

PURCHASE ORDER

GENERAL TERMS AND CONDITIONS OF PURCHASE

Unless specifically stated otherwise, the following clauses shall form the terms and conditions of this CONTRACT.

1.0 DEFINITIONS

1.1 Unless the context otherwise requires, the following terms and expressions whenever use herein shall have the following meanings

ACCEPTANCE shall mean the date where E+H has agreed and accepted that the WORK has been completed in accordance with the CONTRACT and at the expiration of the last GUARANTEE PERIOD;

ACCEPTANCE CERTIFICATE shall mean the certificate issued by E+H upon ACCEPTANCE;

CLIENT shall mean (COMPANY name), a company incorporated in Malaysia and having its place of business at (COMPANY add) for which the MATERIALS OR EQUIPMENT are to be purchased under the CONTRACT and includes its legal successors or assignees;

CLIENT GROUP shall mean the CLIENT and its affiliates, its co-ventures and its and their respective directors, officers and employees (including agency personnel);

CHANGE NOTICE shall have the meaning assigned to it in Clause 13.3;

CHANGE ORDER shall mean a document to be issued by E+H which sets forth changes in the CONTRACT and adjustments to the PURCHASE ORDER PRICE or schedule or both, and which sets forth the basis on which the SUPPLIER will be compensated for the change, if applicable;

CONFIDENTIAL INFORMATION shall have the meaning assigned to it in Clause 22.0;

CONTRACT shall mean this General Terms and Conditions of Purchase, the PURCHASE ORDER and includes any other documents referred to therein;

DAYS shall mean "consecutive calendar days", it being understood that all dates and time periods referred to in the CONTRACT relate to the Gregorian calendar;

DELIVERY DATE shall mean the date on which the MATERIALS OR EQUIPMENT are to be delivered by the SUPPLIER as further stipulated in Clause 8.3, which may be amended pursuant to the provisions of CHANGE ORDER;

EFFECTIVE DATE shall mean the date of the PURCHASE ORDER;

E+H shall mean Endress+Hauser (M) Sdn Bhd (Co No. 189877-M), a company incorporated under the laws of Malaysia and having its registered address at Unit 30-01, Level 30, Tower A, Vertical Business Suite, Avenue 3, Bangsar South, No. 8 Jalan Kerinchi, 59200 Kuala Lumpur;

FORCE MAJEURE shall have the meaning assigned to it in Clause 20.1;

GUARANTEE PERIOD shall mean the period of Eighteen (18) months after completion of WORK or any extensions thereof in accordance with the provisions of Clause 9.2;

INCOTERMS shall mean the Incoterms 2010 or latest applicable on the date of this CONTRACT, issued by the International Chamber of Commerce, Paris, France;

MATERIALS OR EQUIPMENT shall mean all equipment, tools, materials and consumables which are fit for the intended purpose and as identified in the SPECIFICATIONS which the SUPPLIER is required to supply and deliver to E+H in accordance with the CONTRACT;

PARTIES shall collectively mean E+H and the SUPPLIER;

PURCHASE ORDER shall mean E+H form of purchase order as attached in Attachment A herein and governed by this CONTRACT;

PURCHASE ORDER PRICE shall mean the fixed lump sum price as specified in PURCHASE ORDER, in consideration of which the SUPPLIER has agreed to execute the WORK;

SPECIFICATION shall mean any and all specification, drawing, schedule and technical document as set forth the PURCHASE ORDER;

SUPPLIER shall mean [xxxxxxx] and having its registered address at [xxxxxx];

SUPPLIER GROUP shall mean the SUPPLIER, sub-suppliers and to the extent they are involved in the subject matter of the PURCHASE ORDER his/their respective affiliates and SUPPLIER's personnel or any of the foregoing as the case may be;

SITE shall mean the place of delivery as stated in the form of the PURCHASE ORDER; and

WORKS Shall have the meaning assigned in Clause 2.1.

1.2 Unless the AGREEMENT otherwise requires:

- (a) References to the masculine gender includes the feminine and vice versa;
- (b) Headings and table of contents are for ease of reference only;
- (c) Words importing the singular number includes the plural number and vice versa; and
- (d) Words denoting the natural person include anybody or person corporate or incorporate.

1.3 Where special conditions are stated or attached to the form of the PURCHASE ORDER, those conditions shall apply equally with the general terms and conditions shown herein except where there is any inconsistency between the general and special conditions, the special conditions shall apply.

1.4 In the event of any ambiguity, inconsistency or contradiction between the provisions of these general terms and conditions and the attachments hereto and made part thereof, these general terms shall take precedence and prevail over the attachments.

1.5 In the event of any ambiguity, inconsistency or contradiction between the attachments, E+H shall decide which attachment(s) should prevail over the others.

1.6 Subject to Clause 1.5 above, the SUPPLIER shall immediately notify E+H of any ambiguity, inconsistency or contradiction between any of the attachments. E+H shall then issue instructions regarding these documents. Should the SUPPLIER fail to give notice to E+H or fail to discover such ambiguity, inconsistency or contradiction as should reasonably have been discovered by a prudent supplier and/or contractor, all extra costs resulting from such failure shall be on the SUPPLIER's account.

2.0 SCOPE OF WORKS

2.1 The WORK under this CONTRACT comprises the fabrication, assembling, testing, supply and delivery of the MATERIALS OR EQUIPMENT by the SUPPLIER at SITE and shall also include services to be performed by the SUPPLIER as required or may be required by E+H as expressly set forth in the PURCHASE ORDER and/or any part thereof and also all other activities that are reasonably inferable from the description of the WORK. This shall include WORK performed or MATERIALS OR EQUIPMENT supplied pursuant to any authorisation for work, services or changes and/or CHANGE ORDER which will be issued to the SUPPLIER from time to time and shall become part of the scope of work whereby all terms and conditions of this CONTRACT shall govern.

2.2 The SUPPLIER represents and warrants that the SUPPLIER knows and understands the nature and scope of WORK as well as the general and local conditions and other matters which could affect the performance of the WORK. The SUPPLIER's failure to become knowledgeable about or to discover the matters that could affect the WORK shall not relieve the SUPPLIER from its obligations under this CONTRACT. The SUPPLIER shall be deemed to have fully understood the scope of WORK to be provided under this CONTRACT.

3.0 PURCHASE ORDER PRICE

3.1 In full consideration of the execution of the WORK and the fulfilment of the SUPPLIER's other obligations under this CONTRACT E+H shall, subject to the provisions of this CONTRACT, pay to the SUPPLIER the PURCHASE ORDER PRICE consisting of an all-inclusive non escalating fixed lump sum or as better described in PURCHASE ORDER herein.

3.2 Subject to the relevant provisions of the INCOTERMS applicable under Clause 8.1, it is understood and agreed that the above PURCHASE ORDER PRICE shall include all costs, rentals, royalties, insurance, premiums, fees, charges, taxes, levies, imposts or import or other duties of whatever nature required to be paid in connection with the WORK and/or the payment of the PURCHASE ORDER PRICE.

3.3 The PURCHASE ORDER PRICE shall be adjusted to take account of any increase or decrease in the PURCHASE ORDER PRICE resulting from a change in the laws of Malaysia (including orders, regulations, decrees) which affects the taxes or duties (but not personal income tax or corporate taxes) and becomes effective after the EFFECTIVE DATE and which materially affect the SUPPLIER in the performance of its obligations under the CONTRACT. If the SUPPLIER incurs additional costs solely as a result of such change in law, the SUPPLIER shall give reasonable notice to E+H and the SUPPLIER may claim for such additional cost to the extent which directly is attributable to such change in law.

