

## **C GENERAL CONDITIONS OF CONTRACT**

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## **C GENERAL CONDITIONS OF CONTRACT**

### **1 DEFINITION**

- 1.1 "Claim" means action, demand, proceedings and entitlement according to Laws of Republic of Singapore.
- 1.2 "Company" means Tuas Power Ltd (Company Registration No. 199502116G) / Tuas Power Generation Pte Ltd (Company Registration No. 200909292D) / TP Utilities Pte Ltd (Company Registration No. 200920924G) / Tuas Power Supply Pte Ltd (Company Registration No. 200004985K) / TP Asset Management Pte Ltd (Company Registration No. 200505009R) or subsidiaries of Tuas Power Ltd (as the case may be and as more particularly stated in the agreement), the company incorporated in the Republic of Singapore, having their registered offices at 111 Somerset Road, #11-09, Singapore 238164 and shall include any officer or other person authorised by the Company to act on its behalf.
- 1.3 "Contract" means the formal agreement between the Company and the Contractor arising from the acceptance by the Company of the Contractor's offer and includes, but is not limited to the following documents:-
- .1 Request For Quotation / Tender document together with its Specifications, Schedule Of Tender Rates/Prices, Schedule Of Deviation and Appendices (if any);
  - .2 General Conditions Of Contract;
  - .3 Letter Of Acceptance by the Company of the Contractor's offer;
  - .4 Form Of Agreement;
  - .5 Purchase Order and/or Service Order (if any);
  - .6 Confidentiality Statement (if any).
- 1.4 "Contractor" means the successful supplier whose offer the Company has accepted in whole or part and who has undertaken to supply the Items or to perform the Services or Work directly or sub-contracted out to another supplier or agent approved by the Company to supply in whole or part (hereinafter called the Sub-Contractor).
- 1.5 "Contract Price" or "Contract Sum" means the total price quoted excluding Goods and Services Tax and made payable to the Contractor for the supply of each and every Item and/or Service.
- 1.6 "Install" means the unloading at the delivery point at the site / stores and the performance of every operation necessary to establish secured mounting and correct operation at the proper location as specified by the Company.
- 1.7 "Items" means all goods which the Contractor is required to supply under the Contract and includes all parts and units thereof.
- 1.8 "Service" or "Work" means the work which the Contractor is required to provide under the Contract.
- 1.9 "Specification" means the specification referred to in the Request For Quotation / Tender Document and Contract and includes general specification, technical specification and drawings and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Company.
- 1.10 "Successful Acceptance" means the completion of the installation and final connection work of the Items and/or Services in accordance with the Specifications and terms of this Contract, to the Company's satisfaction.
- 1.11 "Supply" or "Provide" means purchase and deliver to the required site and/or stores complete with every necessary appurtenance and support.
- 1.12 Words importing the singular include the plural and vice versa. Words denoting the masculine gender include the feminine gender and both include the neutral gender.
- 1.13 The headings are for convenience only and not for purpose of interpretation.

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### **2 SCOPE OF CONTRACT**

- 2.1 The Contractor shall carry out and complete the supply and installation of all Items and/or Services in accordance with the Contract in every respect and to the directions and satisfaction of the Company.
- 2.2 Several documents forming the Contract are mutually explanatory of one another and in case of ambiguities or discrepancies, the same shall be referred in writing to the duly authorised representative of the Company for clarification whereupon the decision of the Company shall be final.

### **3 RELIANCE**

- 3.1 The Contractor accepts that the Company, inter-alia, relies on the skill and judgement of the Contractor in the design, description, manufacture, quality, reliability, function and performance of the Items to be provided and on the judgement and skill of the Contractor for any and all of the Services to be performed.
- 3.2 Notwithstanding the Company's Request For Quotation / Tender Document and any statement or information of any description contained therein, the Contractor shall inform and satisfy himself on all matters necessary for compliance with and completion of the Contract and in all matters whatsoever that might in any way affect the prices quoted by him.
- 3.3 Any neglect, negligence or failure whatsoever on the part of the Contractor to obtain any necessary and reliable information shall not relieve him from any risks or liabilities for the performance and completion of the Contract.

### **4 PRICE**

- 4.1 The Contractor shall supply the Items and/or Services to the Company in the quantities and at the price set out in Schedule Of Tender Rates/Prices or Schedule Of Rates / Prices.
- 4.2 The Contract Price shall be on an all-in firm price basis.
- 4.3 The Contract Price must be in Singapore Dollars only unless otherwise specified.
- 4.4 The Contract Price shall represent the total cost to the Company excluding Goods and Services Tax for each and every Item and/or Service which shall include but is not limited to:
- .1 the cost of all transport, lifting, packing, freight, handling, delivery, insurance, levies, charges, licence fees, taxes, royalties, customs duties, government levies, import permits etc. where applicable;
  - .2 the cost of the supplies and equipment inclusive of all accessories, whether explicitly or separately specified or not, necessary for providing the full capabilities asked for and for the immediate operation of the Item and/or Service;
  - .3 the cost for all on-site / off-site labour for the preparation, Installation and delivery of the Item and/or Service deemed necessary for their operations;
  - .4 the cost incurred for relevant documentation required by the Company;
  - .5 the cost for testing and commissioning of the Item and/or Service;

### **5 SINGAPORE GOODS AND SERVICES TAX**

- 5.1 The Company shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Goods and Services Tax paid by the Contractor on the value of the Items and/or Services provided in accordance with the Contract. For clarification, "Goods and Services Tax in Singapore" or "GST" shall refer to tax payable under the Goods and Services Tax Act in Singapore as may be amended from time to time. All payment of GST, if applicable, shall be in Singapore Dollars.

