

# VESUVIUS MALAYSIA SDN BHD - CONDITIONS OF SALE

## 1. DEFINITIONS

In these terms and conditions the following words shall have the following meanings:

"Affiliates" means as the context shall *require* the principal or associated or subsidiary companies from time to time of the Company or the Buyer;

an "Authorised Representative" of the Company shall be a Manager of the Company;

"Buyer" means the corporate entity firm or person referred to in the Company's quotation and/or acknowledgement of order who places the order or who purchases or agrees to purchase the Goods and/or Services from the Company;

"Company" means Vesuvius Malaysia Sdn. Bhd. (Company No. 303578-V) whose registered office is at Unit 30-01, Level 30, Tower A, Vertical Business Suite, Avenue 3, Bangsar South, No. 8, Jalan Kerinchi, 59200 Kuala Lumpur. Malaysia.

"Conditions" means these terms and conditions and any special terms and conditions agreed in writing between the Company and the Buyer;

"Contract" means any contract between the Company and the Buyer for the sale of Goods and/or provision of Services, incorporating these Conditions therein;

"Goods" means the goods, products, articles or things (including any part or parts of them) to be supplied under or in relation to the Contract (including without charge);

"Personnel" means the employees directors or other personnel of the Company, its Affiliates or any of their subcontractors, agents or consultants; and

"Services" means the services to be supplied under or in relation to the Contract (including without charge).

## 2. MAKING THE CONTRACT

2.1 The Company's sales coordinators or personnel are not Authorised Representatives and are not authorised to accept, confirm or vary any order or make any representation or promise on behalf of the Company.

2.2 The quotation which comprises of an estimate is not binding on the Company, and remains valid for a period of 60 (sixty) days

only from the date thereof (or such other period specified in the quotation), provided that the Company has not previously withdrawn it.

2.3 Any order issued by the Buyer shall be deemed to be an offer and is subject to acceptance by the Company in writing. The Contract will only be formed when the Company has accepted the Buyer's offer to buy in writing. In the event that the Company has not made a written acknowledgement of the Buyer's offer on these terms and conditions, and the Buyer had prior notice of them (from a previous course of dealing or other forms of notice including the Internet), then these terms and conditions shall nonetheless apply to the Contract.

2.4 All orders from the Buyer shall be in writing.

2.5 All orders shall be subject to these terms and conditions alone.

2.6 These terms and conditions exclude any other terms and conditions inconsistent therewith contained in any offer, acceptance or counter-offer made by the Buyer.

2.7 No variation of these terms and conditions is permitted or valid unless expressly accepted by an Authorised Representative of the Company in writing.

## 3. CANCELLATION

No cancellation by the Buyer shall be permitted except where it is expressly agreed in writing by an Authorised Representative of the Company and then only on terms stipulated by the Company in writing therein.

## 4. PRICE

4.1 All prices specified are those prevailing as at the date of the quotation but shall be subject to adjustment as per 4.3 below.

4.2 Unless otherwise stated all prices quoted are in Malaysian Ringgit, exclusive of GST, and given on the basis that the Goods be delivered Ex-Works (premises nominated by the Company) (Incoterms 2010) and unless otherwise stated in the Contract. The Buyer shall be liable in addition to pay GST, all applicable duties, sales tax, taxes and the Company's charges (if any) for transport, loading, packaging and insurance.

4.3 The Company reserves the right at any time, by notice in writing to the Buyer (including email or fax), to adjust the price to

take account of any increase in the cost of raw materials, labour services or other manufacturing costs or any currency fluctuations affecting the cost of imported materials, or revised rates of taxes, which are beyond the reasonable control of the Company or for any other legitimate reason including corrections of errors or omissions without any liability on the part of the Company.

## **5. TERMS OF PAYMENT**

5.1 All preliminary work (including the costs of acquiring or preparing appropriate tools where necessary) done by the Company at the request of the Buyer in relation to the Contract or the Goods and/or Services or materials used in conjunction therewith shall be paid for by the Buyer on demand.

5.2 Subject to Condition 5.1 above all sums become due and payable under these terms and conditions no later than the end of the month following the month in which the Goods were dispatched or made available for collection and/or the Services were rendered or supplied (or would have been rendered or supplied but for the Buyer's failure to fulfil its obligations under the Contract) unless otherwise expressly specified in writing by the Company. The Company shall retain the right to refuse or withhold delivery of any or all of the Goods or Services until the Buyer has paid for them.

5.3 Time for payment shall be the essence of the Contract.

5.4 Notwithstanding any other provisions, all payments payable to the Company under the Contract shall become due immediately on termination of the Contract for whatsoever reason.