3.4 In the event of any approved CHANGE ORDER(S), the PURCHASE ORDER PRICE and/or DELIVERY DATE shall be adjusted accordingly.

4.0 SCHEDULE OF PAYMENT AND PAYMENT TERMS

4.1 Payment of the PURCHASE ORDER PRICE shall be in accordance with this CONTRACT.

4.2 The SUPPLIER shall submit invoices and supporting documents on the progress of the WORK for any of the instalments due for payment. Such invoices shall be signed and verified and submitted together with supporting documents to show that such WORK has been accomplished to the satisfaction of E+H. Upon verification of the supporting documents, E+H shall make payment by Telegraphic Transfer remittance for undisputed items in such invoices within thirty (30) days after E+H's receipt of SUPPLIER duly signed undisputable invoice together with all the other required documents. If the thirty (30th) day falls on a Sunday, banking holiday or gazetted public holiday, the next working day shall be deemed to be the due date for payment. Payments in respect of disputed items shall be withheld by E+H until the settlement of the dispute by mutual agreement, or in accordance with Clause 23.0, or back charges filed against SUPPLIER by E+H. All payments made by E+H shall not preclude the right of E+H from thereafter disputing any of the items invoiced.

4.3 Should E+H dispute any item or amount in any invoice submitted by SUPPLIER, E+H shall so notify SUPPLIER within ten (10) days following receipt of the invoice, specifying E+H's complaints.

4.4 E+H shall be entitled to withhold payment for the following reasons:

- If any of the SUPPLIER's invoices do not include the supporting documents required by E+H;
- On account of defective WORK done and not remedied by the SUPPLIER;
- Unsatisfactory performance of the WORK;
- The filing of claims against E+H caused by acts or omissions of the SUPPLIER;

4.5 E+H has the right to enforce SUPPLIER to continue with WORK and/or Scope of WORKS while pending CHANGE ORDER from E+H. The CHANGE ORDER periods are within twenty one (21) calendar Days.

4.6 All payments to be made under any of the provisions of this CONTRACT shall be made in Ringgit Malaysia or any other currency as may be agreed in writing by the Parties, at the bank(s) to be designated by the SUPPLIER in writing.

4.7 Payments made under this CONTRACT shall not constitute an admission by E+H as to the performance by the SUPPLIER of its obligations hereunder and in no event shall any such payment affect the warranty obligations of the SUPPLIER. Any payment withheld shall be without prejudice to any other rights or remedies available to E+H.

4.8 SUPPLIER shall submit undisputed Invoice not later than three (3) months from approved Goods Receive Note (GRN) / Acceptance Certificate. Failing which E+H have the rights to not process the said Invoice.

5.0 SUPPLIER'S OBLIGATIONS

5.1 The SUPPLIER represents and warrants that all MATERIALS OR EQUIPMENT supplied by the SUPPLIER under this CONTRACT shall be:

- New, unused, of current production / technology, fully functional, shall conform to the standards as specified in this PURCHASE ORDER and shall have the GUARANTEE PERIOD as specified herein;
- Fit for the purpose and that no prototype equipment shall be offered;
- Free from any defects; and
- Free and clear from all liens, taxes and encumbrances.

5.2 The SUPPLIER further represents and warrants that all MATERIALS OR EQUIPMENT supplied to E+H shall be free from any defects.

5.3 The SUPPLIER shall commence the WORK immediately after the EFFECTIVE DATE and shall prosecute the completion thereof with diligence and dispatch and in an expeditious manner.

5.4 The SUPPLIER represents and warrants that the WORK under this CONTRACT shall be performed in accordance with the good principles and accepted professional standards, in line with the good engineering practice, and meeting the intents and objectives of this CONTRACT. If any WORK or part thereof fails to meet the aforementioned standards, the WORK or any portion thereof shall be deemed to be deficient, in which event the SUPPLIER shall immediately correct the situation, deficient services, mistake, fault, omission or damages at the SUPPLIER's sole expense without limitation. Failure on the part of E+H to notify the SUPPLIER of any deficiency shall not exempt the SUPPLIER from liability under this CONTRACT.

5.5 The SUPPLIER shall be responsible for the interpretations made by the SUPPLIER in translating the data, information and requirements of this CONTRACT into WORK performed by the SUPPLIER based on data or information not contained in this CONTRACT.

5.6 The SUPPLIER shall instruct its personnel to perform the WORK in accordance to protect E+H's interests.

5.7 The SUPPLIER represents and warrants that the SUPPLIER shall employ on the WORK only competent and skilled personnel and shall ensure that all such personnel continue in the functions and responsibilities to which they are initially assigned for as long as it is necessary to achieve proper completion of the WORK

5.8 The SUPPLIER represents and warrants that the SUPPLIER and its personnel possess all the necessary and relevant qualifications, experience and expertise in respect of the WORK to be performed herein and are, therefore, competent and willing to perform the WORK in accordance with this CONTRACT.

5.9 The SUPPLIER declares and warrants that SUPPLIER's PERSONNEL engaged in the performance of this CONTRACT are legally employed in accordance with the applicable laws and shall be responsible for payment of wages, salaries, bonus, overtime and any other allowances reasonably earned by its personnel and shall make all appropriate deductions from their salaries in respect of any employee contributions and the SUPPLIER hereby shall indemnify E+H against any liability in respect thereof.

5.10 Subject to the relevant provisions of the INCOTERM applicable under Clause 8.1, the SUPPLIER and its personnel shall pay all taxes which shall be properly and lawfully assessed or imposed on the SUPPLIER or its personnel in connection with the WORK. For the purpose of this Clause, "tax" includes any tax, duty or charge and any penalty or interest thereon and any other costs and charges whatsoever assessed or imposed by the Government of Malaysia or any relevant authority having jurisdiction in respect of the matter.

5.11 The SUPPLIER shall ensure that its personnel comply with any reasonable requests or instructions given by E+H under the provisions of the PURCHASE ORDER and in particular with any safety and/or security regulations or instructions which are enforced from time to time at E+H'S facilities where the SUPPLIER's personnel are performing their duties for E+H.

5.12 The SUPPLIER represents and warrants that it and each of its sub-contractors has or shall obtain the necessary tools, equipment and personnel and that it and its sub-contractor shall maintain and use all tools and equipment in accordance with the manufacturer's specifications and recommendations and good engineering and operational practices.

5.13 SUPPLIER warrants, in respect of this CONTRACT or the matters which are the subject of this CONTRACT, that he has not made or offered and will not make or offer any payment, gift, promise or other advantage, whether directly or through intermediaries, to or for the use of any public official (i.e. any individual holding a legislative, administrative or judicial office, including any person exercising a public function for a public agency, a public enterprise or a public international organisation), where such payment, gift, promise or advantage would violate the applicable laws or the principles described in the bribery and corruption under the Malaysian Anti-Corruption Commission Act 2009 (Act 694). For purposes herein, a bribe or gratification is any gift, payment, benefit or other advantage, pecuniary or otherwise, offered, given or received in order to secure an undue or improper result, award, decision, benefit or advantage of any kind.

6.0 INSPECTION

6.1 The SUPPLIER shall be responsible for ensuring that all inspections and testing of the MATERIALS OR EQUIPMENT and WORK are carried out in accordance with generally accepted industry standards applicable to an international supplier and shall provide such inspection and testing plan to E+H.

6.2 E+H or any third party appointed by E+H shall have the right at all reasonable times to inspect or witness any test of any part of the WORK at any place where the WORK is being performed. Inspection, witnessing or the lack of both by E+H shall not be construed as acceptance of any part of the WORK, nor as relieving the SUPPLIER of its obligation to fulfil all requirements of the WORK and responsibility for ensuring that the WORK complies with the PURCHASE ORDER and that the same is free from defects and capable of performing its function.

