may dispose of the Goods as it sees fit and may recover from Buyer any loss its incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

4.7. In cases where Seller carries or procures the carriage of the Goods, Seller shall not be liable for loss of or damage to the Goods in transit unless the following conditions are complied with:

4.7.1 in the case of any loss from a consignment of Goods or damage to the Goods Seller must be notified in writing within three (3) business days of delivery to Buyer;

4.7.2 in the case of non-delivery of the whole consignment of the Goods, Seller must be notified in writing within twenty-one (21) days after the date of invoice.

4.8. Claims for shortage or other quantity errors must be made in writing to Seller within five (5) days after delivery.

- 4.9. If the Goods are to be exported from Singapore, Buyer shall obtain at its expense such import licences and other consents relating to the Goods as may be required and, if requested, shall make such licences and consents available to Seller prior to shipment.

#### 5. PRICE, TENDERS, PACKING AND CARRIAGE

- 5.1. Subject to this Clause 5, the price of the Goods and/or Services shall be Seller's quoted price or, where no price has been quoted, Seller's list price current at the date of acceptance of the order. All prices quoted are valid for the period stated on the quotation or if no period is stated, thirty (30) days or upon the earlier acceptance by Buyer after which time they may be altered by Seller without giving notice to Buyer.
- 5.2. Seller reserves the right by giving notice to Buyer at any time before delivery or performance to increase the price of the Goods and/or Services to reflect any increase in the cost to Seller which is due to any factor beyond the control of Seller (such as, without limitation, increases in raw materials or labour, foreign exchange fluctuation, currency regulation or alteration of duties), any change in delivery dates, quantities or specifications for the Goods or Services which is requested by Buyer or any delay caused by any instructions of Buyer or failure of Buyer to give adequate information or instructions.
- 5.3. Any tender made by Seller may be withdrawn at any time before acceptance. If not accepted within sixty (60) days from the date of tender, it shall be deemed to have been withdrawn.
- 5.4. Unless otherwise agreed, packing will be charged for in addition to the price of the Goods and packing cases and materials are not returnable. The Goods will be suitably packed for withstanding the conditions of normal delivery/shipment. Tropical or other special packing will only be supplied on express written request and will be charged for in addition to the price.
- 5.5. Unless otherwise specified and agreed upon in writing signed by the parties, GST and any other taxes duty payable by Buyer is not included in the price.
- 5.6. Unless otherwise agreed in a writing signed by the parties all prices for Goods are given on an ex works basis and where Seller agrees to deliver Goods otherwise than at Seller's premises:-
- 5.6.1 Goods for home market: carriage charges will be invoiced to Buyer at Seller's rates prevailing at time of dispatch
- 5.6.2 Goods for export markets: carriage charges shall be invoiced on the terms specifically stated in the Contract or otherwise at Seller's rates prevailing at the time of dispatch.

#### 6. PAYMENT

- 6.1. Payment of invoices shall be made in full before delivery of the Goods unless Seller, at its sole discretion, has determined a payment term for the delivery of the Goods which Seller shall notify Buyer of in writing. Time shall be of the essence for payment. Seller may suspend the supply of Goods to Buyer where any amounts are overdue under any Contract until all such amounts have been paid.
- 6.2. Where payment is overdue Seller shall be entitled to charge,
- 6.2.1. A fee of \$5100 for Seller's administration costs of dealing with Buyer's failure to pay in accordance with the Contract; or
- 6.2.2. Interest at the rate of three (3) per cent, per month from the due date for payment until receipt by Seller of the full amount (including any accrued interest) whether before or after judgment.
- 6.3. If Buyer changes the method of payment after an order is confirmed Seller may, at its discretion, impose a transaction fee on such payment.
- 6.4. Where payment is due in Singapore dollars payment may in the absolute discretion of Seller be accepted in a foreign currency, provided that payment is made at the exchange rate applicable at the date of payment and Buyer pays in addition any charges incurred by Seller in exchanging the currency into Singapore dollars.
- 6.5. If in Seller's opinion, Buyer's creditworthiness deteriorates before delivery of the Goods, Seller may require full or partial payment of the price prior to delivery or the provision of security by Buyer in a form acceptable to Seller.
- 6.6. Notwithstanding any contrary act of Buyer, all payments made by Buyer to Seller shall be applied first to Goods which Buyer has resold and then to Goods which remain in the possession or under the control of Buyer.
- 6.7. Seller has a general lien on all property of Buyer in Seller's possession (although Buyer may have paid for it in full) in satisfaction of any amount owed by Buyer to Seller under any contract. Seller may do anything necessary to put such property into a saleable condition, sell it on such terms it may think fit and retain from the proceeds of sale an amount equal to the amount owed by Buyer to Seller under any Contract and the its or expenses incurred by Seller in putting the property into a saleable condition and selling it.
- 6.8. Buyer shall not in any circumstances or for any reason whatsoever be entitled to make any deduction or withhold any sum from the price by way of set-offs counterclaim.