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- 5.2 The Contractor shall, if so requested by the Company, furnish such information as may reasonably be required by the Company as to the amount of Goods and Services Tax in Singapore paid by the Contractor on the value of goods and services supplied in accordance with the Contract and payable by the Company to the Contractor in addition to the Contract Price. Any overpayment by the Company to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Clause 29 (Deduction from Payments Due).
- 5.3 For the avoidance of doubt, it is hereby agreed that unless the context clearly indicates otherwise, all references in the Contract to prices and sums of money payable shall be regarded as values before the addition of Goods and Services Tax in Singapore chargeable on such values.

### **6 PAYMENT**

- 6.1 The Company shall make payment, within thirty (30) days from the date of receipt of the Contractor's commercial invoices after the Items and/or Services have been received or performed, examined and the invoices have been certified for payment by the Company after Successful Acceptance of the Items and/or Services. Such payment is subject to any deduction which the Company has the right to make under the Contract.
- 6.2 The Company shall make payment in part or full according to the value of all the Items so delivered or the Services performed after Successful Acceptance provided that such payment shall not affect the Company's right to reject any of the Items and/or Services performed not meeting the Company's satisfaction or the Contractor's responsibility to replace defective or damaged Items and/or to improve the Services required, in which case, the Company, in addition to any other rights which it may have under warranties or otherwise, may at its option require the Contractor to refund the Company any part of the price thereby paid for such Items or Services together with transportation and other charges; or to require the Items and/or Services to be replaced, failing which the Company shall have the right to purchase replacements from alternative sources or to make good any damage in any manner it deems necessary and all costs thereby incurred shall be recoverable as a debt due from the Contractor.
- 6.3 Notwithstanding Clause 6.1, any time agreed between the parties for payment is not of essence in this Contract.

### **7 SECURITY DEPOSIT**

- 7.1 The Contractor shall as a condition precedent to the commencement of any work under this Contract, deposit with the Company an amount equal to five percent (5%) of the Contract Sum (hereinafter called the "Security Deposit") as and by way of a deposit or security for the due and faithful performance of the Contract, the fulfillment of the Contractor's obligations and the observance by the Contractor of all the stipulations, conditions and agreements herein contained.
- 7.2 The Company may within its absolute discretion permit the Contractor to pay the Security Deposit either by cheque to "Tuas Power Ltd / Tuas Power Generation Pte Ltd / TP Utilities Pte Ltd / Tuas Power Supply Pte Ltd / TP Asset Management Pte Ltd or subsidiaries of Tuas Power Ltd \*where applicable" or a security deposit bond such as performance bond or banker's guarantee in the enclosed format by a bank licensed in the Republic of Singapore, subject to a limit of \$300,000.00 to be approved by the Company.
- 7.3 If the Contractor withdraws after acceptance of his offer in full or in part, he shall be liable for all increased cost thereby incurred by the Company obtaining the Items and/or Services from other sources. The Company shall be entitled to utilise and make payments out of or deductions from the security deposit in accordance with the terms and conditions of the Contract.
- 7.4 The provisions of this Clause shall in no way affect the rights and remedies expressly reserved herein to the Company or bar the Company from claiming all expense, loss and damage incurred or sustained by the Company in the event of any breach by the Contractor of any of the stipulations, conditions and agreements herein contained.

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- 7.5 The security deposit shall be released only upon the Contractor's compliance with all the terms and conditions in the Contract which includes the Warranty Period.
- 7.6 For the avoidance of doubt, the Contractor is only required to pay the Security Deposit to the Company if the Contract Price exceeds \$100,000.

### **8 QUANTITY**

- 8.1 Where the Company has entered into a Contract with the Contractor for the supply of Items and/or Services as and when required by the Company during the period of time specified in the Contract, the Contract shall be deemed to be a Period Contract for the duration of the period of time specified. Where the Contractor receives, during the period of time specified in the Contract, any written request or purchase order for specific quantities of the Items and/or Services of the nature specified in the Contract, the Contractor shall proceed to supply the Items and/or Services in accordance with the Contract. The Company shall be under no obligation to purchase the Items or request the performance of the Services specified in the Period Contract except to the extent of the written request or purchase order issued by the Company for those Items and/or Services.
- 8.2 Unless stated that the quantity is an estimate only and subject to further change, there exists an option to extend the duration of the Contract in writing of such acceptance by both parties till the quantity is depleted at the same Contract Price and under the General Conditions Of Contract.