6.3 E+H or its appointed contractor shall have the right to visit the SUPPLIER's plants and visit those of SUB-SUPPLIERS' at any place where the GOODS is being manufactured / supplied for expediting purposes at any time prior to shipment of GOODS. SUPPLIER and its SUB-SUPPLIER shall provide access to their works at all times to E+H or its appointed contractor. The SUPPLIER's sub-orders must carry a note to this effect. For avoidance of doubt, E+H has the right to communicate with SUPPLIER's SUB-SUPPLIERS during the execution of the order for expediting purposes at any time prior to shipment of GOODS.

6.4 The making or failure to make or observe any inspection or test of the MATERIALS OR EQUIPMENT and WORK shall in no way relieve SUPPLIER of his obligations to comply with all requirements of the CONTRACT.

6.5 E+H or their designated inspectors may reject any MATERIALS OR EQUIPMENT and WORK that fails in any way to conform to the SPECIFICATION in the PURCHASE ORDER. In the event of rejection of any MATERIALS OR EQUIPMENT and WORKS by E+H or their designated inspectors, the SUPPLIER shall at its own cost and expense rectify non-conforming MATERIALS OR EQUIPMENT and WORK, which shall be subject to re-inspection/re-testing. The SUPPLIER shall not be entitled to an extension of DELIVERY DATE nor additional costs because of such re-inspection/re-testing.

7.0 PACKING, MARKING AND SHIPPING

7.1 The MATERIALS OR EQUIPMENT shall be properly packed for transportation in such conditions as stated in the requirements of the PURCHASE ORDER. The SUPPLIER shall notify E+H of the firm delivery date at least 7 days before the DELIVERY DATE.

7.2 The SUPPLIER shall be responsible for any loss of or damage to the MATERIALS OR EQUIPMENT caused by improper packing performed by the SUPPLIER and shall at its own costs and expenses including those for export packing and transportation to the port of export and as within 48 hours make all repairs, replacements or supplements of the MATERIALS OR EQUIPMENT as are necessitated by such loss and/or damage.

7.3 The SUPPLIER shall furnish E+H with all shipping documents such as pro forma invoices, packing lists which shall be detailed and itemized, bills of lading, certificate of origin and other documents. All documents needed for customs clearance and transportation.

8.0 DELIVERY OF MATERIALS OR EQUIPMENT

8.1 The supply and delivery of the MATERIALS OR EQUIPMENT shall be governed by and construed in accordance with the INCOTERMS stated in PURCHASE ORDER.

8.2 The SUPPLIER shall ensure that the MATERIALS OR EQUIPMENT are delivered to the SITE on the scheduled DELIVERY DATE and shall perform the WORK in accordance with the terms and conditions of this CONTRACT.

8.3 The "scheduled DELIVERY DATE" for the MATERIALS OR EQUIPMENT shall be the date for delivery stated in the form of the PURCHASE ORDER.

8.4 Without prejudice to the SUPPLIER's obligation to deliver the MATERIALS OR EQUIPMENT on time, the SUPPLIER shall give E+H notice in writing immediately should any delay be foreseen thereby. Failure by the SUPPLIER to deliver the MATERIALS OR EQUIPMENT on the scheduled DELIVERY DATE or such other date as may be subsequently agreed by the Parties shall entitle E+H to terminate the CONTRACT without any penalty to E+H or alternatively, at the option of E+H, the SUPPLIER shall be liable to pay to E+H liquidated damages in accordance with the provisions of Clause 14 .0.

8.5 SUPPLIER shall at all times, control the progress of the WORK to achieve delivery/completion on or before the scheduled DELIVERY DATE and shall give evidence of progress to the WORK upon E+H's request within a reasonable time. In the event E+H is of the reasonable view that the DELIVERY DATE will not be met from the evidence of progress provided by the SUPPLIER, E+H shall have the right (but not the obligation) to instruct the SUPPLIER to accelerate the WORK as the case may be and the SUPPLIER shall at their own cost and expense, adhere to E+H's reasonable instructions.

8.6 Nothing contained herein shall preclude E+H's right, at any time during the continuance of this CONTRACT, to reject the MATERIALS OR EQUIPMENT or any part thereof in the event the MATERIALS OR EQUIPMENT or part thereof do not comply with the requirements of this PURCHASE ORDER.

8.7 All MATERIALS OR EQUIPMENT from SUPPLIER shall be delivered and accepted by E+H's warehouse prior to issuance to E+H's requester of the said MATERIALS OR EQUIPMENT. Any request for direct delivery of MATERIALS OR EQUIPMENT to E+H's requester of the said MATERIALS OR EQUIPMENT must be properly documented and coordinated with the E+H's warehouse.

8.8 Upon delivery of MATERIALS OR EQUIPMENT at SITE and also for final documentation, SUPPLIER shall provide to E+H the original or certified true copy of the MATERIALS OR EQUIPMENT's certificate and test reports (e.g. Positive Material Identification (PMI), hydro test, painting, etc.) at SUPPLIER's cost. In the event the original is not available, the certified true copy of such certificate and test reports shall be verified and signed by third party certification agency.

9.0 WARRANTIES AND GUARANTEES

9.1 The SUPPLIER warrants and guarantees to E+H and E+H's client that:-

- The WORKS shall comply in every respect with any specifications, drawings and other data forming part of the PURCHASE ORDER;
- The WORKS shall be of good quality, fit for purpose for which it is generally intended and/or for which E+H has informed the SUPPLIER or SUPPLIER has represented it is intended, free from defective materials, design defects or workmanship defects and shall be completed without any omission; and
- The WORKS performed under this PURCHASE ORDER shall be in accordance with good principles and accepted professional standards and meeting the intents and objectives of the CONTRACT.

9.2 The SUPPLIER shall be responsible for making good, with all possible speed, any failure of omission and defects in the WORKS or any portion thereof which may appear or occur during the GUARANTEE PERIOD. Remedied WORK shall be at the SUPPLIER's cost and shall carry an additional eighteen (18) months guarantee from the period the WORK is remedied.

If the defect so requires, the SUPPLIER shall bear the costs of dismantling, transportation (including transportation between the onshore base and the offshore site), re-assembly and re-installation of any MATERIALS OR EQUIPMENT affected under this guarantee. The SUPPLIER shall collect the defective item from MMHE and/or CLIENT's designated collection area, rectify the performance under the CONTRACT, if any and deliver the repaired item to the same point.

9.3 If the SUPPLIER does not repair and/or replace the MATERIALS OR EQUIPMENT as provided herein in a timely manner satisfactory to E+H, E+H may, on behalf of the SUPPLIER, perform or have performed some or all part of such remedial work or replacement of the MATERIALS OR EQUIPMENT with notice to the SUPPLIER. The SUPPLIER shall reimburse E+H for all costs and expenses incurred in connection with such performance. These shall include:

- The cost of detection of the defect, removal, transportation, repair, replacement, reinstallation, inspection, re-testing of the MATERIALS OR EQUIPMENT;
- Cost of E+H and/or CLIENT's own personnel together with the proven cost of delay to work of other SUPPLIER caused (if applicable), subject to a maximum of ten (10) % of the PURCHASE ORDER PRICE;
- Other resulting loss or damage incurred by E+H that is not excluded under Clause 29.0 herein or stipulated as the responsibility or liability of the Parties under this CONTRACT.

9.4 Notwithstanding the foregoing, subject to E+H having given prior notice to the effect, repairs or rectification may be carried out or replacements may be made either by E+H or a third party on their behalf, in the event that:

- (a) It would be unreasonable or impractical to give the SUPPLIER an opportunity of inspection and/or remedying defects; or
- (b) There is a threat of further damage or loss, including those as a consequence of delay in installation work or operations.