#### 7. LIEN

- 7.1. In addition to any lien to which Seller may otherwise be entitled, in the event of Buyer's insolvency or failure to pay the price or any sum due under the Contract or any other contract with Seller (including any contract treated as a separate contract by virtue of Clause 7.2 hereof) Seller shall be entitled to a general lien on all goods of Buyer in Seller's possession for any sums due and unpaid under the Contract or under any contract between Seller and Buyer, and for the reasonable costs of storing, handling and insuring the goods during the exercise of such lien, which costs shall accrue from day to day.
- 7.2. Seller may at any time give notice requiring that all sums due and payable to Seller on any account whatsoever be paid not later than seven days from the date of the notice. Notice given by Seller in accordance with this Clause 7.2 shall be in writing specifying the amount due and the date for payment and shall be sent to the registered or principal office of Buyer. If all sums due are not paid by the said date, Seller shall be entitled to sell the goods or any part of them to meet all sums owing to Seller and all expenses on the sale.

#### 8. PROPERTY AND RISK

- 8.1. Risk in the Goods passes from Seller to Buyer in accordance with the delivery terms agreed between Seller and Buyer prior to shipment of the Goods
- 8.2. Any property of Buyer in Seller's possession or under its control and all property supplied to Seller by or on behalf of Buyer is held at Buyer's risk.
- 8.3. Goods for home market: in cases where Seller carries or arranges the carriage of the Goods, risk passes upon delivery by the carrier to or to the order of Buyer. In all other cases risk passes on collection from Seller's premises.
- 8.4. Goods for export markets: risk passes in accordance with the Incoterm that Seller and Buyer have agreed shall apply to the Contract (Incoterm 2020). In all other cases risk passes on collection of the Goods from Seller's premises.
- 8.5. Notwithstanding delivery and passing of risk the Goods remain the property of Seller until Buyer pays to Seller the agreed price for the Goods (together with any accrued interest) and any other sums that shall be due from Buyer to Seller.
- 8.6. Until property in the Goods passes to Buyer, Buyer shall hold the Goods on a fiduciary basis and shall:
- 8.6.1 not part with possession of the Goods;
- 8.6.2 take proper care of the Goods and take all reasonable steps to prevent damage to or deterioration of them;
- 8.6.3 not destroy, deface or obscure any identifying marks packaging on or relating to the Goods;
- 8.6.4 maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;
- 8.6.5 keep the Goods free from any charge, lien or other encumbrance and store the Goods separately to other goods of Buyer or any third party in a way that they remain readily identifiable as Seller's property;
- 8.6.6 notify Seller immediately upon the happening of any of the events set out in Clause 18.2; and
- 8.6.7 give Seller such information relating to the Goods as Seller may from time to time require.
- 8.7. Notwithstanding Clause 8.6, Buyer may use the Goods in its production processes or resell the Goods before ownership has passed to Buyer. Any sale of the Goods by Buyer shall be solely on the condition that such sale shall be on Buyer's own behalf in the ordinary course of Buyer's business at full value and Buyer shall deal as principal when making such sale. In such circumstances, title is retained by Seller until such time as Buyer fully pays for the Goods.
- 8.8. Seller reserves the right to repossess and resell any of the Goods to which it has retained title. Buyer's right to possess the Goods shall terminate and all sums shall become due and payable immediately and Buyer agrees that Seller shall have the right to rescind or terminate the Contract and/or to suspend any further deliveries or performance under the Contract if:-

- 8.8.1. Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors or enters into liquidation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of Buyer or notice of intention to appoint an administrator is given by Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented for the winding up of Buyer or for the granting of an administration order in respect of Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of Buyer or anything analogous under the law of any jurisdiction occurs in relation to Buyer or Seller apprehends that any of the foregoing is about to occur in relation to Buyer; or
- 8.8.2. Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Seller and Buyer, or is unable to pay its debts or Buyer ceases to trade.
- 8.9. Buyer grants an irrevocable right and licence to Seller to enter Buyer's premises during normal business hours in order to inspect or repossess Goods to which it has retained title and the termination for any reason of a Contract shall not affect the continuance in force of this right and licence.
- 8.10. Seller shall be entitled to recover the price (plus GST) in the event of non-payment by Buyer notwithstanding that property in any of the Goods has not passed from Seller. Seller may, by notice to Buyer at any time after delivery, pass property in the Goods to Buyer with effect from the date of the notice.
- 8.11. Where Seller is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer shall be deemed to have sold all goods of the kind sold by Seller to Buyer in the order in which they were invoiced to Buyer.
- 8.12. On termination of the Contract howsoever caused, Seller's (but not Buyer's) rights contained in this Clause 8 shall remain in effect.
- 8.13. Buyer shall pay to Seller on demand on a full indemnity basis all costs and expenses (including legal expenses) incurred by Seller in recovering the Goods pursuant to Clause 8.6

