



# Appendix A

## Standard Terms & Conditions

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## **STANDARD CONDITIONS FOR SALE & INSTALLATION OF EQUIPMENT & SOFTWARE**

### **1 GENERAL**

1.1 This contract (the "**Contract**") consists of **(i)** the document named form of agreement or purchase order (as the case may be), hereinafter referred to as the "**Form of Agreement**", describing the parties and any special terms upon which the parties agree, **(ii)** these "**Standard Conditions**", **(iii)** the "**Scope of Work**" referred to in the Form of Agreement specifying and describing the scope, design and constructions of the Work, **(iv)** the "**Schedule**" either referred to in the Form of Agreement or set forth in the Form of Agreement, setting forth the milestones applicable to the performance of the Work, **(v)** the "**ATP**" procedures referred to in the Form of Agreement and enclosed hereto, **(vi)** the Seller's Installation Criteria and Site survey and **(vii)** any other document specifically referred to in the Form of Agreement and incorporated by reference.

1.2 If a conflict arises between the terms of the documents forming the Contract, the documents shall take precedence in the order listed in the Form of Agreement.

### **2 FURTHER DEFINITIONS**

"**ATP**" shall mean the Seller's acceptance test procedure enclosed hereto.

"**Contract Price**" shall mean the payment to be made for the performance of the Work and any adjustments thereto as agreed by the parties, including the license fees for the Computer Software.

"**Completion**" shall have the meaning set forth in clause 13.1.

"**Computer Software**" shall mean the computer software to form a part of the System and consisting of Seller's Software and/or Sublicensed Software.

"**Documentation**" shall mean any documentation and/or user manuals included with the System.

"**Effective Date**" shall mean the date defined as the Effective Date in the Form of Agreement.

"**Equipment**" shall mean all machinery, apparatus, materials and articles, including computers, and hardware forming part of the Work, excluding Computer Software.

"**FAT**" shall mean the internal factory acceptance test carried out at Seller's premises according to the ATP.

"**Intellectual Property**" ("**IP**") means all work of authorship, procedures, designs, inventions and discoveries, and, in each case, in all forms, formats, languages and versions.

"**Intellectual Property Rights**" ("**IPR**") means all right, title and interest in and to any Intellectual Property, in all territories, under all applicable bodies of law (including, without limitation, under the laws of copyright, patent trademark, trade usage and trade secrets), and all applications, registrations, renewals, extensions, restorations and resuscitations relating to any of the foregoing.

"**In Writing**" shall mean communication by document signed by the parties or by letter, courier service, or telefax, electronic mail and by such other means as are agreed by the parties.

"**SAT**" shall mean the site acceptance test to be carried out according to the ATP.

"**Seller's Software**" shall mean computer software to which the Seller holds the copyright, or which is developed by the Seller.

"**Services**" shall mean the Seller's installation of the Equipment and the Computer Software at the Site.

"**Site**" shall mean the place where the System is to be installed, including as much of the surrounding area as is necessary for unloading, storage and internal transport and completion of the Services.

"**Sublicensed Software**" shall mean the computer software to which a third party holds the copyright and to which the Buyer receives the same right of limited use as set forth in the license conditions for said Sublicensed Software as issued by said third party.

"**System**" shall mean the system which the Seller shall deliver pursuant to the Scope of Work and which includes the Equipment, the Documentation and the Computer Software.

"**Work**" shall mean the work to be carried out by the Seller pursuant to the Scope of Work, including the Services.

### **3 PRODUCT INFORMATION**

3.1 All information and data contained in general product documentation, price lists and tender information shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.

### **4 THE WORK**

4.1 A description of the Work shall be set forth in the Scope of Work.

4.2 The Seller shall ensure that the Work is carried out in accordance with all applicable laws and regulations.

4.3 If changes in applicable laws or regulations referred to in clause 4.2 occurs between the Effective Date and Completion and this affects the System or the performance of the Work, the Buyer shall compensate Seller for such direct extra costs caused thereby, and the Schedule and the Scope of Work shall be amended to reflect the consequences of such changes (if any).

### **5 COMPUTER SOFTWARE**

5.1 Upon payment by the Buyer of the Contract Price in full, the Seller grants to the Buyer and the Buyer accepts from the Seller, a non-exclusive and non-transferable License to limited use of the Seller's Software and Documentation as set forth herein and to use the Sublicensed Software according to the terms of the licensing agreement governing such software.