The cost for the above repairs or rectification shall be at the SUPPLIER's account.

9.5 The SUPPLIER's liability hereunder shall extend to all damages proximately caused by the omissions or defects, including incidental damages such as removal, inspection, costs of return or storage.

9.6 The foregoing warranty shall not apply:

- (a) To normal wear and tear;
- (b) To damage proven to be caused by a THIRD PARTY, or to prove misuse by E+H unless such damage or misuse is due to the SUPPLIER GROUPS acts, omissions, faulty instructions or negligence.

Unless otherwise specified in the PURCHASE ORDER, foregoing warranty does not apply to any item which is furnished by E+H as a component part of the MATERIALS OR EQUIPMENT.

9.7 During the duration of the GUARANTEE PERIOD, the SUPPLIER shall indemnify and keep indemnified E+H against injury (including death) to any person or loss of or damage to any property of E+H which may arise as a result of the defective materials, design defects or workmanship defects of the WORKS and against all claims, demands, proceedings, damages, cost, change and expenses whatsoever in respect thereof or in relation thereto.

10.0 SUPERVISORY SERVICES

10.1 E+H may require the SUPPLIER to furnish supervisory services at the site, or at the locations described in the PURCHASE ORDER or instructed by E+H from time to time. The scope of supervisory services, daily rates, anticipated periods and other conditions for such supervisory services, or as otherwise may be mutually agreed upon between E+H and the SUPPLIER.

10.2 If it is required that the SUPPLIER render supervisory services by dispatching its personnel to the site under the CONTRACT or by separate agreement between E+H and the SUPPLIER, the SUPPLIER shall be responsible (at its own costs and expense) for obtaining visas, work permits or such other permits, licenses or approval, and procuring any insurances, necessary for the performance of the supervisory services, and procuring any necessary insurances.

10.3 If E+H is of the opinion that any person dispatched by the SUPPLIER for the supervisory services is not qualified or capable of performing its duties properly and efficiently, E+H may instruct the SUPPLIER to remove such person from the site and replace such person immediately with a qualified person at its costs and expenses. The SUPPLIER shall comply with such instruction without delay.

11.0 TITLE AND RISK

11.1 Title and risk in the WORKS shall remain with the SUPPLIER until they are delivered at SITE or in accordance with the relevant provision of INCOTERMS. At such time, title and risk shall transfer to E+H. However, until such title is passed to E+H, E+H shall have a lien on all of the SUPPLIER's materials and supplies forming part of the WORKS arising from the PURCHASE ORDER and other payments made by E+H to the SUPPLIER.

11.2 Notwithstanding anything to the contrary, the passing of title and risk of WORK shall not affect the right to reject the WORKS.

11.3 In the case of WORKS delivered by the SUPPLIER not conforming with the CONTRACT whether by reason of not being of the quality or in the quantity or measurement stipulated or being unfit for the purpose for which they are required, E+H shall have the right to reject such WORKS within a reasonable time of their delivery and inspection and to purchase elsewhere and to claim for any additional expense incurred without prejudice to any other right which E+H may have against the SUPPLIER. The making of any prior payments by E+H shall not prejudice E+H's right of rejection.

12.0 PERFORMANCE BOND

12.1 If applicable, the SUPPLIER shall provide a Performance Bond/Bank Guarantee in the form of an irrevocable and unconditional bank guarantee payable on demand in favour of E+H in an amount equal to ten percent (10%) of the PURCHASE ORDER PRICE from a bank operating in Malaysia acceptable to E+H within fourteen (14) days from the EFFECTIVE DATE to guarantee the performance of the SUPPLIER's obligations under this CONTRACT. The Bank Guarantee shall be valid throughout the EFFECTIVE DATE until the end of the GUARANTEE PERIOD. However, the SUPPLIER shall be entitled to reduce the value of the Bank Guarantee to 5% of the PURCHASE ORDER PRICE (as adjusted) at the commencement of the GUARANTEE PERIOD. Any

failure to provide the Bank Guarantee shall be deemed to be a default of the SUPPLIER. (Bank Guarantee for performance from a bank nominated by SUPPLIER and approved by E+H in the form set out in PURCHASE ORDER).

12.2 This Bank Guarantee shall apply to the CONTRACT including all indulgences, changes, alterations, incorrect payment or extensions as may be made, given, conceded or agreed under the CONTRACT whether or not the guarantor received notice of the same and the guarantor shall waive all need for notice of the same.

12.3 E+H shall not be obliged to make any payments to the SUPPLIER under the CONTRACT until it has received a Bank Guarantee in compliance with this Clause.

12.4 In the event that the ACCEPTANCE and/or any guarantee period under the CONTRACT is extended for any reason whatsoever such that the validity of the Bank Guarantee is not in compliance with this Clause, the SUPPLIER shall at its own cost and expense, extend the validity of the Bank Guarantee. The SUPPLIER shall forward to the PURCHASER original written confirmation from the guarantor of the extension of the validity of the Bank Guarantee not less than seven (7) days prior to the expiry of the Bank Guarantee failing which the E+H compliance with this Clause, the SUPPLIER shall at its own cost and expense, extend the validity of the Bank Guarantee. The SUPPLIER shall forward to the PURCHASER original written confirmation from the guarantor of the extension of the validity of the Bank Guarantee not less than seven (7) days prior to the expiry of the Bank Guarantee failing which the E+H shall be entitled to call on the Bank Guarantee without any prior notice to the SUPPLIER for the full value of the Bank Guarantee which said sum shall be held in trust for the PURCHASER free from interest subject to E+H has a right to make such deductions there from as are due to E+H under the CONTRACT.

12.5 The Bank Guarantee shall be valid until the end of the GUARANTEE PERIOD and in the event of there being more than one guarantee period, the Bank Guarantee shall be valid until the end of the last guarantee period under the CONTRACT.

12.6 If the Bank Guarantee to be furnished pursuant Clause 12.1 is not duly furnished by the SUPPLIER to E+H within the stipulated period, E+H may at its option without prejudice to any rights or claims it may have against the SUPPLIER by reason of the SUPPLIER's non-compliance with any of the provisions of this CONTRACT, terminate the CONTRACT by notice in writing to the SUPPLIER. E+H shall thereupon not be liable for any claim or demand from the SUPPLIER under the provisions of the CONTRACT in respect of anything than already done or furnished, or in respect of any matter or thing whatsoever in connection with or relating to the CONTRACT, but E+H shall be entitled to be repaid by the SUPPLIER for all out-of-pocket expenses incurred by E+H incidental to the obtaining of a new contractor.

13.0 CHANGE

13.1 E+H may, at any time during the continuance of this CONTRACT and the execution of the WORKS instruct the SUPPLIER to alter, amend, omit, change, modify, and add to reduce or otherwise vary any part of the WORKS or the MATERIALS OR EQUIPMENT and the SUPPLIER shall carry out such changes under the terms and conditions of this CONTRACT.

13.2 The SUPPLIER shall not make changes to the WORKS or MATERIALS OR EQUIPMENT without an order in writing from E+H.

13.3 On receipt of any written order from E+H requiring a change in the WORK or MATERIALS OR EQUIPMENT which may, in the opinion of the SUPPLIER, involve a change in the PURCHASE ORDER PRICE and/or schedule, the SUPPLIER shall, within fourteen (14) days of such change to the PURCHASE ORDER was made as stated in Clause 13.1, advise E+H to that effect by submitting a CHANGE NOTICE. Any CHANGE NOTICE not submitted within the prescribed period herein shall not be admissible.