### **9 QUALITY**

- 9.1 The Items and/or Services supplied shall conform in all respects to the relevant Specifications. The Contractor warrants that the Items and/or Services supplied shall be in perfect condition of merchantable quality and fit for their purpose under the Contract. The Contractor hereby acknowledges that he knows the purpose the Items and/or Services are intended for.

### **10 ADEQUACY OF DESIGN**

- 10.1 Notwithstanding any approval (whether verbally or in writing) given by the Company to any of the Contractor's proposals, designs and technical Specifications relating to the performance and construction of the Items and/or Services, the Contractor agrees and declares that it shall remain solely responsible for the adequacy of the design, performance, function, reliability and construction of the Items and/or Services and compliance with the Specifications.

### **11 ALTERATION OF SCHEDULES, SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND SAMPLES**

- 11.1 The Contractor shall not alter any part of the Specifications relating to the Items and/or Services unless directed by the Company but the Company reserves the right to alter the same from time to time and as from the date of such alterations the Items and/or Service shall be in accordance with the Specifications as altered. In the event that such alteration results in a change in the cost of the Items and/or Services and in the period required for delivery, such change in cost of the Items and/or Services and the time of delivery shall be agreed to in writing between the parties to the Contract, and shall be made in relation to the Items and/or Services which are the subject of the alteration. In all other respects the Contract shall remain unaltered.

### **12 INSPECTION AND TESTING**

- 12.1 The Company shall have at all times full and free access to either the Contractor's or Sub-Contractor's and agent's premises, and shall have the power to inspect, examine and test the Items and/or Services during the complete production processes with all reasonable facilities and permission at all times as may be required therefor.

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- 12.2 Where the tests other than type test are provided, whether at the premises of the Contractor or of any Sub-Contractor, the Contractor shall provide, free of charge, such labour, materials, electricity, fuel, stores, apparatus, equipment and instruments as the Company may consider to requisition from time to time, and as may reasonably be demanded efficiently to carry out such tests of the Items and/or Services in accordance with the Contract.
- 12.3 The Contractor shall give the Company notice of Items and/or Services being ready for inspection, examination and testing. The Company shall attend within twenty-one days of the date on which the goods, materials, goods, work and plant is notified as being ready, failing which the Contractor may proceed with the tests and he shall forward to the Company duly certified copies of the test certificates in duplicate.

### **13 PACKING**

- 13.1 The Contractor shall, without additional cost, ensure that the Items to be supplied under the Contract are adequately packed so as to ensure that they reach their destination intact and undamaged. Any other requirement on packing specified in the Contract shall be complied with and such labour and material costs incurred thereby shall be borne by the Contractor.

### **14 DELIVERY**

- 14.1 Delivery of the Items and/or Services shall be effected by the Contractor by the date(s) and time specified in the Contract, in the manner specified and at the place(s) specified in the Contract. In this regard, TIME SHALL BE OF THE ESSENCE.
- 14.2 Unless otherwise stated, all delivery shall be made on Monday to Friday except Public Holiday, between 9.00am to 5.00pm. The Company reserves the right, at its discretion, to vary the delivery date(s) and time, the place of delivery and/or delivery manner on due notification to the Contractor in writing.
- 14.3 The Company shall check and acknowledge receipt of the Items and/or Services upon delivery completed by the Contractor in full or part provided that such acknowledgement shall not relieve the Contractor from his responsibility for delay in the delivery of the Items and/or Services, for replacement of defective or damaged Items and/or unsatisfactory Services in accordance with the Contract.
- 14.4 Time is of essence and there shall be no delays whatsoever.
- 14.5 The Contractor shall deliver the Items and/or Services as directed reasonably by the Company. No Item and/or Service shall be delivered to the site and/or stores without the Company's permission.
- 14.6 The Contractor shall be responsible for the reception at the port of discharge, handling, transportation, safe delivery, handling and storage at his site and/or stores and all necessary labour, materials, equipment and work required for the supply of the Items and/or Services under this Contract.
- 14.7 For delivery to the Company's stores, the Contractor shall stack and arrange the Items in proper manner at the place directed by the store's officer-in-charge.

### **15 DELAY IN SUPPLY AND DELIVERY**

- 15.1 In the event of failure by the Contractor to supply and deliver any of the Items or complete the provision of any of the Services by the dates specified in the Contract other than due to the circumstances provided for in Clause 25 (Force Majeure), the Company shall, without prejudice to any other rights or remedies it has in this Contract or otherwise, have the right:
- .1 to cancel all or any such item of Items and/or Works from the Contract
    - (i) without compensation and obtain them from other sources; or
    - (ii) obtain a refund of all monies previously paid to the Contractor for the Items and/or services;

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and all increased costs thereby incurred, losses, damages, extra charges and expenses shall be deducted from any sum due or to become due to the Contractor under the Contract or shall be recoverable against the Contractor as debt due; or

- .2 to require the Contractor to pay or allow the Company to deduct from any money due or become due to the Contractor as liquidated damages (and not as a penalty) of a sum to be calculated at the rate of one percent (1%) of the total amount/price of the Items and/or Services delayed per week or part thereof (including Saturdays, Sundays and Public Holidays) which elapse between the date of delivery of the Items and/or completion of the Services specified in the Contract and the actual date of delivery of the Items and/or completion of the Services up to a maximum of ten percent (10%) of the full Contract Sum.