5.2 Use of the Computer Software shall be limited to the System.

5.3 The Buyer shall not install, use or transfer the Computer Software on other computers than the Equipment without prior consent In Writing from the Seller.

5.4 Unless specifically allowed for in the Form of Agreement, the Buyer shall not copy, reproduce, modify, adapt, translate, reverse engineer, decompile, or disassemble the Computer Software or the Documentation. The Buyer shall not develop derivative work which is intended to be functionally equivalent substitutes for the Computer Software, the Documentation or parts thereof.

5.5 Full title in and ownership to the Seller's Software and Documentation, including all copies thereof, and all rights therein including without limitation IPR, trade secrets, trademarks, patents

and copyrights, belongs to and shall remain with the Seller (or Seller's subcontractors, as the case may be). The Buyer acknowledges that similar ownership rights apply to the Sublicensed Software.

5.6 The Buyer shall not remove, cover or alter the Seller's or any third party's ownership-, trademark-, copyright-, or other proprietary marks and notices on the Equipment, Computer Software or Documentation.

5.7 The Buyer acknowledges and accepts that all or some of the Computer Software may be released to the Buyer with a time-lock which will disable the use of the Computer Software within a designated time period. Upon payment of the last instalment of the Contract Price, the Buyer shall notify the Seller In Writing in order for the Seller to de-activate such time-lock(s) on the Computer Software

### **6 FACTORY ACCEPTANCE TEST (FAT)**

6.1 The Seller, at its sole option, may as part of its internal quality assurance procedures perform a Factory Acceptance Test (FAT) of the System and may issue a certificate when the test is completed.

6.2 The Seller shall notify the Buyer In Writing of a FAT to be performed in sufficient time to permit the Buyer to be represented as an observer at the FAT. The Buyer shall be entitled, at its own cost, to be present during FAT, but is not obliged to do so.

6.3 If the System or parts thereof have been approved by the Buyer under FAT, the System or parts thereof may not be rejected by the Buyer under SAT if the quality and performance of the System, including the visual perception created by the use of the System, is unchanged from FAT.

### **7 VARIATIONS**

7.1 The Buyer may require variations In Writing to the originally agreed Scope of Work, including but not limited to scope, quality, design and construction thereof, until the System has been delivered. Such request shall contain an exact description of the variation required.

7.2 Within reasonable time after receipt of a request for a variation from the Buyer, the Seller shall notify the Buyer In Writing of its proposal to implement the variation and the resultant adjustments to the Contract Price, the Schedule and other terms of the Contract.

7.3 The Seller shall not have the obligation to implement variations requested by the Buyer until the parties have agreed In Writing on the adjustments to the Contract Price, the Schedule and other terms of the Contract.

## **8 DELIVERY OF THE EQUIPMENT. TITLE AND RISK**

8.1 The time for delivery of the Equipment shall be as stated in the Form of Agreement.

8.2 Risk of loss to the Equipment shall transfer from Seller to Buyer according to the agreed Incoterm. Unless otherwise set forth in the form of Agreement, the terms of delivery are EXW (Incoterms 2010) at the specific points for delivery set forth in the Form of Agreement as the named place of delivery.

8.3 If the Buyer is unable to take delivery in accordance with this clause, the Seller shall arrange for storage of the Equipment at the risk and expense of the Buyer. The Seller shall also, if the Buyer so requires In Writing, endeavour to secure third party insurance on the Equipment at the Buyer's expense.

## **9 THE SERVICES: PREPARATORY WORK AND INSTALLATION CONDITIONS**

9.1 The Buyer shall ensure that the Site complies with the Seller's Installation Criteria and Site survey as enclosed hereto.

9.2 The Buyer shall provide necessary security clearances and permits, and ensure the necessary conditions for the performance of the Services and for the correct operating conditions of the System (such as power, appropriate air-conditioning, LAN, etc) all in such time so as not to delay the installation of the Equipment.

9.3 Any preparatory construction or other work that the Buyer needs to conclude in order to prepare the Site for the performance of the Services and for the correct operation of the System shall be completed in good time so as not to delay the Seller's performance of its Services.

9.4 The Buyer shall in due time and in accordance with the Schedule provide the Seller with the information and documentation required by the Seller to customize the System according to the Scope of Work. If the Schedule does not provide a deadline for the provision of such information, the Seller shall notify the Buyer in due time of the date by which the information and documentation must be provided for the Seller to

adhere to the Schedule. The Buyer shall be liable for all costs and delays resulting from delays by the Buyer in providing the information and documentation required by the Seller. The Buyer shall also be responsible for the accuracy and completeness of all preparatory construction and other work as well as all information and documentation it provides to the Seller.