13.4 If E+H satisfied with the submissions contained in the CHANGE NOTICE, E+H shall thereafter issue CHANGE ORDER.

13.5 In the event that the SUPPLIER and E+H fail to agree on the change, upon E+H's request the SUPPLIER shall be required to carry out such work pending the agreement on the change. If a dispute persists, the procedure outlined in Clause 23.0 shall apply. The change in cost to E+H, if any occasioned by any such variations shall be added to or deducted from the PURCHASE ORDER PRICE, as the case may be. Following approval by E+H, such CHANGE ORDER shall be deemed to form part of this CONTRACT.

13.6 The SUPPLIER acknowledges that there shall be no claims for any increase in the amount of work undertaken or to be undertaken which can be inferred from the SPECIFICATION or for rectification work or modifications whether or not related to design and/or other errors, mistakes, omissions, and lack of accuracy in carrying out its obligations herein if such is required in order to furnish complete, operable, safe

and reliable WORKS and MATERIALS OR EQUIPMENT.

13.7 If, in the opinion of E+H, a CHANGE ORDER to the WORKS adversely affects the DELIVERY DATE to the extent that is impossible for the SUPPLIER to DELIVERY DATE, E+H may amend the DELIVERY DATE.

13.8 No CHANGE ORDER shall in any way vitiate or invalidate the obligations of the SUPPLIER under this CONTRACT.

13.9 The SUPPLIER shall co-operate fully with E+H in minimising the cost or schedule impact of CHANGE ORDER. CHANGE ORDER shall not be considered as justification for additional payment per se but shall only result in additional payment when the SUPPLIER has established to the satisfaction of E+H, that he has explored all possibilities of accommodating the CHANGE ORDER without incurring extra costs or delays to the schedule.

13.10 Any changes or variations proposed or initiated by E+H or the SUPPLIER pursuant to this Clause which are due to defects, errors or omissions in the WORKS or MATERIALS OR EQUIPMENT which could alter, add to, change or vary considerably the amount of the work within the scope of WORK of the SUPPLIER or its sub-SUPPLIER shall not justify extra costs in any event.

13.11 Any and all changes or modifications to the SPECIFICATION, schedule or WORK pursuant to this CONTRACT and any additional payments for required work or services due from E+H to the SUPPLIER, or credits for deleted work or services due to E+H by the SUPPLIER, under the provision of this Clause shall be embodied in a CHANGE ORDER upon conditions specified therein which shall be signed by E+H and the SUPPLIER, and such CHANGE ORDER shall be deemed to form part of this CONTRACT and be subject to all of the from E+H to the SUPPLIER, or credits for deleted work or services due to E+H by the SUPPLIER, under the provision of this Clause shall be embodied in a CHANGE ORDER upon conditions specified therein which shall be signed by E+H and the SUPPLIER, and such CHANGE ORDER shall be deemed to form part of this CONTRACT and be subject to all of the terms and conditions therein unless otherwise excepted.

14.0 LIQUIDATED DAMAGES

14.1 In the event the DELIVERY DATE is not met by the SUPPLIER, the SUPPLIER shall pay E+H liquidated damages (which the SUPPLIER and E+H hereby agree shall not be considered a penalty).

14.2 Liquidated damages shall be paid by the SUPPLIER to E+H in the amount calculated at 0.1% of the PURCHASE ORDER PRICE per day for each day of delay (provided), up to the maximum of 10% of the PURCHASE ORDER PRICE.

14.3 The liquidated damages stated in this Clause 14.0 is deemed to be the actual loss which E+H will suffer in the event that the SUPPLIER fails to deliver the MATERIALS OR EQUIPMENT on the DELIVERY DATE. The SUPPLIER agrees to pay to E+H the said amount(s) if the same becomes due without the need for E+H to prove actual damage or loss.

14.4 The PARTIES agree that the amount of such liquidated damages is a genuine pre-estimate of the losses which may be sustained by E+H in the event of delay in delivery of the MATERIALS OR EQUIPMENT.

15.0 SUSPENSION

15.1 Upon receipt of such suspension notice as referenced above hereof, the SUPPLIER shall, unless the notice otherwise requires:

- (a) Immediately discontinue performance of the WORKS on the date and to the extent specified in the notice;
- (b) In such the event of the SUPPLIER shall be liable for all costs and expenses incurred by E+H as a result of the suspension
- (c) Place no orders and make no further sub-supply with respect to the suspended portion of the WORKS other than to the extent required in the notice;
- (d) Promptly make every reasonable effort to obtain suspension upon terms satisfactory to E+H of all outstanding orders and sub-supply to the extent they relate to the execution of the portion of the WORKS suspended;
- (e) Continue to maintain such portion of the WORKS that has been carried out;
- (f) Use its best efforts to minimise the costs associated with the suspension.
- (g) Continue to perform all unsuspended parts of the WORKS

15.2 Suspension for SUPPLIER's non-default:-

15.2.1 E+H may, at its absolute discretion, by notice in writing to the SUPPLIER, instruct to suspend at any time the execution of all or any portion of the WORKS for reasons other than the default of the SUPPLIER or Force Majeure and E+H shall issue a CHANGE ORDER to cover the followings:-

- (a) The cost of keeping all facilities, MATERIALS OR EQUIPMENT and personnel dedicated to the part of the WORKS suspended to the extent that the SUPPLIER is unable to redeploy such resources during the period of suspension;

- (b) Standby fees, where applicable, for all facilities, MATERIALS OR EQUIPMENT and personnel of the SUPPLIER authorised in advance by E+H to be on standby;
- (c) Other items directly related to the suspended part of the WORKS, if authorised in advance by E+H; and
- (d) Any changes to the DELIVERY DATE.

15.2.2 In the event of suspension of the whole or part of the WORKS, the SUPPLIER shall not be relieved of any continuing obligations or liabilities under the provisions of the CONTRACT, nor does it affect any statutory or other legal rights of E+H or the SUPPLIER.

15.2.3 E+H may at any time, by giving written notice to the SUPPLIER specifying the part of the WORK to be resumed and the effective date of such resumption, authorise the SUPPLIER to resume all or any part of the WORK suspended.

15.2.4 The SUPPLIER shall resume the performance of the WORKS on the date fixed in such written notice from E+H to the extent required in the notice.

15.3 Suspension for SUPPLIER's Default:-

15.3.1 In the event that the SUPPLIER is in default, E+H may issue a suspension notice for reason of default under this clause; the suspension notice shall include reasons for such issuance and shall also outline the steps to be taken by the SUPPLIER to rectify the situation within a specified period.

15.3.2 The SUPPLIER shall be considered in default of its obligations until the situation has been remedied to the satisfaction of E+H and E+H may, in addition to and without any prejudice to any other rights it may have, exercise its rights of termination herein.

15.3.3 No payment shall be made to the SUPPLIER in the event that E+H suspends the performance of the WORK pursuant to the default of the SUPPLIER.

16.0 TERMINATION

16.1 For Default In the event of any material breach of any of the terms and conditions of this PURCHASE ORDER, E+H may, without prejudice to any other right under this CONTRACT or at law, terminate this CONTRACT with immediate effect.

16.2 For Liquidation or Reconstruction

E+H may also terminate this CONTRACT with immediate effect if:-

- (a) The SUPPLIER generally suspends payment of its debts as they become due;
- (b) A petition is filed or an order is filed or an order is made or entered (and is not stayed within thirty (30) days of service thereof) against the SUPPLIER;
- (c) or a resolution is passed or an involuntary petition is filed for the winding up, receivership, bankruptcy or reorganisation of the SUPPLIER;
- (d) the SUPPLIER makes an assignment for benefit of all or substantially all its creditors or a receiver or administrator is appointed to all or substantially all of its assets; or
- (e) the ownership or control of the SUPPLIER has been materially altered, receiver or administrator is appointed to all or substantially all of its assets; or
- (f) the ownership or control of the SUPPLIER has been materially altered.