5.5 The Company reserves the right to charge interest at one per cent (1%) per month on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under Conditions 5.1 5.2 and 5.4.

5.6 The Buyer shall have no right of set off, statutory or otherwise. The Company shall reserve the right to set off any claim of any kind whatsoever which the Buyer (or its Affiliates) may have against the Company (or its Affiliates) under the Contract or any other contracts or otherwise howsoever against any sum which would otherwise be due from the Buyer (or its Affiliates) to the Company (or its Affiliates) under the Contract or any other contracts or otherwise howsoever.

5.7 The Company shall reserve the right, where in its opinion doubts arise as to a Buyer's financial position or in the case of failure to pay for any preliminary work any Goods and/or Services

or any delivery or instalment as aforesaid, or the Buyer refuses to accept delivery of Goods or performance of Services to suspend withhold or cancel delivery or performance of any order or any part or instalment without any liability whatsoever until full payment or security for payment has been provided to the Company's satisfaction.

5.8 All payments shall be in Malaysian Ringgit unless stated otherwise in the Contract.

## **6. TERMINATION**

6.1 Without prejudice to any rights that have accrued under the Contract or any other rights or remedies, the Company may with or without notice (notwithstanding any previous agreement or arrangement to the contrary) immediately suspend performance of the Contract, cancel any outstanding delivery of Goods and/or supply of Services, stop any Goods in transit or with notice in writing to the Buyer terminate the Contract without any liability whatsoever to the Company if:

6.1.1 the Buyer fails to pay any sum payable under the Contract, or any other agreement between the Buyer and the Company or any Affiliate of the Company within 7 days of it being due and payable; or

6.1.2 the Buyer commits a material breach of any of its obligations under the Contract which is incapable of remedy; or

6.1.3 the Buyer commits a material breach of its obligations under the Contract which is capable of remedy however fails to remedy it or persists in such breach after 14 days' notice in writing to remedy or desist the same; or

6.1.4 the Buyer suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be insolvent or unable to pay its debts within the meaning of Section 218 (2) of the Companies Act, 1965 (Laws of Malaysia) or any such analogous proceeding under foreign laws; or

6.1.5 the Buyer calls a meeting, gives a notice, passes a resolution or a petition is filed or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation); or

6.1.6 the Buyer has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it all or any part of its assets; or

6.1.7 the Buyer has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such asset; or

6.1.8 the Buyer takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts or such similar proceedings pursuant to Sections 395 to 402 of the Companies Act, 2016 (Laws of Malaysia); or

6.1.9 A secured lender has taken any steps to obtain possession of the property of the Buyer on which it has security or otherwise to enforce its security; or

6.1.10 the Buyer has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or

6.1.11 the financial position of the Buyer has become impaired in the opinion of the Company; or

6.1.12 any proceedings taken against the Buyer, with respect to it in any jurisdiction under foreign laws to which it is subject, or any event whatsoever happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 6.1.

## **7. DELIVERY AND RISK**

7.1 Unless stated otherwise in the Contract, the Goods shall be delivered Ex-Works (Premises nominated by the Company) (Incoterms 2010) and the Buyer shall take delivery at the Company's or nominated premises within 14 days of being notified that such Goods are ready.

7.2 If the Contract states expressly in writing that delivery is to be in accordance with a term defined by an Incoterm rule, then Incoterms 2010 shall apply, and where there is any conflict or ambiguity between these Conditions and that delivery term, that delivery term shall apply.

7.3 Risk shall pass on delivery of Goods to the Buyer (notwithstanding delivery of the Goods may be before commencement or completion of the Services). In the event the Buyer fails or does not take delivery of the Goods within 14 days of being notified that Goods are ready for delivery then the Goods are deemed delivered on expiry of the 14 days and risk shall pass to the Buyer notwithstanding that the Goods are uncollected.

7.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery by the Company shall not be made of the essence of the Contract.

7.5 The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery or by the failure to make Goods ready for collection on the due date.

7.6 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.

7.7 When delivery is to be made by instalments or the Company exercises its right to deliver by instalments under Condition 7.6 hereof or in the event of delay in the delivery of any one or more instalments for whatsoever reason this will not entitle the Buyer to terminate the Contract as repudiated or claim any damages.

7.8 Deviations in quantity of the Goods from the Contract shall be acceptable to the Buyer and shall not give the Buyer any right to reject the Goods or to claim any damages. The Buyer shall be obliged to accept and pay at the Contract rate for such of the quantity of the Goods delivered.