### **16 REJECTION, REMOVAL AND REPLACEMENT**

- 16.1 The Contractor shall, when so notified in writing by the Company, remove and replace within seven (7) days from the date of receipt of the notice in writing and at the Contractor's own expense, any rejected Items and/or Services which are found on delivery to be damaged, defective or in any way inferior to approved samples or not in accordance with the Contract, failing which the Company shall have the right to purchase replacements from alternative sources or to make good any damage in any manner it deems necessary and all costs thereby incurred shall be recoverable as a debt due from the Contractor.
- 16.2 The Company shall, without other options, use the rejected Items and/or incomplete Services for a reasonable time until the Contractor is able to obtain a replacement. The Company shall give notice in writing of such intention to the Contractor at a reasonable price mutually agreed to be paid to the Contractor for such use.

### **17 TITLE AND RISK**

- 17.1 Title and the risk of loss or damage to the Items and/or Services shall pass from the Contractor to the Company upon delivery to the site / store in accordance with the Contract. Provided always that should the Items be returned to the Contractor and/or Services required for the purposes of upgrading, modification, replacement, rework or repair, the risk of loss or damage to the Items and/or Services shall pass from the Company to the Contractor from the date the Items are collected or delivered back to the Contractor and/or Services are taken-over by Contractor thereof.

### **18 WARRANTY**

- 18.1 The Contractor warrants the Items and/or Services supplied against any defect in production, or any defect arising out of design, faulty materials or workmanship or any failure or malfunction due to quality of materials, workmanship, design, assembly or installation for a period of not less than twelve (12) months or such other period as the Company shall notify the Contractor on or prior to the date of this Contract, effective from the date of Successful Acceptance (hereinafter referred to as the "Warranty Period").
- 18.2 During the Warranty Period, any Item supplied is found by the Contractor to be defective, or malfunctioning or where the workmanship is unsatisfactory and/or Service is poor or out-of-order, the Contractor shall at the written notification by the Company, replace the same at the expense (including freight charges, transportation costs and other incidental charges) of the Contractor or if the Company so agrees, make good, improve or repair the same at the expense (including freight charges, transportation costs and other incidental charges) of the Contractor within three (3) days of receipt of the written notification from the Company. The Items and/or Service so replaced, improved or repaired shall then be subject to the warranty under this Clause and extended for the duration the Item was out of service and/or Service was out-of-order.
- 18.3 The Contractor shall submit detailed service reports on all Items repaired and/or Services modified in any manner during the Warranty Period.
- 18.4 The Contractor shall provide regular preventive maintenance as recommended by the manufacturer during the Warranty Period and indicate to the Company the nature and extent of the service provided. The



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Contractor shall during a working day respond within 24 hours of receiving a service breakdown call from the Company, replace with original parts and/or repair free of charge any Item found defective or malfunctioning as well as rectify any Service required.

- 18.5 In the event that the maintenance or repair of Items and/or Services takes more than two (2) calendar days per occurrence, the Contractor shall within three (3) working days from the occurrence of the Items and/or Services downtime, provide at no extra cost to the Company the use of alternative Items and/or Services.
- 18.6 The Warranty Period shall be extended for the duration the Item is found defective or the Service is out-of-order when supplied which shall be computed from the date of notification by the Company to the Contractor that the Item is found defective and/or the Service is out-of-order.
- 18.7 Where the Item is out of service and/or the Service is out-of-order for more than three (3) consecutive days, the Contractor shall pay liquidated damages to the Company as stated in Clause 15. Such liquidated damages may be deducted from any money due to the Contractor under the Contract or shall become a legal debt from the Contractor to the Company.
- 18.8 The Contractor shall guarantee that spare parts and/or consumables for the Items supplied will be available for a period of at least 12 months from the date of Successful Acceptance of the Item and shall further undertake to locally supply or make available these parts / consumables for the stipulated period.

### **19 ASSIGNMENT**

- 19.1 The Contractor shall not transfer or assign the Contract or any part of share, benefit or interest therein without the prior written consent of the Company except where is provided in the Contract.
- 19.2 Such consent if given by the Company shall not relieve the Contractor from any liability or obligation under the Contract, and he shall be responsible for the act, defaults and neglects of any Sub-Contractor, his agents, servants or workmen as if they were the acts, defaults, or neglects of the Contractor, his agents, servants or workmen.
- 19.3 The Company is entitled to transfer or assign the Contract or any part of the share, benefit or interest to any parties at any time without the prior consent of the Contractor.