#### 9. INFRINGEMENT OF THIRD PARTY RIGHTS

- 9.1. When Goods and/or Services are supplied or performed to Buyer's specification or design, Buyer shall indemnify Seller fully with respect to loss, damages, costs and expenses awarded against or incurred by Seller in connection with or paid or agreed to be paid by Seller in settlement of any claim made or proceedings brought against Seller by any party claiming infringement of any patent rights, copyright, design right, trade mark or other industrial or intellectual property rights which results from Seller's use of Buyer's specification or design.
- 9.2. If at any time it is alleged or, in Seller's reasonable opinion, likely to be alleged that the Goods infringe the rights of any third party, Seller may at its option and at its own expense:
- 9.2.1. modify or replace the Goods in such a way which does not detract from their overall performance so as to avoid the infringement or
- 9.2.2. procure for Buyer the right to continue to use the Goods; or
- 9.2.3. repurchase the Goods at the price paid by Buyer less depreciation.
- 9.3. Buyer shall notify Seller immediately of any actual or threatened claim or action alleging infringement of the rights of any third party. Seller shall have control over and shall conduct any such proceedings in such manner as it shall determine. Buyer shall provide all reasonable assistance as Seller may request. The cost of such proceedings shall be borne by Buyer.
- 9.4. Buyer warrants that any design or specification furnished or given to Seller shall not be such as to cause Seller to infringe any patent, copyright, design right, trade marks other industrial or intellectual property right in the execution of Buyer's order.
- 9.5. Buyer warrants that any design or specification furnished or given to Seller shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable Seller to manufacture the Goods and/or perform Services to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether of Buyer or Buyer's customer or howsoever arising at law and Buyer shall indemnify Seller fully in respect of loss, damages, costs and expenses incurred by Seller which results from any incompleteness in Buyer's specification or design.
- 9.6. Any and all intellectual property that Seller creates in designing and/or manufacturing Goods and/or Services in accordance with any specifications or instructions of Buyer shall remain the property of Seller.

#### 10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 10.1. Each party undertakes that it will not during the term of any Contract or at any time thereafter use, divulge or communicate to any person, except its professional representatives or advisers, who agree to keep such information confidential, or as may be required by law or any legal or regulatory authority, any Confidential Information concerning the other party which may have or may in the future come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any Confidential Information. In the event that a party is required to disclose any Confidential Information of the other party by law or to any legal or regulatory authority, except as otherwise prohibited by law, such party shall provide notice to the other party and provide its reasonable cooperation in any efforts by the owner of such Confidential Information to seek an injunction or other protective relief from the disclosure of such Confidential Information. "Confidential Information" means all information relating to a party's business or financial or other affairs, regardless of format, which is not in the public domain including, without limitation, information relating to:
- 10.1.1. customer and supplier names and other details of customers and suppliers, sales targets, sales statistics, market share statistics, prices of goods sold and purchased, market research reports and surveys and advertising or other promotional materials;
- 10.1.2. future projects, business development or planning, commercial relationships and negotiations; and
- 10.1.3. designs, formulae, inventions or improvements relating to products or prospective products designed, manufactured or sold by a party or any other trade secrets or know-how or financial information in relation to the businesses, finances, dealings or affairs of a party.
- 10.2. The subject matter of a Contract shall be treated as confidential between the parties and shall not be disclosed to any third party without the prior written consent of Seller.
- 10.3. Where Seller designs the Goods pursuant to a commission from Buyer, then any copyright, design right or other intellectual property right in them shall vest in Seller and Buyer agrees that it shall do any acts and execute any documentation required by Seller to secure vesting of such rights in Seller.
- 10.4. All tools, patterns and other equipment used in the manufacture of the Goods or the performance of any of Seller's Services shall remain the property of Seller unless otherwise expressly agreed in writing. Buyer shall not permit any third party to use such equipment nor disclose to any third party any technical, dimensional or design details, or any other information in respect of such equipment at any time.
- 10.5. Buyer shall not use Seller's name, logo or other intellectual property rights in advertising or publicity without Seller's prior written consent
- 10.6. The obligations in this Clause 10 are subject to any other written agreement(s) entered into by Seller and Buyer regarding confidentiality obligations between Seller and Buyer.

#### 11. EXTENT AND LIMITS OF LIABILITY

- 11.1. Unless otherwise agreed in writing by Seller and subject to the provisions of this Clause 11, Seller guarantees all Goods of its manufacture against any defect which can be proved to Seller's satisfaction to have been caused by faulty materials or workmanship and which appears within 12 months from the date of dispatch of the Goods.
- 11.2. Should such defect appear within such period, Seller's liability will be limited solely to repairing, or at its option, replacing the defective Goods or part free of charge provided that Seller shall not be liable for such defect in any circumstances if:
- 11.2.1. the Goods have been subjected to unsuitable storage, treatment or handling prior to use or to abnormal use, or to use under abnormal conditions or beyond their capacity as rated and recommended by Seller; or
- 11.2.2. the defect has been caused or contributed to by exposure to direct weather conditions (whether before or after installation), or by operation in abnormal atmospheric conditions, or by reason of faulty installation, servicing or repair of the Goods by any person other than a duly authorized representative of Seller;
- 11.2.3. the defect is directly or indirectly attributable to any designs, specifications or instructions provided by Buyer to Seller; or
- 11.2.4. Buyer fails as soon as possible after the assumed defect has become apparent to notify that defect to Seller in writing quoting the serial number if any and the date of purchase.
- 11.3. Seller's aforesaid guarantee shall be subject to the following further provisos, namely:
- 11.3.1. where the design of goods of the type in question has been altered since the Goods were dispatched, Seller may at its option supply goods of the new design;