7.9 If for any reason the Buyer fails, refuses or neglects to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then the Goods shall be deemed delivered, risk passing to the Buyer (including for loss or damage caused by the Company's negligence) and the Company may:

- (a) store the Goods until actual delivery whereupon the Buyer shall be liable for all related costs and expenses (including but without limitation to storage and insurance); or
- (b) sell the Goods at the best price readily obtainable and (after deduction of all storage costs and selling expenses on indemnity basis) charge the Buyer for any shortfall against the Contract price.

## **8. RETENTION OF TITLE**

8.1 Full legal, beneficial and equitable ownership of Goods shall remain with the Company until full payment has been received by the Company:

- 8.1.1 for the Goods;
- 8.1.2 for any other goods supplied by the Company;
- 8.1.3 of any other monies due from the Buyer to the Company on any account;
- 8.1.4 of any other monies due from the Buyer

to any Affiliate of the Company on any account.

8.2 Until full legal, beneficial and equitable title to and property in the Goods passes to the Buyer under Condition 8.1:

8.2.1 the Buyer shall hold the Goods on a fiduciary basis as the Company's bailee;

8.2.2 the Buyer shall store the Goods at its premises disclosed to the Company in a proper manner in conditions which adequately protect and preserve the Goods;

8.2.3 the Buyer shall insure the Goods at its own cost without any charge to the Company;

8.2.4 the Buyer shall not tamper with any identification on the Goods or their packaging;

8.2.5 the Buyer shall not pledge or in any manner charge by way of security for indebtedness any of the Goods;

8.2.6 the Buyer shall keep the Goods separately and readily identifiable as the property of the Company; and

8.2.7 the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Buyer reasonable notice of its intention to do so.

8.3 8.3.1 Notwithstanding Conditions 8.1 and 8.2 the Buyer may (as between it and its buyer only) as principal in the ordinary course of its business sell the Goods by bona fide sale at full market value for the account of the Company or in the ordinary course of business use the Goods unless the Company notifies the Buyer otherwise in writing;

8.3.2 Goods shall be deemed sold or used in the order delivered to the Buyer;

8.3.3 where Goods have a shelf life or an expiry date; Goods shall be sold or used in the order of the shortest shelf life or the expiry date of the same;

8.3.4 any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Company and the Buyer) be made by the Buyer as agent for the Company

and the Buyer shall upon receipt of the proceeds of such sale remit the full purchase price of the Goods to the Company less any part paid and until such amount for the Goods has been paid shall hold the proceeds to the account of the Company as trustee and agent for the Company.

8.4 Any time prior to title in Goods passing to the Buyer (whether or not all payment to the Company is overdue or the Buyer is otherwise in breach of any obligation to the Company) the Company may (without prejudice to any other of its rights):

8.4.1 retake possession of all or any part of the Goods, wherein the Buyer hereby has granted the Company an irrevocable licence to enter any premises for that purpose (and to authorise others being its agents or servants to do so on its behalf);

8.4.2 require the immediate delivery up to the Company of all or any part of the Goods;

8.4.3 terminate the Buyer's authority to resell the Goods immediately by written notice to the Buyer including e-mails or fax, which authority shall automatically terminate (without notice) on any insolvency of the Buyer or it having a receiver or administrative receiver or liquidator appointed over the whole or any part of its assets or calling a meeting of its creditors or any execution or distress being levied on the Goods or any other assets in Buyer's possession.

8.5 The Company may at any time appropriate sums received from the Buyer to any accounts as it thinks fit notwithstanding any purported appropriation by the Buyer.

8.6 Each clause and sub-clause of this Condition 8 is separate severable and distinct and accordingly in the event of any of them being for any reason whatsoever unenforceable according to its terms, the others terms herein shall remain in force and effect.

8.7 All drawings, designs, samples, tools, moulds and other equipment made, prepared or obtained by the Company (and all intellectual property rights in them or in Goods or Services) shall be and remain the exclusive property of the Company whether or not a charge is levied to the Buyer or payment for the same has been tendered in respect thereof.

8.8 The Buyer shall maintain all appropriate insurances in respect of the Goods, with notice to the insurance provider of the Company's insurable interest in Goods, until the date or dates

on which the risk therein passes to it as hereinbefore defined. In the event of any loss or damage occurring while the Goods are the property of the Company, the Buyer shall notify the insurance provider of the Company's insurable interest in Goods and the Buyer shall immediately on receipt of the insurance monies, remit to the Company the full amount paid without any deduction pursuant to the insurance policy of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company. In the event the amount so paid pursuant to the insurance policy is insufficient payment for the Contract price of the Goods, the Buyer shall forthwith remit such balance outstanding on the Goods to the Company.