### **20 RIGHTS OF THE COMPANY IN THE EVENT OF DEFAULT BY THE CONTRACTOR**

- 20.1 If the Contractor is in default in the performance of this Contract or fails to fulfill any part or obligation under this Contract, the Company shall have the right to terminate the appointment of the Contractor under this Contract thirty (30) days after the written notification to the Contractor of his default or failure without being liable therefore in damages.
- 20.2 If the Contractor fails to proceed with the Contract with reasonable diligence within seven (7) days after a notice has been sent to the Contractor specifying the default, the Company shall be entitled to determine this Contract and to recover from the Contractor the amount of any loss resulting from such determination.
- 20.3 The exercise of any of the rights granted to the Company hereunder shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Company.
- 20.4 In the event of termination under Clause 20.1 above, the Company shall have the right to:-
- .1 keep all or any of the Items and/or Services after Successful Acceptance provided that in the event payment has yet to be made on those Items and/or Services, the Company shall pay for the Items and/or Services so kept;
  - .2 sell or otherwise dispose of all or any of the Items delivered including accessories, documentation, method of use or information of any kind and if payment has yet to be made on those Items, the

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Company shall be entitled to set-off any claim which it may have against the Contractor the proceeds of such disposal;

- .3 return all or any of the Items already delivered to the Company and the Contractor shall refund forthwith to the Company any payment that has been made by the Company on such Items returned by the Company; or
  - .4 purchase from other sources as it deems fit any or all the Items and/or any or all the Services under the Contract or identical or similar Items and/or Services from other sources and the Contractor shall bear all costs so incurred, if any.
- 20.5 Where the appointment of the Contractor under the Contract is terminated pursuant to Clause 20.1 above but it is subsequently established that there was no default on the part of the Contractor, the Contractor shall be paid for the Successful Acceptance of the Items and/or Services by the Company in accordance with the Contract prior to the date of termination.
- 20.6 Notwithstanding anything contained herein, the Contractor shall not be entitled to any other claim including but not limited to anticipated loss of profit and works-in-progress for the value of any of the Items not Successfully Accepted and/or any of the Services not performed prior to the termination of the Contract.

### **21 INDEMNITY**

- 21.1 If in the course of the use or operation of the Items and/or Services, any loss or expense is incurred by the Company or any damage to property occurs or death or personal injury is caused to any person and it is shown that such damage, death or injury is caused by any act, omission, default or negligence of the Contractor or any breach by the Contractor of the Contract, the Contractor shall indemnify the Company against any claims arising therefrom and all costs, charges and expenses (including reasonable legal fees) incurred thereby.
- 21.2 The Contractor shall be responsible for the payment of all premiums on insurances to be undertaken by the Contractor which shall become payable from time to time. Compliance with the foregoing requirements as to the effecting of insurance shall not relieve the Contractor of his liabilities and obligations in this Contract.

### **22 INDEMNIFICATION OF THE COMPANY AGAINST CLAIMS BY THE CONTRACTOR'S EMPLOYEES**

- 22.1 In the event of the Company (including for this purpose every employee, officer, staff and department thereof) being held liable for damages arising out of any claim by any workman or employee employed by the Contractor and/or by any third party, the Contractor shall indemnify the Company, its officers or agents or departments against such claim and any costs, charges and expenses in respect thereof.

### **23 INSURANCE FOR THE PURPOSE OF INDEMNIFYING THE COMPANY AGAINST CLAIMS BY THE CONTRACTOR'S EMPLOYEES**

- 23.1 The Contractor shall take out at his own expense with an insurance company to be approved by the Company, a policy or policies or insurance in terms to be approved by the Company, indemnifying the Company (including for this purpose every employee, officer, staff and department thereof) from all liabilities arising out of claims by any and every workman and employee of the Contractor and/or any third party employed in and for the performance of this Contract for payment of compensation under or by virtue of the Work Injury Compensation Act or any other laws amending or replacing such Act as well as from all cost and expenses incidental or consequential thereto. The Company may take actions as provided in Clause 23.2.2 hereof for any default of the Contractor in complying with the terms of this Clause.
- 23.2 .1 Any policies taken out by the Contractor in compliance with Clause 23.1 hereof shall be deposited with the Company or with such departments as the Company shall determine and the Contractor shall maintain such policy or policies in full force and effect by the payment of all premiums that may become due from time to time on the first day on which the same ought to be paid until

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completion of the Contract and shall, if the Company so directs, deposit with the Company the receipts in respect of the payments of such premiums.

- .2 If the Contractor defaults in complying with any of the terms of Clause 23.1 and/or Clause 23.2.1, the Company may without prejudice to any other right or remedy available to the Company for breach of any term of the Contract:
  - (i) withhold all payments which would otherwise be due to the Contractor under the Contract and out of such money so withheld satisfy any claim by workmen or employees that would have been borne by an insurance Company had the Contractor not defaulted in maintaining a policy of insurance, and/or
  - (ii) pay such premiums as may have become due and remain unpaid under the policy or policies taken out by the Contractor and deduct the amount of such premiums from any money due or becoming due to the Contractor.
- .3 Nothing in this Clause shall be construed to prejudice or to waive or in any manner to modify the right of the Company to be indemnified by the Contractor in respect of all claims, costs and other expenses whatsoever which by reason of the Contractor's default or otherwise may become payable by the Company.