16.3 For Convenience

This CONTRACT may also be terminated at any time by E+H by giving notice in writing of fourteen (14) days, for any reason whatsoever. On receipt of such notice, the SUPPLIER shall stop all the WORKS. E+H shall pay a reasonable price for all WORKS delivered/completed as of the effective date of such termination and all actual direct reasonable costs incurred by the SUPPLIER as a direct result of such termination.

17.0 INSURANCE

17.1 Without prejudice to the SUPPLIER's liability and responsibilities as contained elsewhere in the CONTRACT, the SUPPLIER shall procure and maintain at its own cost and expense during the performance of this CONTRACT, the following insurance applicable to its operations with respect to and for the duration of the CONTRACT:

- (a) Workmen's Compensation and/or Employer's Liability Insurance covering adequately the employees, servants and agents of the SUPPLIER and any sub-supplier as required by the Workmen's Compensation Act 1952 or similar statutory social insurance laws and/or the common laws of any nation or political sub-division thereof to which the SUPPLIER's or any sub-supplier's operations under the CONTRACT are subject
- (b) Comprehensive Automobile Liability Insurance covering owned, non-owned and hired automobiles by the SUPPLIER providing unlimited cover for injury or death.
- (c) "All Risk" Property Damage and Transit Insurance; SUPPLIER shall provide all risks insurance covering SUPPLIER equipment at all times during the duration of this PURCHASE ORDER including , but not limited to, losses occurring at the WORK SITE and/or transit to or from the WORKSITE and/or between the WORK SITE.
- (d) Comprehensive General Liability Insurance covering the SUPPLIER's legal and contractual liabilities for loss or damage to property, bodily injury or death, for any one incident or series of incidents arising from any one event and unlimited in the aggregate. Such insurance shall include but not be limited to, where applicable, pollution liability insurance, protection and indemnity risks, automobile public liability, and non-owned aircraft liability.

Guideline for Limit of Liability for Comprehensive General Liability Insurance applicable only for supply & delivery:

Contract Value	Limit of Liability
(i) Below RM 500K	Contract Price
(ii) RM500K to RM1 Million	RM1 Million
(iii) RM1 Million to RM5 Million	RM5 Million
(iv) Above RM5 Million	RM10 Million

(e) Any other insurance which may be relevant and/or necessary and/or may be required by any law(s) to which the SUPPLIER and/or sub-supplier are subject.

17.2 SUPPLIER shall cause E+H and its parent companies, subsidiaries, affiliates, shareholders, consultants and their respective directors, board members, agents, officers and employees to be included as additional assured and covered by all insurance as stipulated in this Clause 17 with respect to the operations conducted under this CONTRACT and shall cause the insurers thereof to waive all express or implied rights of subrogation against such parties and their respective directors, employees, officers and agents.

17.3 All deductibles, exceptions and exclusions applicable to the foregoing insurance shall be for the account of and be paid by the SUPPLIER. Any breach of conditions and/or warranties contained in such policies of insurance shall also be for the account of the SUPPLIER.

17.4 The SUPPLIER shall fully indemnify E+H against loss or damage arising out of any failure to effect or maintain insurance specified by CONTRACT or out of any act or omission which invalidates the said insurances.

17.5 No later than 14 days after the EFFECTIVE DATE or any extension granted by E+H, the SUPPLIER shall furnish to E+H original certificates of insurance evidencing:

- (a) Types, coverage, effective and expiration dates of insurance policy;
- (b) Territorial limits include all locations where WORK is to be carried out;
- (c) Compliance with co-insured, waiver of subrogation and cross liability;
- (d) Full payment of premium;
- (e) that the supplier shall give a thirty (30) day prior written notice to E+H before any material amendment to, or cancellation of, the insurance policy.

17.6 The furnishing of certificate of insurance or other documents of insurance shall not be interpreted as implying that E+H assumes responsibility for the correctness of such policies or documents or that the SUPPLIER has complied with its other obligations contained in this CONTRACT.

17.7 The SUPPLIER and its sub-supplier(s) shall not commence WORKS until all the insurances that the SUPPLIER is required to provide are in force.

17.8 Should the SUPPLIER at any time neglect or refuse to provide or renew/ extend any insurance required herein, or should any insurance be cancelled, notice of such cancellation should be furnished to E+H before cancellation takes effect and E+H shall have the right to procure such insurance and, in such event, any sum so paid by E+H shall immediately become due and payable to E+H by the SUPPLIER or E+H shall be entitled to deduct such sums from any monies due or which may become due to the SUPPLIER, in addition to any other remedies E+H may have under this CONTRACT.

17.9 The SUPPLIER shall notify E+H immediately upon receipt of any notice of claims, incidents or demands or of any situation which may give rise to such claims or demands being made under the said policies.

17.10 The SUPPLIER shall ensure that its sub-supplier maintains similar insurance coverage as specified herein and that its sub-supplier similarly indemnify and hold E+H harmless against all costs, claims and demands. Any deficiencies in the coverage or policy limits of sub-supplier insurance shall be for the sole responsibility of the SUPPLIER.

17.11 The amounts of the SUPPLIER furnished insurance called for herein shall be the minimum and not the maximum limits of liability. The SUPPLIER may provide other insurance coverage or higher limits of coverage. E+H shall not bear any financial liability attributable to deficient insurance coverage by the SUPPLIER.

17.12 E+H will not be liable to the SUPPLIER for damages in excess of the limits of such insurance, and the SUPPLIER indemnifies and saves E+H harmless for all damage or personal injury in excess of such limits.

17.13 The SUPPLIER and E+H shall co-operate fully with the insurance carrier furnishing the insurance policies specified herein in the event of any claim.

18.0 LIABILITIES AND INDEMNITIES

18.1 The SUPPLIER shall be responsible for and shall hold harmless and indemnify E+H, its officers, employees and/or agents from and against any loss or expense

by reason of all claims, proceedings, demands and causes of action in respect of any damage, loss or injury (including death) to any person or property of the SUPPLIER, howsoever caused, without regard to whether any negligence, act or omissions of E+H contributed to such damage, loss or injury.

18.2 E+H shall be responsible for and shall hold harmless and indemnify the SUPPLIER, its officers, employees and/or agents from and against any loss or expense by reason of all claims, proceedings, demands and causes of action in respect of any damage, loss or injury (including death) to any person or property of E+H, howsoever caused, without regard to whether any negligence, act or omissions of the SUPPLIER contributed to such damage, loss or injury.

18.3 The SUPPLIER shall be responsible for and shall hold harmless and indemnify E+H, E+H's client, its officers, employees and/or agents from against any and all liability, loss or expense by reason of any claim, action or litigation in respect of any patent, copyright, trademark or other intellectual property rights (foreign or domestic), resulting from the use or resale of the WORKS.

18.4 The SUPPLIER shall further indemnify and hold E+H safe and harmless from and against all injuries to, including death of, and loss of damage to property of third parties arising out of or in connection with the performance of the WORKS whether or not such loss or damage was caused by or contributed to or was partly attributable to any act, fault, omission, negligence or lack of due diligence of E+H or any of its agents. The PARTIES further agree that the respective liabilities of SUPPLIER and E+H in respect of all injuries to, including death of, and loss of damage to property of third parties arising out of or in connection with the performance of the WORKS shall be determined by law.