## 9. SUPPLY OF SERVICES

9.1 The Company shall provide the Services to the Buyer in accordance with the Contract.

9.2 The Company shall use its reasonable endeavours to meet any performance dates for the Services, but such dates shall be estimates only and time shall not be of the essence for the performance of Services. The Company shall not be liable for any loss whatsoever or howsoever arising or caused by its failure to provide the Services on such due dates.

9.3 Where the Company is to perform the Services at the Buyer's premises, the Buyer shall:

- (i) ensure safe and unhindered access to the premises for all the Personnel to carry out work at all relevant times;
- (ii) ensure that all consents, permissions, or licences required for the Services to be provided are in place;
- (iii) ensure the provision of adequate power, lighting, heating, water, compressed air and steam and other such facilities or supplies as necessary for the provision of Services;
- (iv) provide adjacent to where the Services are to be provided, storage for the materials required for the Services and associated equipment acceptable to the Company under cover and protected from damage by frost, water, and other physical elements or natural conditions;
- (v) provide adjacent to where the Services are to be provided ample working area adjacent to the installation site;
- (vi) provide a crane service and/or lift truck to unload the Goods and associated equipment and to handle the same to

an area acceptable to the Company within 50 feet of the installation site as necessary for the provision of Services;

(vii) provide adequate physical protection against theft, loss or damage to the materials and equipment required for the Services;

(viii) ensure that the site where Services are to be provided is adequate for that purpose, clear and free of all health and safety hazards and possesses such facilities for the Personnel to comply with any applicable legislation and as the Company shall reasonably require;

(ix) be responsible for the Personnel's death or personal injury or damage to or loss of the Company (and its Affiliates, subcontractors and Personnel)'s property whilst on the Buyer's premises;

(x) where the Services include the removal of a section of any installation the Company will endeavour to prevent the collapse of or damage to any part or parts of the section removed or of the remaining installation, but such removal will be at the Buyer's risk and the Company shall not accept any responsibility whatsoever for any loss or damage (and therefore excludes all liability) resulting directly or indirectly from any such removal or collapse; and

(xi) be responsible at its own costs to procure all relevant insurances against all risk and liability in respect fire, theft, accident and damage of equipment goods, material, personnel (Affiliates, sub contractors), installation and all other coverage relating to and in connection with the Services.

9.4 The Company shall not be liable in any manner whatsoever where the Services are undertaken on plant or machinery, and that plant or machinery is used for purposes of which the Company has not been given reasonable advance written notice and the liability expressly accepted by the Company in writing.

9.5 The Services will be deemed to be completed and the relevant Contract price to be due and payable immediately:

(a) when the Company issues a written notice to the Buyer confirming such completion; or

(b) if the Company is available to perform the Services but is prevented from doing so by reason of:

- (i) the lack of relevant assistance from the Buyer (lack of availability of test components or parts from the

Buyer)

(ii) the condition of the Buyer's premises on the site at which the Services are to be provided and/or the facilities at or the services available at those premises at the time agreed for the provision of the Services; or

(iii) the failure by the Buyer to comply with the Contract.

## 10. COMPANY MATERIALS

10.1 Where the Company supplies materials (whether for a charge or free of charge) to the Buyer for use in connection with the Contract (including but without limitation to equipment required for the preparation, storage, delivery, installation or use of, or for the Goods and/or Services) ("Company Materials"), such materials shall be and remain the property of the Company.

10.2 The Buyer shall maintain the Company Materials in good order and condition and at its risk, subject to fair wear and tear, and shall use them only in connection with the Contract, in accordance with the Company's recommendations and instructions and as expressly authorised.

10.3 The Buyer shall at its own costs procure all risk liability insurance for the Company Materials with sufficient coverage endorsing the insurable interest to the insurance coverage in favour of the Company. The Buyer shall indemnify the Company and its Affiliates against all losses, costs, damages, expenses and claims in respect of the Company Materials whilst they are in the Buyer's possession.

10.4 The Buyer shall at any time immediately upon the Company's request cease to use the Company Materials and deliver up to the Company all Company Materials and for the avoidance of doubt, the Buyer shall not have any right of lien over the Company Materials. The Company is entitled to retake possession of the Company Materials at any time without notice and the Buyer hereby grants the Company an irrevocable licence to enter any premises for that purpose (and to authorise others, its agents or servants to do so on its behalf).

10.5 On termination of the Contract or any part of it for any reason whatsoever, the Buyer shall return all Company Materials. If the Buyer fails to do so, then the Company may without prejudice to its other rights or remedies enter the Buyer's premises and retake possession of them. Until the Company Materials have been returned or delivered, the Buyer shall be solely responsible for

their safe keeping and shall not use them for any purpose not connected with the Contract.