- 11.3.2. any repair or examination of defective Goods or parts shall be carried out at Seller's premises and Buyer shall at its own expense and risk adequately pack the Goods and return them to Seller;
- 11.3.3. the decision of Seller is final as to whether or not a defect is due to faulty workmanship or material;
- 11.3.4. if in the opinion of Seller the Goods are satisfactory in operation or, if defective, then defective only as a result of circumstances for which Seller is not liable hereunder, or as a result of fair wear and tear, Buyer shall if required by Seller pay a reasonable charge for the examination of the Goods by Seller and any cost of returning the Goods to Buyer. In such case, Seller will submit to Buyer a quotation for repair of the Goods before effecting any repair;
- 11.3.5. Seller shall not in any case be liable under this Clause 11 or at all in respect of any Goods not of Seller's manufacture although Seller will do all that is reasonable at Buyer's expense to secure for Buyer the benefit of rights equivalent to rights which Seller may have against the supplier of such Goods; and
- 11.3.6. Seller shall not be liable for any costs of stripping or reassembling any equipment into which any of Seller's goods may be fitted.
- 11.4. Unless otherwise agreed in writing by Seller, Seller guarantees all Services performed by Seller against defects in workmanship for a period of three (3) months from completion of the Services. Should such defect appear within such period, Seller's liability will be limited solely to re-performing the Services free of charge or refunding the price where it has been paid provided that Seller shall not be liable for such defect in any circumstances if Buyer fails as soon as possible after the assumed defect has become apparent to notify that defect to Seller in writing. The decision of Seller is final as to whether or not a defect is due to faulty workmanship or material
- 11.5. The following provisions govern Seller's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to Buyer in respect of:
- 11.5.1. any breach of its contractual obligations under any Contract; and
- 11.5.2. use made or resale by Buyer of any of the Goods, or of any product incorporating the Goods; and
- 11.5.3. any representation, statement or tortious act or omission including negligence arising under or in connection with any Contract, save that any exclusions or limitations shall not apply in the case of fraud or fraudulent concealment
- BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 11.6 AND 11.7**
- 11.6. Seller shall not be liable to Buyer for:
- 11.6.1. Economic loss, loss of profits, loss of operations, loss of data, loss of contracts, loss of market shares, loss of goodwill; loss of business opportunity or production downtime;
- 11.6.2. increased costs or expenses;
- 11.6.3. any type of special indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused); (including such loss or damage suffered by Buyer as a result of any action brought by a third party) which arise out of or in connection with the Contract even if such loss was reasonably foreseeable or Seller had been advised of the possibility of Buyer incurring it and regardless of the legal theory on which it is based.
- 11.7. Unless stated otherwise, Seller's aggregate liability in contract tort, breach of statutory duty or otherwise, including any liability for negligence, howsoever caused arising out of or in connection with any Contract shall be limited to the value of the specific Good giving rise to the claim and Buyer's remedies shall be limited to the return of non-confirming Goods and repayment of the price or the repair and/or replacement of non-conforming Goods.
- 11.8. Any act or omission on the part of Seller or its employees, agents or subcontractors falling within Clause 11.5 shall, for the purpose of this clause, be known as an "Event of Default". If a number of Events of Default give rise substantially to the same loss they shall be regarded as giving rise to only one claim. Buyer shall give Seller not less than thirty (30) days in which to remedy any Event of Default such period commencing on the day Seller receives notice in writing from Buyer of such Event of Default
- 11.9. Seller's liability to Buyer for death or injury resulting from its negligence shall not be limited.
- 11.10. Seller shall have no liability to Buyer in respect of any Event of Default unless Buyer serves notice in writing of the same upon Seller within thirty (30) days of the date it became aware of the circumstances giving rise to the Event of Default or the date it ought reasonably to have become so aware. Buyer agrees that any action brought against Seller for an Event of Default or any other matter arising out of or in relation to any Contract must be commenced within one (1) year from the date of delivery of the Goods.
- 11.11. Buyer acknowledges and agrees that (i) it has selected and ordered Goods based on its own skill and judgement, (ii) it is responsible for ensuring that the Goods selected are fit for Buyer's purpose, and (iii) the Goods fitness for purpose shall not be a criteria for determining the quality of the Goods for the purposes of Section 14 of the Sale of Goods Act, Chapter 393. Seller warrants only that the Goods have been produced in accordance with Seller's standard practices with regard to materials and workmanship and no samples or prior description of Goods shall constitute a warranty. Buyer shall not return any Goods to Seller without the prior written consent of Seller. The warranty set out in this Clause 11.11 is the only warranty given by Seller in respect of the Goods and all other warranties, conditions and other terms relating to the Goods of whatever nature are excluded to the fullest extent permitted by law.
- 11.12. Seller shall not be liable for breach of the warranty in Clause 11.11 above if:
- 11.12.1. Buyer uses the Goods after notifying Seller of their non-compliance;
- 11.12.2. such non-compliance is the result of any failure by Buyer to follow Seller's instructions as to use, handling and/or storage; or
- 11.12.3. Buyer alters or repairs the Goods without Seller's written consent
- 11.13. Seller is not liable for any loss, damage or liability of any kind suffered by Buyer if Buyer's specification or choice of materials for the Goods is not suitable for Buyer's intended use of the Goods.
- 11.14. If Buyer modifies the Goods or incorporates the Goods into another product or component part, Seller shall have no liability to Buyer or to any third party with respect to the Goods and Buyer agrees to hold harmless and indemnify Seller from any and all claims, liabilities, losses, costs and expenses (including reasonable legal fees) arising from such modification or incorporation.
- 11.15. Seller is not liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by: (a) repairs or remedial work carried out on the Goods without Seller's prior written approval, (b) Buyer's incorporation of the Goods into other goods, or (c) any violation by of applicable law by Buyer, including its officers, directors, employees, subcontractors, agents or representatives. Buyer shall indemnify Seller against each loss, liability and cost arising out of such claims.
- 12. SPECIFICATIONS**
- 12.1. All drawings, designs, specification and information submitted by Seller shall be treated as confidential and shall not be disclosed to any third party without Seller's written consent or used by Buyer other than for purposes authorised by Seller.
- 12.2. Seller accepts no responsibility for any errors, omissions or other defects in any drawings, designs or specifications not prepared by Seller. Buyer shall indemnify Seller against each loss, liability and cost which Seller incurs arising from the errors, omissions or other defects in any drawings, designs or specifications not prepared by Seller.
- 13. MATERIALS PROVIDED BY BUYER**
- 13.1. Buyer's material and parts shall be delivered to Seller free of all charge to Seller. All materials removed as part of Seller's processes or as a consequence of performing the Services become the property of Seller and are allowed for in Seller's estimate or quotation.
- 13.2. Seller shall not be liable for the value of any materials or finished parts sent for fittings other purposes, or for any loss or damage whatsoever and however caused, or resulting from the negligent performance or non-performance of the machining, cutting, fitting or other works specified in the Contract.
- 13.3. Buyer's materials or parts sent for fitting shall be suitable in every way for the machining, cutting or fitting specified in the Contract and Seller is to have no obligation to check such suitability. Buyer will pay Seller for work done and for consequential damage to machines and tools of Seller arising directly or indirectly from any unsuitability of Buyer's materials or parts as aforesaid.
- 13.4. Seller shall not be liable for any Goods which are found to be defective as a result of materials, inserts, or parts provided by Buyer and Buyer shall be required to purchase any Goods into which Seller incorporates any Buyer provided materials, inserts or parts at the then applicable price for such Goods.
- 14. BUYER'S ASSISTANCE**
- 14.1. Where the Services are to be performed on Buyer's premises, Buyer agrees to provide Seller on a timely basis with such access, machine downtime, utilities and equipment as Seller shall reasonably require in order to perform the Services in accordance with the Contract.