### **24 REMEDIES FOR INFRINGEMENTS OF PATENT RIGHTS, INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES**

- 24.1 All royalties and fees whatsoever claimed by or payable to any person, firm, corporation or government for or in connection with any invention or patent or patent rights, copyrights and trademarks used or required to be used in respect of the Items and/or Service supplied under this Contract shall be deemed to be included in the Contract Price.
- 24.2 In the event of the Company (including for this purpose, every employee, officer, staff and department thereof) being held liable for damages arising out of any claim at any time on account of any intellectual property rights which may be held to have been infringed by virtue of the Company's acceptance, distribution, use, manufacture or possession of any of the Items and/or Services supplied under the Contract, the Contractor shall indemnify the Company and its employee, officer, staff or department against all such claims and any costs, charges and expenses incurred in respect thereof.
- 24.3 Without prejudice to the Company's rights under above Clause 24.2, in the event that any such infringement occurs, the Contractor shall at his own expense:
  - .1 procure for the Company the right to continue accepting, possessing, purchasing, distributing or using the infringing Items and/or Services; or
  - .2 modify or amend the infringing Items and/or Services so that the same becomes non-infringing without affecting the capability, capacity and performance of the Items and/or Services, or
  - .3 replace the infringing Items and/or Services by other Items and/or Services of identical capability, capacity and performance.
- 24.4 Intellectual property rights include but are not limited to inventions, patent rights, copyrights, registered design rights and trademarks.

### **25 FORCE MAJEURE**

- 25.1 The Contractor shall not be liable for any failure to comply with his obligations under this Contract where such failure is caused by an Act of God or Force Majeure such as any state of riot, civil commotion, strike, earthquake, lockout, fire, flood, war or acts of foreign enemies or perils of the sea (other than delays caused by Sub-Contractors), if they are beyond the control of the Contractor. The Contractor shall notify the Company in writing of the said failure within fourteen (14) days of the commencement of the event relied

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upon by the Contractor for its failure to comply with its obligations, failing which the Contractor shall not be entitled to rely on this Clause to absolve him any liability whatsoever.

- 25.2 In any of the events mentioned in Clause 25.1, the Contractor shall, for the duration of such event, be relieved of any obligation under this Contract as is affected by such event:

Provided that the provisions of the Contract shall remain in force with regard to other obligations of the Contractor under the Contract which are not affected by such event.

And Provided further that the Contractor shall, should the Company in writing so require, resume his full obligations under the Contract upon the cessation of such event.

- 25.3 Notwithstanding Clause 25.2 above, the Company shall, after giving fourteen (14) day's notice in writing to the Contractor, have the right to terminate the appointment of the Contractor under the Contract without being liable therefor in damages (including works-in-progress).
- 25.4 In the event of termination under Clause 25.3 above, the Contractor shall be entitled to payment for the Successful Acceptance of Items and/or Services that has been provided in accordance with the Contract prior to the date of termination.
- 25.5 Notwithstanding anything contained herein, the Contractor shall not be entitled to any other claim including but not limited to anticipated loss of profit and works-in-progress for the value of any of the rejected Items or any of the Services not performed prior to the termination of the Contract.

## **26 PROPRIETARY DATA**

- 26.1 Where as a result of carrying out its obligations under the Contract in respect of work designed by the Contractor for which the Contractor is to be paid by the Company, the Contractor generates proprietary technical data, then such data, know-how and other information shall become the property of the Company.
- 26.2 The Contractor shall not use any such proprietary technical data, know-how and other information save for the purposes of the Contract without the prior written authorisation of the Company even in the event of termination and/or expiry of the Contract.

## **27 SUSPENSION OR TERMINATION**

- 27.1 The Company shall, after giving thirty (30) days' notice in writing to the Contractor have the right to suspend or terminate the appointment of the Contractor under the Contract without being liable therefor in damages if the Company is affected by any state of war, Act of God, event seriously disrupting public safety, peace or good order of the Republic of Singapore or any circumstances beyond the control of the Company.
- 27.2 In the event of termination under the Clause 27.1 above, the Contractor shall be entitled to payment for the Successful Acceptance of Items and/or Services that has been provided in accordance with the Contract prior to the date of termination.
- 27.3 Notwithstanding anything contained herein, the Contractor shall not be entitled to any other claim including but not limited to anticipated loss of profit and works-in-progress for the value of any of the Items not Successfully Accepted or any of the Services not performed prior to the termination of the Contract.

## **28 INSOLVENCY**

- 28.1 The Company may at any time by notice in writing determine the appointment of the Contractor under the Contract without compensation to the Contractor in any of the following events:
- .1 if the Contractor, being an individual or, where the Contractor is a firm, any partner in that firm, shall at anytime become bankrupt, or shall have a bankruptcy order made against him, or shall make

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any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or

- .2 if the Contractor, being a Company, shall pass a resolution, or any court shall make an order, that the Company shall be wound up (otherwise than for purpose of amalgamation or reconstruction), or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the court or a creditor to appoint a receiver or manager or which entitle any court to make a winding up order or appoint a judicial manager; or
- .3 if the Contractor is insolvent or unable to pay his debts as they falls due.

Provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Company.