## **10 WORKING CONDITIONS**

10.1 The Buyer shall ensure that the Seller's personnel have full access to the Site during all normal working hours and outside normal working hours to the extent deemed necessary by the Seller in order to perform the Services.

10.2 The Buyer shall place the Equipment at the disposal of the Seller at the Site in time for Seller to commence the Services. The Equipment shall during performance of the Services remain at the risk of the Buyer, but Seller shall be liable for loss or damage caused by the negligence of the Seller during performance of the Services.

10.3 Before the Seller commences installation of the System the Buyer shall (i) inform the Seller In Writing of all relevant safety regulations in force at the Site, and (ii) ensure that the Site complies with all applicable health and safety laws and regulations. The Seller shall have the right to stop work at the Site if at any time it encounters any unsafe or dangerous conditions and the Buyer shall be liable for all costs and delays resulting from any such work stoppage.

10.4 The Buyer shall ensure that the Seller's personnel obtain suitable and convenient board and lodging in the neighbourhood of the Site. The Buyer, at its sole expense, shall make available to the Seller all necessary cranes, lifting equipment and equipment for transport on the Site as and when reasonably requested by the Seller.

10.5 The Buyer, at its sole expense, shall make available to the Seller all necessary facilities for the storage of and protection against theft, damage and deterioration of the Equipment, tools and equipment required for installation, and the personal effects of the Seller's personnel.

## **11 BUYERS DEFAULT**

11.1 If the Buyer anticipates that it will be unable to comply with the conditions of clause 9 or 10 or to allow the Services to be performed in time, it shall forthwith notify the Seller In Writing, stating the reason and the time when it will be able to comply with its obligations. Such delay shall not

relieve the Buyer of its payment obligations and the Buyer shall pay any part of the Contract Price which would otherwise have become due. The Seller shall be entitled to an extension as set forth in clause 14.1 (iv) and to compensation for all costs, expenses and losses suffered as a result of the Buyer's default.

11.2 The Seller may by notice In Writing require the Buyer to remedy its default within a final reasonable period which shall be at least 30 days. If the Buyer fails to remedy its default within such period, the Seller may by notice In Writing terminate the Contract. The Seller shall then be entitled to compensation for any and all costs, expenses and losses suffered as a result of the Buyer's default.

## **12 SITE ACCEPTANCE TEST (SAT)**

12.1 When the Work has been completed, SAT shall, unless otherwise agreed, be conducted to determine compliance of the System with this Contract.

The Seller shall notify the Buyer In Writing that the System is ready for SAT. The notice shall specify the date and other pertinent information regarding the performance of SAT.

12.2 If, after having been notified In Writing of the date of SAT the Buyer fails to participate or otherwise prevents SAT from being carried out as scheduled, the test shall be deemed as having been satisfactorily completed at the date for SAT stated in the Seller's notice.

12.3 SAT shall be carried out during normal working hours according to the Seller's procedures. The Seller shall record the tests and the results of the SAT In Writing and the protocol shall be signed by both parties.

12.4 Minor outstanding work and defects that will not substantially affect the use or operation of the System shall not prevent SAT from being deemed completed. The Seller shall remedy minor outstanding work and defects without undue delay.

12.5 If the record shows outstanding work and defects that are not minor, the Seller shall remedy these deficiencies without undue delay. When the deficiencies have been satisfactorily remedied, the SAT shall be deemed successfully completed. Only if a new SAT (in full or in part) is necessary in order to show that the deficiencies have been remedied, shall such a new SAT (in full or in part) be performed.

## **13 COMPLETION AND TAKE OVER**

13.1 The Work shall be considered as completed ("Completion"):

(i) when the SAT has been satisfactorily completed or is deemed under clause 12.2 as having been satisfactorily completed, or

(ii) where the parties have agreed not to carry out SAT, when the Buyer has received Seller's notice In Writing that the System has been completed, or

(iii) pursuant to clause 13.3.

13.2 Minor outstanding work and defects that will not substantially affect the use of the System shall not prevent take-over. To the extent training is part of the Work; such training may be performed after Completion, and thus shall not prevent Completion.