- 14.2. If Buyer shall fail to perform its obligations in Clause 14.1 or shall fail to perform them in a timely manner Buyer acknowledges and agrees that Seller shall be entitled to delay performance of the Services until such time as Buyer has complied in all respects with its obligations in Clause 14.1 and to increase the price for the Services to reflect any increased costs to Seller caused by Buyer's failure to perform or late performance.

#### 15. LICENCES AND CONSENTS

Where an export or import licence, a foreign exchange control or similar authorisation is required for performance of the Contract, Buyer shall act with due diligence to obtain it in good time. Seller shall not be under any obligation to commence work under the Contract until Buyer has obtained all necessary licences and authorisations. If Seller in its sole discretion commences work before Buyer has obtained all necessary licences and authorisations and Buyer fails to obtain such licences and/or authorisations in good time, failure to obtain any licence or consent does not entitle Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by Seller resulting from such failure shall be paid by Buyer.

#### 16. SETOFF

Seller shall be entitled to apply any sum due from Seller to Buyer in settlement of any sum due from Buyer to any other company in Seller's Group and, where there is any amount due from any other company in Seller's Group to Buyer, Seller shall on behalf of Buyer be entitled to give to such other company a good receipt for any sum which such other company may pay to Seller in settlement of any sum due from Buyer to Seller.

#### 17. FORCE MAJEURE

- 17.1. If Seller is prevented, hindered or delayed from or in supplying the Goods in accordance with these conditions by a Force Majeure Event Seller may, at its option:
- 17.1.1 suspend deliveries while the Force Majeure Event continues;
  - 17.1.2 apportion available stocks between its customers as it decides; or
  - 17.1.3 terminate any contract so affected with immediate effect by written notice to Buyer, and Seller shall not be liable for any loss or damage suffered by Buyer as a result.
- 17.2. In this Clause 17 "Force Majeure Event" means an event or circumstance beyond the reasonable control of Seller including, without limitation, acts of God, acts of governments, acts of terrorism, hostilities between nations, war, strikes, boycotts, lockout, other industrial or labour disputes relating to Seller's workforce, infectious diseases epidemics as well as travel restrictions due to such events.