19.0 LICENCE AND PERMIT

Subject to the relevant provisions of the INCOTERM applicable under Clause 8.1, the SUPPLIER shall obtain any licence or other permit which is required in the country of shipment and/or origin for implementation of this CONTRACT. This CONTRACT is conditional upon such license or other permit being made available in good time, in accordance with the delivery date stated in this CONTRACT.

20.0 FORCE MAJEURE

20.1 FORCE MAJEURE events shall be events beyond the control of the Parties or either of them and shall include, but not be limited to:-

- (a) Acts of God or force of nature,
- (b) Landslide, lightning, earthquake, flood,
- (c) Fire, explosion,
- (d) Unusually severe weather during the period in question,
- (e) Act of war (declared or undeclared) of public enemy,
- (f) Strikes, boycotts, lockouts or other labour disturbance (excluding those solely amongst employees of the SUPPLIER or its sub-supplier),
- (g) Act or omission of sovereign or those purporting to represent sovereign states,
- (h) Blockade, embargo, quarantine, public disorder, sabotage and acts of terrorists.

20.2 However, FORCE MAJEURE shall not include the followings:-

- (a) Late delivery of MATERIALS OR EQUIPMENT caused by congestion at SUPPLIER's or SUPPLIER's plant or elsewhere, or oversold condition of the market, inefficiencies, or similar occurrences;
- (a) Late performance by SUPPLIER caused by a shortage of supervisors or labour, inefficiencies, or similar occurrences;
- (b) Mechanical breakdown of any item of the SUPPLIER's equipment, plant or machinery;
- (b) Contractual commitment made by the SUPPLIER to third parties which limits the SUPPLIER's ability to provide Materials or Equipment;
- (c) Financial distress of the SUPPLIER or sub-supplier; and
- (f) Cumulative effect of recurring weather over time, including but not limited to excessive cumulative rainfall and/or period of high relative humidity.

20.3 If a party is or will be prevented from performing any of its obligations under the CONTRACT by FORCE MAJEURE, then it shall give notice to the other party of the event or circumstances constituting the FORCE MAJEURE and shall specify the obligations, the performance of which is or will be prevented.

20.3.1 The notice shall be given immediately after the party became aware, or should have become aware, of the relevant event or circumstance constituting FORCE MAJEURE.

20.3.2 Neither party shall be liable to the other for any delay or failure to perform their respective obligations for so long as such FORCE MAJEURE prevents it from performing them.

20.4 Each party shall at all times use all reasonable endeavours to minimize any delay in the performance of the WORK as a result of FORCE MAJEURE.

20.5 If the SUPPLIER is prevented from performing any of its obligations hereunder by FORCE MAJEURE of which notice has been given under sub-Clause 20.1 and suffers delay by reason of such FORCE MAJEURE, the SUPPLIER shall be entitled to an extension of time the period of when titled to any additional claims for costs as a result of any FORCE MAJEURE.

20.6 Unless otherwise agreed by the Parties, if the WORKS to be executed by the SUPPLIER are suspended by FORCE MAJEURE conditions lasting for more than 2 years, E+H and the SUPPLIER shall each have the option of terminating this CONTRACT in whole or part thereof and each party shall have no further liability to the other save that the SUPPLIER shall be paid for the balance of the CONTRACT, value of the MATERIALS OR EQUIPMENT which have been delivered or works performed up to the date of termination.

21.0 WAIVER AND VALIDITY

21.1 Failure by E+H to enforce the performance of any of the provision of CONTRACT against the SUPPLIER shall neither be deemed to be a waiver of its rights hereunder nor shall it affect the validity of the CONTRACT in any way.

21.2 Any waiver by E+H to any breach of CONTRACT by the SUPPLIER shall not constitute a precedent and shall not be deemed a waiver of any succeeding breach of the same provision or any other provision of the CONTRACT.

21.3 Any provision herein which is or becomes illegal or enforceable shall be severed from the CONTRACT and shall not affect the validity of the remaining provisions hereof.

22.0 CONFIDENTIALITY

22.1 The SUPPLIER shall hold in confidence and not divulge to third parties or use in any way without prior written approval from E+H, other than for accomplishing the WORKS, this CONTRACT which includes but shall not be limited to all accompanying designs, drawings, specifications and other information and data disclosed, directly or indirectly by E+H.

22.2 This Clause shall survive the termination or expiry of the CONTRACT for a further seven (7) years. SUPPLIER shall ensure that any person with access to all confidential information above shall be bound by terms of confidentiality no less stringent than this Clause.

23.0 DISPUTE RESOLUTION AND ARBITRATION

23.1 All disputes, controversies or claims arising out of or in connection with this CONTRACT or the breach, termination or invalidity thereof shall be finally settled by arbitration in accordance with the rules of the Regional Centre for Arbitration, Kuala Lumpur for the time being force. The place of arbitration shall be Kuala Lumpur and the language to be used in the arbitral proceedings shall English.

23.2 Pending the resolution of any disputes, controversies or claims arising out or relating to this CONTRACT, the SUPPLIER shall perform and/or continue performing all its obligations specified in the CONTRACT.

24.0 TAXES AND DUTIES

24.1 The PARTIES hereby agree that subject to the relevant provision of the INCOTERMS applicable under Clause 8.1 above:

- (a) The SUPPLIER shall be liable for and shall pay at its own expense when due, all taxes relating to and for the performance of the WORKS including, without limitation:
 - (i) All custom duties, sales, service, excise, storage, consumption and use taxes, licences, permits and registration fees, income, turnover profit, excess profit, franchise and personal property taxes and any other taxes; and
 - (ii) All employment taxes and contributions imposed by law, or trade union contracts, or regulations with respect to or measured by the compensation (wages, salaries or others) paid to employees of the SUPPLIER including, without limitation, taxes and contributions for unemployment and compensation insurance, old age benefits, welfare funds, pensions and annuities and disability insurance and similar items.
- (b) E+H shall have the right to withhold from any payment due or that may become due to the SUPPLIER under this CONTRACT for the purpose of setting off taxes on income, excess profit, royalty and other taxes, to the extent that such withholding is required by the Government of Malaysia or any relevant authorities thereof or by the government of any other country. Payment by E+H to the respective governmental office of the amount of money so withheld will relieve E+H from any further obligation to the SUPPLIER with respect to the amount so withheld. E+H shall not be liable for any additional costs, loss or expenses incurred by the SUPPLIER due to or arising from such withholding.

(c) The SUPPLIER shall indemnify E+H from and against any claims, demands and causes of action which may arise as a result of the SUPPLIER's failure to comply with the directions and procedural.

(d) The SUPPLIER shall protect, hold harmless and indemnify E+H from and against all claims, demands and causes of action based on any and all claims or liability income, excess profits, royalty and other taxes, assessed or levied by the Government of Malaysia or any relevant author against E+H for which the SUPPLIER is liable for. The indemnity under this Clause includes, without limitation, any and all claims, suits, costs, liabilities, judgments, fines, penalties, demands, loss or damage including any and all expenses, disbursements, costs, legal fees, sums and amounts which E+H suffers, incurs or is put in resulting from or in any way connected with any assessment or imposition, which by the terms of this Clause, the SUPPLIER is liable for.

25.0 NOTICES All notices shall be in writing and sent by registered mail, express mail, courier, or transmitted by facsimile or electronic mail (when confirmation of receipt has been received by sender's facsimile or electronic mail as the case may be), to the addresses indicated in the Clause 1.1 (under E+H definition) or such other address as either party may indicate by at least ten (10) days prior written notice to the other party.

26.0 ENTIRE AGREEMENT The terms and conditions set out on this AGREEMENT together with any subsequent amendments made in writing by E+H and SUPPLIER represent the entire agreement between E+H and the SUPPLIER.