- 28.2 In the event of termination under Clause 28.1 above, the Company shall have the same right as stipulated in Clause 20.4.1 to Clause 20.4.4.
- 28.3 Any termination under Clause 28.1 above shall discharge the parties from any liability for further performance of the Contract and the Company shall be repaid forthwith any payment previously made on Items and/or Services which have not been Successfully Accepted (whether paid by way of deposit or otherwise) and shall also recover from the Contractor the amount of any loss or damage sustained or incurred by the Company as a consequence of such termination.

### **29 DEDUCTION FROM PAYMENT DUE**

- 29.1 The Company shall be entitled to withhold or deduct any payment due to the Contractor by reason of any default or breach of the Contract by the Contractor.
- 29.2 All costs, damages or expenses which the Company may have paid, for which under the Contract the Contractor is liable, may be deducted by the Company from any money due or becoming due to the Contractor under the Contract, without prejudice to the Company's rights for any other method of recovery of the same.

### **30 GIFTS, INDUCEMENTS AND REWARDS**

- 30.1 The Company shall be entitled to determine the appointment of the Contractor under the Contract and to recover from the Contractor the amount of any loss resulting from such determination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract with the Company or for showing or forbearing to show favour to any person in relation to any Contract with the Company, or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Company, the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Penal Code or under the Prevention of Corruption Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under the Penal Code or the Prevention of Corruption Act.

### **31 LICENCES AND AUTHORISATIONS**

- 31.1 The Contractor shall obtain, prior to the commencement of any work under the Contract, all licences and/or authorisation and permits and other governmental authorisations required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfill all its obligations under the Contract. All related fees incurred shall be deemed to be included in the Contract Price.
- 31.2 The failure of the Contractor to obtain all the necessary licences and/or authorisation or the withdrawal of any governmental licences and/or authorisation or the disapproval of the continuance of the Contract by any government authorities mentioned in Clause 31.1 above will not constitute a force majeure event and the

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Company shall in such an event be entitled to terminate the Contract forthwith without being liable in damages (including but not limited to loss of anticipated profits and any works-in-progress) and the Contractor shall refund forthwith all monies already paid in advance by the Company (less the price of any Items and/or Services Successfully Accepted). Such refund shall be a debt due from the Contractor to the Company.

### **32 GOVERNMENT REGULATIONS**

- 32.1 The Contractor shall be responsible for complying with all enactments, orders, rules, regulations or other instructions issued by the government statutory bodies or other competent authorities as may be in force from time to time.
- 32.2 The Contractor shall indemnify the Company against any penalties payable as a result of the Contractor's failure to comply with any of the said enactments, orders, regulations or other instructions and in addition the Company shall have the right to claim full compensation under Clause 15 (Delay in Supply And Delivery) in the event of the whole or any part of the Contract not being completed as a result of such failure to comply.

### **33 PROTECTION AND NON-DISCLOSURE OF INFORMATION**

- 33.1 Except with the consent in writing of the Company, the Contractor shall not disclose the Contract or any provision thereof, or any Specifications or information issued or furnished by or on behalf of the Company in connection therewith or in relation to the Company to any person, other than a person employed or engaged by the Contractor in carrying out the Contract or any Sub-Contractor, supplier or other person concerned with the same.
- 33.2 The Contractor shall treat the details of the Contract or any provision as private and confidential.

### **34 ARBITRATION**

- 34.1 Any dispute or difference arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference into this Clause. The Tribunal shall consist of one (1) arbitrator to be appointed pursuant to Rule 7 of the SIAC Rules.
- 34.2 Either party shall, within thirty (30) days from the date of dispute, question or difference, notify the other party in writing the specific nature, the point of issue and the same shall be referred to the arbitrator.
- 34.3 The commencement of any arbitration proceedings under this Clause shall in no way affect the continual performance of the obligations of the Contractor under the Contract, except insofar as such obligations relate to the subject matter of such proceedings.
- 34.4 All arbitration proceedings shall be conducted in the English Language.

### **35 APPLICABLE LAW**

- 35.1 The Contract shall be deemed to be made in Singapore and shall be subject to, governed by and interpreted in accordance with the Laws of Republic of Singapore for every purpose. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Contract is hereby expressly excluded.

### **36 VARIATION OF CONTRACT**

- 36.1 No variation in any part of the Contract shall apply thereto unless such variations are evidenced in writing and agreed upon by both parties.

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36.2 Any goods, materials and plant omitted from the Contract which may reasonably be implied or inferred and in the opinion of the Company are necessary for the efficient completion of this Contract shall be executed by the Contractor accordingly, as if they had been expressly described in the Specification and expressly shown in the drawings and the costs thereof shall be deemed to be included in and covered by the Contract Price.

### **37 WAIVER**

37.1 Unless the contrary is specifically and expressly provided for in this Contract:

- .1 Failure of the Company to enforce any provision or right of this Contract or failure to exercise any election shall not constitute a waiver of such provision, right or election.
- .2 No waiver, election, renunciation or affirmation by the Company shall be effective unless it is expressly so stated in writing and signed by the Company's authorised representatives.
- .3 If there is any lawful reason for the Company's exercise of a right, then the exercise of that right shall be lawful notwithstanding that it was stated to be exercised for a mistaken reason.
- .4 All the rights of the Company in this Contract or otherwise are cumulative and the exercise of any right by the Company shall not be considered a waiver of an estoppel against the exercise of any other right by the Company.