13.3 The Buyer shall not be entitled to use the System, any other part of the Work or any part thereof before Completion. If the Buyer does so without the Seller's consent In Writing, it shall be deemed to have accepted Completion of the System. The Seller shall then be relieved of its duty to carry out SAT or any other tests.

13.4 As soon as the System has been Completed in accordance with clauses 13.1, the warranty period of clause 16.2 shall begin.

## **14 SELLER'S DELAY**

14.1 The Seller shall be entitled to an extension of the time for delivery and completion of the Work set out in the Schedule, if delay occurs due to:

(i) any of the Force Majeure circumstances referred to in clause 21, or

(ii) situations referred to in clause 4.3 or

(iii) variations under clause 7, or

(iv) an act or omission on the part of the Buyer in breach of the Contract.

14.2 If the Seller is entitled to an extension pursuant to clause 14.1, such extension shall be adequate and sufficient, taking into account the total effect of the delay to the Seller's activities. This provision applies regardless of whether the reason for delay occurs before or after the agreed time for Completion.

14.3 The Seller is in delay if Completion is not achieved by the time set forth in the Schedule, as extended, if applicable, pursuant to the provisions of clauses 14.1 and 14.2. The Buyer shall be entitled to liquidated damages when the Seller has been in delay for one (1) week.

The liquidated damages shall be payable at a rate of 0.25 per cent of the Contract Price for each completed week of delay. The liquidated damages shall not exceed 5.0 per cent of the Contract Price.

If the Scope of Work describes that more than one System shall be provided, the liquidated damages shall be calculated on the price of the delayed System only.

The liquidated damages shall become due upon the Buyer's request In Writing but not before completion or termination of the Contract under clause 14.5. A claim for liquidated damages cannot be submitted by the Buyer later than 30 days after Completion or termination of the Contract under clause 14.5. The Seller shall not be liable for a claim for liquidated damages submitted after the time-limit set forth in this provision.

14.4 If the Seller's delay is such that the Buyer has become entitled to the maximum liquidated damages under clause 14.3 and the Work is still not delivered, the Buyer may demand In Writing completion within a final reasonable period which shall not be less than two months.

14.5 If the Seller does not complete the Work within such final period and such delay is not the result of Force Majeure circumstances referred to in clause 21 or circumstances for which the Buyer is responsible, then the Buyer may by notice In Writing to the Seller terminate the Contract in respect of such delayed part of the Work.

If the Buyer terminates the Contract, it shall, subject to the limitations of liability of clause 20.1, be entitled to compensation for the loss it has suffered as a result of the Seller's delay, less liquidated damages received under clause 14.3.

14.6 Liquidated damages under clause 14.3 and termination of the Contract within limited compensation under clause 14.5 shall be the sole and exclusive remedies available to the Buyer in case of delay on the part of the Seller. All other claims against the Seller based on such delay shall be excluded.

## 15 PAYMENT

15.1 Payment shall be made upon Seller's invoices according to the payment schedule set forth in the Form of Agreement. Invoices shall be paid no later than 10 days after date of issue.

15.2 If any part of the Work is delayed for any cause for which the Buyer or any of its suppliers, agents or representatives other than the Seller, is responsible, and this delay is not the result of Force Majeure circumstances referred to in clause 21, payment shall nevertheless be made at the agreed time as though the Seller had fulfilled its obligations in accordance with the Contract. In addition, the Buyer shall compensate the Seller for:

(i) costs and extra work resulting from the delay, including removing, securing and setting up installation equipment;

(ii) additional costs, including costs as a result of the Seller having to keep its equipment at the Site for a longer time than expected;

(iii) additional costs for travel and board and lodging for the Seller's personnel;

(iv) other documented costs incurred by the Seller as a result of changes in the installation programme.

15.3 Payment shall be made by wire transfer to the Seller's nominated bank account. Payment shall not be deemed to have been effected before the Seller's account has been fully and irrevocably credited.

15.4 If the Buyer fails to pay by a stipulated date according to clause 15.1, the Seller shall be entitled to interest from the day on which payment was due. The rate of interest shall be 12 per cent per annum or the maximum permitted by law, whichever is lower. In addition, the Seller may suspend its performance of the Contract and refrain to de-activate the time-lock on all or some of the Computer Software until it receives payment hereunder.

If the Buyer has not paid the amount due within two months from the date the respective payment became due, the Seller shall be entitled to terminate the Contract by notice In Writing to the Buyer and to claim compensation for the loss suffered as a result of such breach by the Buyer.