27.0 HEALTH, SAFETY AND ENVIRONMENT (HSE)

27.1 Where a service is being provided on E+H premises or to be performed at any project venue, the SUPPLIER shall be responsible and to communicate on the HSE requirement to all persons engaged on WORKS and all persons who may be affected by activities of the SUPPLIER. SUPPLIER shall comply with all E+H's safety regulations and procedures in this regard.

SUPPLIER must comply and shall ensure compliance by his personnel, workmen, agents, employees, representatives and his sub-contractors at all time during the execution of the WORK with all current and latest of the followings:

- (a) Factories and Machinery Act, 1967;
- (b) Occupational Safety and Health Act, 1994;
- (c) Atomic Energy Licensing Act, 1984;
- (d) Electricity Supply Act, 1990;
- (e) Fire Services Act, 1988;
- (f) Uniform Building By-Law, 1984;
- (g) Prevention and Control of Infectious Diseases Act, 1988
- (h) Client's HSE requirements, if applicable.
- (i) E+H Safety Rules; and
- (j) All other relevant HSE at work requirements imposed by law, statutes, ordinances and acts of parliament including and subsequent amendments to or re-enactment of the said law.

27.2 SUPPLIER to comply with Law of Malaysia, Occupational Safety And Health (OSHA) 1994 (Act 514) and its regulation- Use and Standard of Exposure Chemical Hazardous to Health Regulations 2000 (USECHH Regulations), Classification, Labelling and Safety Data Sheet of Hazardous Chemicals Regulations 2013 (CLASS Regulations) for chemicals during delivery, transit, transfer, repacking, storage and handling. SUPPLIER to deliver the items complete in accordance to legal requirements and not limited to bilingual Safety Data Sheet (SDS) - Bahasa Malaysia and English. Failure to comply may result in SUPPLIER's delivery being rejected.

27.3 SUPPLIER shall comply with all relevant laws and regulations relating to the protection and preservation of the environment, in particular the Atomic Energy Licensing Act, 1984, including any subsequent amendments to or re-enactments of the said Act and its Regulation not limited to transportation, storage, handling and managing of Radioactive products from the WORKS. All measures taken by the SUPPLIER in compliance with this clause shall be deemed to be included in the PRICE.

27.4 SUPPLIER representative(s) must be fully equipped with necessary, adequate and approved Personal Protective Equipment (PPE) when working in MMHE yard and must in straight compliance to MMHE HSE requirements enforced in the yard. PPE shall be provided on SUPPLIER's own cost. Failure to do so, SUPPLIER shall be barred or/and shall not be allowed to enter MMHE Yard.

27.5 Adequate and approved standard PPE (such as but not limited to safety shoes, safety helmet, safety glass and coverall) are compulsory for all personnel entering red zone area such as warehouse area including loading and unloading which also applies to all SUPPLIER's representative and transporter personnel whether they are delivering materials or presenting documents at E+H warehouse.

27.6 Any non-compliance or infringement of any HSE rules by the SUPPLIER as stated in Clause 27.1 will be subject to the stern action to be taken against those non-compliance including but not limited to undergo E+H HSE Consequence Management process, summons, bar from unload or attend to the consignment in E+H yard and/or bar from entering the E+H yard. SUPPLIER whom found continuously disregard this regulation shall be subjected to suspension from future business engagement.

28.0 QUALITY ASSURANCE

28.1 The SUPPLIER and its sub-supplier shall have and operate a quality assurance system as specified in the CONTRACT.

28.2 E+H shall have the right to reject any WORKS not conforming to specified quality standards as contained in the CONTRACT.

28.3 Notwithstanding the above, such non-conformity shall be deemed a default under Clause 16.0.

29.0 INTELLECTUAL PROPERTY RIGHTS

29.1 The SUPPLIER hereby warrants that the execution or performance of the WORKS under the CONTRACT, including, without limitation, the design, manufacture, installation and use of the MATERIALS OR EQUIPMENT and/or CONTRACT shall in no way infringe any patent, design, trademark or other right of any third party.

29.2 The SUPPLIER, warranting that it has the right to do so, hereby grants E+H and to the CLIENT through E+H a perpetual, irrevocable, royalty-free, worldwide, transferable, non-exclusive license under all patent, utility models or other industrial property rights and know-how now or hereafter created or owned by the SUPPLIER which cover any apparatus, article, process or composition used or produced in the performance of the Work including the right to use, operate, maintain and repair the MATERIALS OR EQUIPMENT and all parts thereof. For MATERIALS OR EQUIPMENT manufactured under license, the SUPPLIER shall submit a certificate from the licensor that the MATERIALS OR EQUIPMENT has been manufactured to the licensor's design and specification.

29.3 Should any third party raise a claim or bring a suit against E+H and/or the Client, and/or threaten to do so on the ground that the sale, lease, import, installation, use or operation of the MATERIALS OR EQUIPMENT and/or the Client from and against all claims, demands, losses, damages, costs and expenses (including the legal fees) caused thereby.

30.0 CONSEQUENTIAL DAMAGES Neither the SUPPLIER nor E+H shall be liable to the other by way of indemnity or otherwise (including but not limited to negligence) for any indirect or consequential losses including but not limited to loss of profit, loss of use, loss of production, loss of contracts, loss of revenues or of anticipated savings, any increase in operating costs, or for any financial or economic loss whatsoever that may be suffered by the other. Any exclusion or limitation specified in the CONTRACT shall apply to claims in contract, tort or otherwise at law in respect of matters covered by such exclusion or limitation.

31.0 ASSIGNMENT

The SUPPLIER shall not assign this CONTRACT in whole or in part without the prior written approval of E+H, which approval shall not be unreasonably withheld.

32.0 GOVERNING LAWS

32.1 In the performance of this CONTRACT, the SUPPLIER and the SUPPLIER GROUP shall be subject to all Malaysian applicable laws.

32.2 The PARTIES irrevocably agree to submit to the jurisdiction of the Malaysian Courts.

33.0 E+H Code of Conduct And Business Ethics (CoBE)

33.1 E+H reject all forms of corrupt business behavior.

33.2 E+H do not accept bribes.

33.3 E+H particularly do not receive any improper benefits with the intention of influencing the recipient to provide an unjustified commercial advantage. A benefit is usually improper if it is not moderate, commonly accepted or if it is not offered in a clear business context. E+H expects from our suppliers and business partners a responsible behavior in line with the rules of E+H's Code of Conduct.

33.4 E+H decides on appropriate actions if we discover relevant compliance issues in the organization of our suppliers and business partners.

34.0 INSTALLATION OF UNLICENSED SOFTWARE

34.1 SUPPLIER shall comply with the Malaysian Copyright Act 1987 including any subsequent amendments to or re-enactments of the said Act. The SUPPLIER shall ensure that any software provided and installed by the SUPPLIER used in connection with the WORK, either used on E+H's IT equipment or SUPPLIER's IT equipment, must have a valid license for such software prior to the installation and use.

34.2 SUPPLIER shall maintain accurate and up-to-date records of all software provided, downloaded or installed by the SUPPLIER on SUPPLIER's IT equipment. SUPPLIER, while working at Site, shall adhere to the software licensing requirement and update their software(s) inventory and licenses on a regular basis in compliance to rules.

34.3 The SUPPLIER shall save, indemnify, defend and hold harmless E+H from all claims, losses, damages, costs (including legal costs on a solicitor and client basis), expenses, and liabilities of every kind and nature for, or arising out of, any alleged or actual infringement of unlicensed software, arising out of or in connection with the performance of the obligations of the SUPPLIER under the SUPPLIER.