### **38 WAIVER OF SOVEREIGN IMMUNITY**

38.1 In the event that the Contractor is owned whether in part or in whole by a government or state, the Contractor hereby waives the defence of sovereign immunity in any forum in which a dispute is to be resolved and further consents to the jurisdiction of such forum over the Contractor.

### **39 USE OF RESOURCES**

- 39.1 Wherever and to whatever extent possible, the Contractor shall include the use of local resources as to labour, materials and equipment where these are available and adequate.
- 39.2 The Contractor shall make his own arrangements for the engagement of all labour, local or foreign, and at all times ensure that his local workmen or foreign workers with valid work permits to comply with any instructions or orders issued by the Company whilst working at the site / stores.
- 39.3 The Contractor shall ensure that no person who has entered illegally into Singapore in contravention of the provisions of the Immigration Act or any statutory modification or re-enactment thereof (hereinafter called Illegal Immigrant) shall be employed by him or his Sub-Contractor in the execution of any part of the work. If any illegal immigrant is found to be so employed, the Company shall, notwithstanding the provision of this Contract, be entitled to withhold any payment due to the Contractor for a period of two (2) months and the Company shall not be liable for any loss or damage suffered by the Contractor as a result of any payment being so withheld. In addition, the Company reserves the right to impose such other measures as debarment of the Contractor.
- 39.4 No child under the age of fourteen (14) years shall be employed in any work to be performed under this Contract.

### **40 WITHHOLDING TAX FOR FOREIGN CONTRACTOR**

40.1 If the Contract is awarded to a Contractor who is non-resident in Singapore, the Contractor shall obtain a letter from the Inland Revenue Authority of Singapore ("IRAS"), indicating the amount of withholding tax, if any, to be deducted from any payment due to the foreign Contractor.

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40.2 If the above mentioned letter is not received by the Company, any payment due to the Contractor shall be withheld (without payment of any interest) pending receipt of the letter. Withholding tax as advised by IRAS shall be deducted from any payment due to the Contractor.

### **41 STANDARDS AND CODES OF PRACTICE**

41.1 It shall be the responsibility of the successful Contractor to ensure and furnish evidence that all Items and/or Services to be supplied by him must conform to all relevant, current Singapore Laws, Standards and Codes of Practice. The Contractor shall bear all costs associated with the testing of his Items and/or Services for this purpose by the relevant authorities.

41.2 No claims for extra payment will be entertained by the Company in this regard.

41.3 The Contract shall comply with the Tripartite Guidelines on fair employment practice as advised by Tripartite Alliance For Fair Employment Practices (TAFEP) and Code of Conduct and/or Policies and/or Procedures issued by the Company from time to time in relation to the Company's health and safety procedures.

### **42 THIRD PARTIES**

42.1 A person who is not a party to this Contract shall not have any right under the Contracts (Rights of Third Parties) Act to enforce any term of this Contract.

### **43 LANGUAGE**

43.1 All business and correspondence relating to this Contract, both written and verbal, shall be conducted in the English language.

### **44 COMMUNICATION**

44.1 Any notice or other communication requesting information and clarification of any matters, sent by the Company or Contractor to either party shall be deemed to be properly sent if it is sent by hand, or under registered mail cover or by confirmed facsimile to the Contractor's or Company's address as specified in the Contract to the duly authorised representative unless otherwise stated.

### **45 REASONABLENESS**

45.1 Both parties agree that the clauses stated in this Contract are reasonable.

### **46 SURVIVAL**

46.1 All clauses of this Contract so intended to survive after termination or expiration of the appointment of the Contractor under the Contract shall survive such termination or expiration.

### **47 PERSONAL DATA PROTECTION**

47.1 The Contractor shall comply with the Personal Data Protection Act ("PDPA") and the Contractor will take such action to ensure that the Company will be in compliance with PDPA. Without limiting the foregoing, the Contractor shall:

- (i) process all and any personal data ("**Personal Data**") given by the Company or on behalf of the Company pursuant to this Contract for the purposes of performing this Contract only;



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- (ii) at all times comply with the PDPA, including to:
  - a. implement appropriate security measures to protect Personal Data against unauthorised or unlawful processing, access, collection, use, disclosure, copying, modification, disposal or similar risks, and against accidental loss, destruction, damage, alteration or disclosure; and
  - b. cease retention of all documents and materials which contain Personal Data, or remove the means by which Personal Data can be associated with particular individuals, as soon as the Personal Data is no longer required for the purposes of performing this Contract; and
- (iii) obtain prior written consent from the Company before transferring any Personal Data outside of Singapore, or to any third parties.

The Contractor, for itself and on behalf of its employees, its contractors and agents and their respective employees (collectively "Representatives"), consents to the collection, usage, storage, process and disclosure by the Company of any Personal Data relating to the Contractor or its Representatives for the purpose of this Contract.