15.5 Apart from any obligations on behalf of the Seller or the Buyer under the trade terms



applicable in clause 8.2, all taxes, retentions, withholdings, duties and fees, if any, are to be paid by the Buyer, with the sole exception of taxes on the income or revenue of the Seller.

## **16 WARRANTY FOR THE EQUIPMENT**

16.1 Pursuant to the provisions of this clause, the Seller shall remedy any defect in the Equipment resulting from faulty materials or workmanship. Notwithstanding the above, the warranty for Computer Software is exclusively set forth in clause 17.

16.2 The Seller's liability to remedy is limited to defects in the System which appear within a period of one year from Completion. If Completion has been delayed for reasons for which the Buyer is responsible, the Seller is only responsible for defects which appear within a period of one year from the originally stipulated Completion date. If the Scope of Work describes that more than one System shall be provided, the warranty period set forth herein applies from Completion of each System.

16.3 When a defect in a part of the Equipment has been remedied, the Seller shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Work for a period of one year, however, the Seller shall have no further liability hereunder whatsoever after 18 months from Completion.

16.4 The Buyer shall without undue delay notify the Seller In Writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period specified in clause 16.2. Where the defect is such that it may cause damage, the notice shall be given immediately.

The notice shall contain a description of the defect and how it manifests itself. If the Buyer does not provide the notice to the Seller of a defect within the time-limits set forth in this provision, the Seller shall have no responsibility to remedy the defect and shall have no liability to the Buyer in relation to such defect.

16.5 On receipt of notice of a defect from the Buyer the Seller shall remedy the defect as soon as reasonably possible at the Seller's own cost. Repair shall be carried out at the Site, unless the Seller deems it appropriate that the defective part or the Equipment is returned to it for repair or replacement. The cost of transporting Equipment or

parts thereof to the Seller shall be for the Buyer's cost and risk. The cost of transporting Equipment or parts thereof from the Seller shall be for the Seller's cost and risk.

16.6 If the Buyer has notified the Seller in accordance with clause 16.4, and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the costs it incurs and time spent as a result of the notice.

16.7 The Buyer shall at its own expense arrange for any dismantling and reassembly of equipment other than the System, to the extent that such is necessary to remedy the defect. Defective parts which have been replaced shall be made available to the Seller and shall become the property of the Seller.

16.8 If, within a reasonable time, the Seller does not initiate and diligently pursue its obligations under clause 16.5, the Buyer may, by notice In Writing, specify a final time for completion of the Seller's obligations. The notice shall be given at least 1 month before such final time.

If the Seller fails to fulfil its obligations within such final time, the Buyer may undertake or employ a third party to undertake necessary remedial work. Where successful remedial work has been undertaken by the Buyer or a third party, reimbursement by the Seller of the reasonable costs incurred by the Buyer that are otherwise recoverable from the Seller shall constitute full settlement of the Seller's liability for the said defect.

16.9 The Seller shall have no liability for defects caused by misuse, normal wear and tear, faulty or lacking maintenance or faulty repair by the Buyer or third parties, or by alterations carried out on the System without the Seller's consent In Writing. Further, the visual perception created by the use of the System shall always be deemed to be in compliance with the Contract if it is the same as presented and approved during FAT and/or SAT.

16.10 Except as specifically stated otherwise in clauses 16 and 17, the Seller shall not be liable for and hereby disclaims all other warranties, express or implied, including warranties of fitness for purpose and merchantability with regard to the System.

16.11 The remedies set forth in this clause and clause 17 are the sole and exclusive remedies

available to Buyer against Seller for defects in the System.

## **17 WARRANTY FOR COMPUTER SOFTWARE**

17.1 As its sole warranty obligation during the period set forth in clause 16.2 and 16.3, the Seller undertakes to remedy or replace with an upgraded version, free of charge, such Seller's Software for such bugs, errors and defects to the extent they substantially affect the operation of the System. As regards Sublicensed Software, the Buyer's sole recourse for bugs, errors and defects are to the warranties, if any, provided by such providers. The Seller will allow and assist the Buyer in pursuing any claim under such warranties.

17.2 The Seller warrants that Seller's Software upon installation (to the extent possible) has been screened with updated, first class commercially available virus detection programs, but the Seller cannot and does not warrant that the Computer Software will be free of viruses. The Seller's warranty to screen with such virus detection programs shall expire upon installation of the Computer Software, or connection to the Buyer's computer system, whichever occur first.