#### 18. TERMINATION

18.1. Without prejudice to the provisions of Clause 8.8, on or at any time after the occurrence of any of the events set out in Clause 8.8 or listed in Condition 18.2, Seller may stop any Goods in transit suspend further deliveries to Buyer and/or terminate any Contract with Buyer with immediate effect by written notice to Buyer. Termination of the Contract shall be without prejudice to any of Seller's other rights including, without limitation, to recover payment due in respect of delivered Goods or Services performed and all expenses properly incurred by Seller in performing the Contract and/or to cancel further deliveries and/or suspend further performance.

18.2. The events are:

- 18.2.1. Buyer being in breach of an obligation under a Contract;
- 18.2.2. if resolution is passed or an originating summons is presented against Buyer for liquidation, winding-up, dissolution or for the appointment of a judicial manager (including an interim judicial manager), or a liquidator, receiver, trustee, judicial manager or similar official (including the appointment of such an official in an interim or provisional capacity) is appointed or if execution or any form of action is levied or taken against any of Buyer's assets;
- 18.2.3. Buyer being unable to pay its debts within the meaning of section 254(2) of the Companies Act Chapter 50 of Singapore;
- 18.2.4. Buyer has stopped or threatened to stop paying its debts as they fall due;
- 18.2.5. Buyer making an arrangement or composition with its creditors generally or applying to a court of competent jurisdiction for protection from its creditors; or
- 18.2.6. where there is any change or threatened change of circumstances which would materially and adversely affect the business or financial condition of Buyer or its ability to perform its obligations under a Contract.

- 18.3. Upon termination, any indebtedness of Buyer to Seller becomes immediately due and payable and Seller shall be under no further obligation to supply Goods to Buyer.
- 18.4. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

#### 19. ASSIGNMENT

Buyer may not assign or transfer, or purport to assign or transfer, any of its rights or obligations under a Contract without Seller's prior written consent. Seller may assign the Contract or any part of it to any person, firm or company.

#### 20. INVALIDITY

If any part of these conditions is or becomes (whether or not pursuant to any judgment or otherwise) invalid, illegal or unenforceable in any respect under the law of any jurisdiction:

- 20.1 the validity, legality and enforceability under the law of that jurisdiction of any other part of these conditions; and
- 20.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other part of these conditions;

shall not be affected or impaired in any way thereby.

#### 21. NO PARTNERSHIP

Nothing in these conditions and no action taken by the parties pursuant to these conditions shall constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between the parties.

#### 22. GOVERNING LAW AND JURISDICTION CLAUSE

- 22.1. These conditions and any Contract made under them (and any dispute, controversy, proceeding or claim arising out of or in any way relating to these conditions or any Contract made under them) shall be governed by and construed in accordance with Singapore law.
- 22.2. Trade and shipping terms shall have the meaning assigned to them by Incoterms 2020 or any subsequent amendments thereof prevailing at the time of any Contract unless otherwise specifically provided for in such Contract.
- 22.3. The parties hereby irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Singapore.

#### 23. EXCLUSION OF THIRD PARTY RIGHTS

A person who is not a party to these terms and conditions shall have no right under the Contracts (Rights of Third Parties) Act Chapter 53B of Singapore, to enforce any of these terms and conditions.

#### 24. SALE OF GOODS (UNITED NATIONS CONVENTION) ACT, CHAPTER 283a OF SINGAPORE

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these conditions.

#### 25. ANTI-CORRUPTION

- 25.1. In performing its obligations under the Contract, Seller shall comply with all applicable laws, statutes, regulations and codes from time to time in force.
- 25.2. Seller shall:
- 25.2.1. comply with all laws relating to anti-bribery and anti-corruption (including the Prevention of Corruption Act (Cap. 241 of Singapore)) and all policies of Buyer relating thereto notified to Seller from time to time and shall not contravene any such law or policy;
  - 25.2.2. have and enforce as appropriate its own policies and procedures to ensure compliance with Claim 25.2.1;

- 25.2.3.promptly notify Buyer if any request or demand for financial or other advantage of any kind is received by Seller in connection with the performance of a Contract or if any foreign public official is appointed as an officer or employer of or acquires an interest in Seller; and
- 25.2.4.ensure that any person performing any aspect of a Contract complies with this Clause 25.
- 25.3. In performing its obligations under the Contract, Seller shall:
- 25.3.1.comply with all anti-slavery and human trafficking laws, statutes, regulations from time to time in force (including the Prevention Of Human Trafficking Act 2014 (No. 45 of 2014)) and all policies of Buyer relating thereto notified to Seller from time to time and shall not contravene any such law or policy;
- 25.3.2.have and enforce as appropriate its own policies and procedures to ensure compliance with Clause 25.3.1; and
- 25.3.3.require that each of its subcontractors and Seller shall comply with the Anti- slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in for (including the Prevention Of Human Trafficking Act 2014 (No. 45 of 2014)).