17.3 The Seller shall not be liable for any bugs, errors, or defects caused, in whole or in part by the Buyer using the Computer Software in conflict with the user manual or in breach of any of the provisions in clause 5 or together with other software applications unless approved by the Seller In Writing.

17.4 The Buyer shall take all precautions, such as data backup, testing and error detection procedures to avoid consequences of errors, and it shall be under a duty to mitigate any loss which may occur as a consequence thereof.

## **18 INFRINGEMENT OF IPR**

18.1 In the event that any third party makes a claim or demand or initiates legal proceedings based upon a claim that any part of the Seller's Software or Equipment manufactured by Seller infringes any third party's Intellectual Property Rights (an "**Action**"), the Seller will, subject to the provisions herein, defend and indemnify the Buyer and keep him indemnified for costs and damages, provided that:

(i) the Buyer immediately informs the Seller of such Action In Writing;

(ii) the Buyer does not make any admissions that prejudices, or might prejudice the defence of the Action;

(iii) the Seller is given complete control over the defence of the Action and over all negotiations relating to the Action; and

(iv) the Buyer provides the Seller with all assistance requested by the Seller.

18.2 If the Buyer becomes the subject of, or in the Seller's sole opinion there is a risk that the Buyer could become the subject of an Action, the Seller shall have the right, at its own expense and at its sole discretion to carry out an exchange or modification to the System so that it no longer infringes the third party's intellectual property rights.

18.3 The Seller's obligations as set forth above shall not apply and the Seller shall not be responsible or liable for any infringement of third party Intellectual Property Rights resulting from;

(i) the use of all or some of the Computer Software, Equipment and/or the System with any other software, documentation, equipment or systems, if the infringement would not otherwise occur; or

(ii) any modifications to the System not performed by the Seller; if the infringement would not otherwise occur.

18.4 The Seller's liability for infringement of third party's Intellectual Property Rights with respect to Sublicensed Software and Equipment purchased from third parties shall be limited to providing the Buyer access to applicable warranties and indemnities (if any) provided by the provider of such Sublicensed Software and Equipment.

18.5 The parties agree that these Standard Conditions sets forth the Seller's sole and exclusive responsibility and liability to the Buyer in the event that the System is held to infringe the Intellectual Property Rights of any third party.

## **19 LIABILITY AND INDEMNITY**

19.1 The Seller shall indemnify and hold harmless the Buyer, his affiliated entities, Buyer's subcontractors, their respective agents and employees (the "**Buyer Group**") from and against all claims, damages, losses and expenses in respect of:

(i) bodily injury, sickness, diseases or death of any employee of the Seller Group and

(ii) loss or damage to the property of the Seller Group;

arising out of or in the course of or by reason of the Seller's performance of the Work and the remedying of warranty defects. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of the Buyer Group.

19.2 The Buyer shall indemnify and hold harmless the Seller, his affiliated entities, Seller's subcontractors, their respective agents and employees (the "**Seller Group**") from and against all claims, damages, losses and expenses in respect of:

(i) bodily injury, sickness, diseases or death of any employee of the Buyer Group and

(ii) loss or damage to the property of the Buyer Group;

arising out of or in the course of or by reason of the Seller's performance of the Work and the remedying of warranty defects. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of the Seller Group.

19.3 The Seller shall not be liable for any claims, damages, losses and expenses in respect of bodily injury, sickness, diseases, or death, or damage to or loss of property caused by the Work or the System after Completion. Nor shall the Seller be liable for any such claims, damages, losses and expenses caused by the Buyer using the System after Completion.

19.4 If the Seller incurs liability towards any third party for such claims, damages, losses and expenses as described in clause 19.3, the Buyer shall indemnify, defend and hold the Seller harmless.

19.5 If a claim for damage or loss as described in clause 19.3 is brought by a third party against the Seller, the Seller shall forthwith inform the Buyer thereof In Writing.

19.6 If a third party initiates a legal proceeding, whether by court action or arbitration, against the Seller for which the Buyer has agreed to defend and indemnify, the Buyer hereby consents to be added to such proceeding as an additional party and hereby waives any objection to the jurisdiction of such court or tribunal.

19.7 The Seller shall ensure that its insurers waive all rights of subrogation against the Buyer Group and The Buyer shall ensure that its insurers waive all rights of subrogation against the Seller Group for loss or damages subject to the indemnities set forth in this clause 19.

## **20 LIMITATION OF LIABILITY**

20.1 Notwithstanding anything to the contrary set forth in these Standard Conditions, the following shall apply:

20.1.1 Save for any liquidated damages pursuant to clause 14.3, neither the Seller nor the Buyer shall be liable to the other by way of indemnity or by reason of any breach of the Contract or of statutory duty or by reason of tort of whatever reason (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts, attorney's fees or for any indirect, consequential or special damages whatsoever that may be suffered by the other.

20.1.2 With the only exception of Seller's liability under clauses 18.1 and 19.1, in no circumstances whatsoever shall the liability of the Seller to the Buyer under the Contract for any act, omission, delay, defect or default (including liquidated damages) exceed 15 per cent of the Contract Price.

20.2 The Buyer and the Seller intend that their respective rights, obligations and liabilities as provided for in this Contract shall be exclusively set forth herein and thus exhaustive of the remedies, rights, obligations and liabilities that may arise in respect or in consequence of a breach of contract or of statutory duty or a tortious or negligent act or omission at statutory and/or common law.

## **21 FORCE MAJEURE**

21.1 Notwithstanding any other provisions set forth herein, either party shall be entitled to suspend performance of its obligations under the Contract for reasons of Force Majeure, which shall mean an event beyond the reasonable control of the party affected impeding performance or making performance unreasonably onerous, such as (but not limited to) local and general industrial disputes, fire, war (whether declared or not), armed conflict, terrorist activity, extensive military mobilization, insurrection, requisition, seizure, embargo, governmental action, export and import restrictions, restrictions in the use of power and defects or delays in deliveries by sub-Sellers caused by such circumstances referred to in this clause.

21.2 The party claiming to be affected by Force Majeure shall notify the other party In Writing without undue delay on the intervention and on the cessation of such circumstance. If Force Majeure prevents the Buyer from fulfilling its obligations, it shall compensate the Seller for all costs incurred in securing and protecting the Work.

21.3 Regardless of what otherwise may follow from these Standard Conditions, either party shall be entitled to terminate the contract by notice In Writing to the other party if performance of the Contract is suspended under clause 21.1 for more than 12 months.

## **22 SEVERABILITY**

22.1 The parties agree that should any provision of this Contract violate any applicable mandatory law or regulation, such provision shall be deemed severable and modified to comply with such applicable mandatory laws or regulations to the extent such modification will give meaning to the intent of the parties consistent with mandatory applicable laws and regulations. Such provisions shall not affect the other provisions of the Contract.

## **23 CONFIDENTIALITY**

23.1 The System constitutes highly valuable property of the Seller and contains IPR, copyrights, trade secrets and confidential information owned by the Seller. The Buyer shall observe confidentiality with respect to the System and its performance and design data.

23.2 The parties agree to treat as confidential and proprietary all specifications, drawings, blueprints, nomenclature, samples, models, tools, designs, processes, data, software and any other business or technical information, materials, or ideas in any form (e.g., written, electronic, visual, oral, or otherwise) supplied or disclosed to one party by the other party in connection with the Work ("**Proprietary Information**"). Such Proprietary Information shall remain the property of the disclosing party and shall not be disclosed to third parties and shall not be used by the receiving party for any other purpose than the commissioning, operation or maintenance of the System.

23.3 The obligations of confidentiality shall survive the termination or cancellation of this Contract.

23.4 The duty of confidentiality does not apply to Proprietary Information which, by documentary evidence:

- (i) is already known to the receiving party at the time it is obtained, free from any obligations to hold such information in confidence;
- (ii) has become publicly known; or
- (iii) is rightfully received from a third party without restrictions.

## **24 QUALITY ASSURANCE AND AUDIT**

24.1 Upon notice In Writing, Buyer shall be entitled during normal business hours to inspect the performance of the Work provided such inspection does not unreasonable affect the performance of the Work.

## **25 DISPUTES AND APPLICABLE LAW**

25.1 The Contract shall be governed by and construed in accordance with Norwegian law.

25.2 Any dispute relating to or arising out of this Contract shall first be sought resolved amicably through negotiations between high-level executives of the Parties. If such negotiations are not successful after a period of 60 days from a claim In Writing for such negotiations from either Party, either Party has the right to bring the dispute to final resolution through arbitration pursuant to the Norwegian Arbitration Act. The arbitration shall be conducted in the English language in Oslo, Norway.