## 26. EXPORT CONTROLS

- 26.1 Seller Group Positions. Buyer acknowledges that Seller has defined Group Positions, which consist of list of countries to which Michelin refuses and prohibits any direct or indirect sales (including transit across these countries) which as of the date of the Agreement comprises Cuba, Iran, North Korea, Syria. These Group Positions, which may contain more restrictive provisions than the Trade Restrictions as defined below, are based on commercial considerations and other compliance concerns, including but not limited to: money laundering and corruption concerns and concerns related to the financing of terrorism. These Group Positions apply to the Products sold as spare parts or incorporated in a higher-level assembly (such as fitted unit, a ground vehicle, a plane, etc...). Buyer shall respect such Positions. Seller reserves the right to regularly change such list of countries during the term of this Agreement. Buyer shall only be required to comply with such change only where and to the extent such change has been notified in writing to Buyer.
- 26.2 Trade Restrictions
- (a) Buyer shall comply with all applicable laws and regulations with regard to the supply, sale, transfer, export, re-transfer, or re-export of the Goods, including but not limited to those relating to: trade sanctions (including but not limited to comprehensive or sectoral embargoes and restricted parties) and export controls (including but not limited to military or dual usage products), altogether defined hereafter as "Trade Restrictions". For the avoidance of doubt, all applicable laws and regulations could include those originating out of the United Nations, the European Union, the OSCE, or the United States of America.
- (b) Buyer shall not cause Seller to, either directly or indirectly, risk any potential violation of any applicable Trade Restrictions. Furthermore, Buyer will not supply, sell, transfer, export, re-transfer, re-export, or otherwise make available or use any Good supplied by Seller in order to circumvent, evade or avoid any applicable Trade Restrictions.
- (c) Buyer shall only supply, sell, transfer, export, re-transfer, re-export, otherwise make available or use Goods as permitted by applicable law and shall not supply, sell, transfer, export, re-transfer, re-export, or otherwise make available, either directly or indirectly, any Goods:
- (i). To any individual, entity or body resident, located, registered, incorporated, domiciled or head-quartered in any jurisdiction targeted by applicable Trade Restrictions;
- (ii). To any "Restricted Person": Restricted Person shall mean any individual, entity or body either: (1) specifically designated or listed under Trade Restrictions; (2) owned or controlled by any person specifically designated or listed under Trade Restrictions; or, (3) acting for or on behalf of any person specifically designated or listed under Trade Restrictions and
- (iii). For any use, purpose or activity which is prohibited or otherwise restricted under Trade Restrictions,
- (d) Where Seller has reasonable cause to suspect that any Good may be or has been supplied, sold, transferred, exported, re-transferred, re-exported, otherwise made available to any jurisdiction targeted by applicable Trade Restrictions, or to a Restricted Person, or for any use, purpose or activity which is prohibited or otherwise restricted under Trade Restrictions, Seller reserves the right to:
- (i). Immediately suspend its performance under the Agreement;
- (ii). Request further information or documentary evidence from the Buyer, including but not limited to:
- (1) Any licences, authorisations, permits, or approvals obtained by the Buyer with respect to the supply, sale, transfer or export of the Goods;
- (2) Any End User Certificates or Undertakings supplied to the Buyer;
- (3) Any shipping or commercial documentation, including: invoices; or, bills of lading,
- in order to verify the end use(s) or end user(s) of the Goods.
- (iii). Take any other appropriate and proportionate measure regarding its commercial relationship with the Buyer.
- (e) Buyer certifies that, as of the date hereof, neither Buyer, nor any of the Buyer's Group Companies, nor any of their respective directors or officers is a Restricted Person. Buyer shall immediately notify Seller if Buyer, or any of the Buyer's Group Companies, or any of their respective directors or officers becomes a Restricted Person. Furthermore, Buyer shall immediately inform Seller if Buyer is or become aware or has reasonable cause to suspect that either the Buyer, or any of the Buyer's Group Companies, or any of their respective directors or officers may become a Restricted Person.
- (f) In the event that any Good supplied by Seller is re-supplied, re-sold, re-transferred, re-exported, re-distributed or otherwise made available to any third party, Buyer shall take all actions reasonably necessary to ensure that such third parties: (i) comply with any applicable Trade Restrictions and Seller Group Positions; and, (ii) do not cause Seller to directly or indirectly violate any applicable Trade Restrictions or Seller Group Positions.
- (g) Buyer shall indemnify and hold harmless Seller from and against any losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, any expense of litigation or settlement, and court costs, arising from any noncompliance with Trade Restrictions or Seller Group Positions by Buyer. Buyer shall be responsible for any act or omission of Buyer, its officers, employees, affiliates, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.
- 26.3 Sanctions & Export Control regarding Russia, Belarus, and Sanctioned Regions of Ukraine (Crimea region and the oblasts of Donetsk, Kherson, Luhansk and Zaporizhzhia or any other regions of Ukraine which may become sanctioned in the future)
- (a) Buyer shall not sell, export or re-export, transit, directly or indirectly, to, within or through, or for use in Russia or Belarus or Sanctioned Regions of Ukraine, any goods or technologies supplied under or in connection with this Agreement that fall within the scope of applicable sanctions regimes imposed by relevant jurisdictions (notably United States of America, European Union, Canada, United Kingdom) applicable to the above listed territories. Buyer shall not take any action that may expose Seller entities or employees to potential liability under the same sanctions measures. For the avoidance of any doubt, Buyer receiving U.S.-sourced/U.S. jurisdiction products is prohibited from directly and indirectly exporting them to, reexporting them to, transferring them within or through, or for use in the above listed countries and territories.
- (b) Buyer shall undertake its best efforts to ensure that the purpose of paragraph C.1) is complied with by any third parties further down the commercial chain, including by possible resellers.
- (c) Buyer shall set up and maintain an adequate monitoring mechanism to detect any conduct by any third parties further down the commercial chain, including by possible resellers, that would contravene the objective of paragraph C.1). Buyer is also aware of the potential punitive legal risks related to circumventing the sanctions imposed against these countries or regions by using third countries which do not impose sanctions against these countries or regions. In consequence, Buyer shall undertake to carry out appropriate due diligence, including detection of red flags, on the use of or trade of any Seller products or services, to avoid involving any products, services, companies or employees of Seller in a transaction or activity which may expose them to potential liability under applicable sanctions regimes.
- (d) Any violation of paragraphs C.1), C.2) or C.3) shall constitute a material breach of an essential element of the Agreement, and Seller shall be entitled to seek appropriate remedies, and take appropriate actions, including, but not limited to:
- i. immediate suspension of the Agreement; and/or
- ii. immediate termination of this Agreement; and
- iii. a penalty of up to 100% of (i) the total value of the Agreement or (ii) the price of the goods and services sold or exported, whichever is higher.
- (e) Buyer shall immediately inform Seller of any information or knowledge that indicates non-compliance with paragraphs C.1), C.2) or C.3), including notably any relevant activities by third parties that may contravene the purpose of paragraph C.1). Buyer shall make available to Seller any information concerning compliance with the obligations under paragraph (C.1), C.2) and C.3) as soon as reasonably practicable of the written request of such information.

## 27. ETHICS AND COMPLIANCE

Buyer agrees that (a) in its business dealings with Seller, it will adhere to the highest standards of ethical conduct, such as set forth in the Michelin Code of Ethics, available at <http://ethique.michelin.com/en>; and (b) be aware of and comply with the laws and regulations that apply to Buyer. In the event of inconsistency between any applicable law or regulation and any provision of these Terms and Conditions, the more stringent requirement shall take precedence.

Buyer shall apply a "zero tolerance" policy with regard to corruption and influence peddling. In particular, Buyer agrees that it will not (1) offer, promise or give, or (2) attempt or conspire to offer, promise or give, any unfair advantage, whether monetary or of any other nature, directly or indirectly through an intermediary, to a public official or to any professional relation, for that official or professional relation or for a third party, such that the official, professional relation or third party acts or refrains from acting in the performance of their duties, with a view to obtaining or retaining an activity or other advantage improperly.

With respect to gifts and invitations, Buyer agrees to refrain from any practice aimed at (1) directly or indirectly improperly influencing the judgment of any of Seller's personnel or (2) obtaining any undue advantage.

In the event that Seller reasonably believes that Buyer has violated this clause, Seller reserves the right to (a) immediately suspend its performance under the Agreement; (b) request further information or documentary evidence from Buyer that in Seller's good faith judgment is related to the suspected violation; and (c) take any other appropriate and proportionate measure regarding its commercial relationship with the Buyer.

An Ethics Line is available that can be used by anyone to report any potential breach of any applicable laws and regulations and/or Michelin's Code of Ethics and Anti-Corruption Code of Conduct. An alert can be submitted through the following link: <http://michelingroup.ethicspoint.com/>.

## 28. GENERAL

- 28.1. Failure or delay by Buyer in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 28.2. Any waiver by Buyer of any breach of, or any default under, any provision of the Contract by Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 28.3. Each right or remedy of Seller under the Contract is without prejudice to any other right or remedy of Seller whether under the Contract or not.
- 28.4. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 28.5. These Conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.
- 28.6. All notices, demands or other communications required or permitted to be made hereunder shall be made in writing and delivered personally or sent by prepaid registered post, facsimile or electronic mail addressed to the intended recipient thereof at its address, facsimile number and/or electronic mail address. Any notice, demand or communication delivered shall be deemed to have been served:
  - 28.6.1. in the case of delivery by hand, when delivered
  - 28.6.2. in the case of facsimile, immediately upon receipt by the sender of a confirmation note or any similar transmission report indicating that the notice or communication has been sent in full to the recipients facsimile machine;
  - 28.6.3. in the case of electronic mail, only when actually received in readable form, within four (4) hours of sending, provided that the sender does not receive a transmission failure report and any electronic communication which becomes effective, in accordance with the foregoing, after 5 p.m. in the place of receipt shall be deemed only to become effective on the following day; or
  - 28.6.4. in the case of registered post (if dispatched to an address within the country of the sender) five (5) days or (if dispatched by registered air-letter to an address outside the country of the sender) ten (10) days after posting, and in proving the same it shall be sufficient to show that the envelope containing the same was duly addressed, stamped and posted.
- 28.7. Both parties agree that this particular contract may be conducted by electronic means and executed by an electronic signature, and such electronic signature will appear on the agreement just as a handwritten signature would for the purpose of establishing the validity, enforceability and admissibility of the contract.