## 11. INSPECTION/SHORTAGES

11.1 The Buyer shall be deemed to have accepted the Goods as being of merchantable quality, reasonably fit for the purpose, in accordance with description, in conformity with specification and in accordance with the Contract unless:

(a) within seven days after the Buyer has taken delivery or collected the Goods as the case may be (but in any event prior to any use or modification of the Goods), the Buyer has notified the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within seven days); or

(b) the Buyer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time which in any event shall not be more than thirty (30) days from delivery or collection of Goods where the defect or failure would not be so apparent within seven (7) days of the date of delivery or collection, failing which the Buyer shall not be entitled to reject the Goods for any reasons whatsoever and the Company shall have no liability for any such defect or failure, and the Buyer shall be bound to pay the price in full without any deduction as if the Goods had been delivered in accordance with the Contract.

11.2 In all cases where defects or shortages are complained of, the Company shall be under no liability whatsoever in respect thereof unless reasonable opportunity to inspect the Goods is afforded to the Company (including by agents or servants) (including when requested by the Company by the Goods are being returned to the Company at the Buyer's cost) in any event before any use is made thereof or any alteration or modification is made thereto by the Buyer.

11.3 The Company shall only be liable for any non-delivery of Goods or non-completion of Services (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company within seven days of the date when the Goods or Services would, in the ordinary course of events have been delivered or completed in accordance with the Contract.

11.4 If the Buyer gives notice to the Company in accordance with Condition 11.3 the liability of the Company for non-delivery of the

Goods shall be limited only to replacing the Goods or for non-performance of Services to completion of the Services within a reasonable time or in the alternative at the absolute discretion of the Company, issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or Services.

## **12. WARRANTY**

12.1 The Company undertakes to replace or repair any Goods or part of them or remedy or rectify any Services or parts of them or in the alternative refund that proportion of the price in respect of damage or defect attributable to any Services or Goods or parts of them as the Company shall in absolute discretion decide which shall have first been proven to the Company's satisfaction to be defective and not in accordance with the Contract due to the sole default of the Company in workmanship or materials or failure to provide the Services with reasonable skill and care on the part of the Company within the period of six months from the performance of the Services or the delivery of such Goods or the shelf life of the Goods advised by the Company on the product datasheet or otherwise. The Company will notify the Buyer in writing by email, fax or post if the period is to be other than six months.

12.2 The liability of the Company under this Condition 12 shall in no event exceed the purchase price of the defective Goods or price of the Services and performance of any one of the options referred to in Condition 12.1 shall constitute an absolute and entire discharge of the Company's liability under Condition 12.1.

12.3 The Company shall be under no liability under Condition 12.1 unless the Buyer:

12.3.1 notifies the Company in writing of the alleged defect within seven days of the time when the Buyer discovers or ought to have discovered the defect with reasonable inspection or examination; and

12.3.2 affords the Company a reasonable opportunity to inspect the relevant Goods or location at which the Services were performed and the subject matter on which the Services were performed (if any) and, if so requested by the Company and where it is reasonable to do so, promptly returns to the Company or such other person nominated by the Company a sample of the Goods or materials relating to the Services within fourteen days, carriage paid by the Buyer, for inspection, examination and testing and otherwise permits the Company to have access to the Goods or such materials at the Buyer's premises or other location where

they may be or the Services were performed and the subject matter on which the Services were performed (if any) for such purposes.

12.4 If the Company elects to replace the Goods or remedy or rectify the Services pursuant to Condition 12.1 the Company shall deliver the replacement Goods to or remedy or rectify the Services for the Buyer at the Company's own expense at the address to which the defective Goods were delivered or defective Services performed and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Buyer) re-vest in the Company and the Buyer shall make all such arrangements as may be necessary to deliver up at its own costs to the Company the defective Goods which are being replaced or materials relating to the previously performed Services.

12.5 The Company shall be under no liability whatsoever under Condition 12.1:

12.5.1 In respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal storage or working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or use for other purpose than specified or alteration or tampering or repair of Goods without the Company's approval;

12.5.2 if the total price due for the Goods or Services has not been paid;

12.5.3 for parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is provided by the said manufacturer to the Company and which the Company is able to validly enforce against any such manufacturer;

12.5.4 for any Goods or Services supplied in accordance with, or where the defect has arisen due to any drawing, design, specification, instruction, information or recommendation provided by the Buyer.

12.5.5 for any Goods or Services supplied where the defect has arisen because the Buyer has failed to provide information, which if provided would have allowed the Company to ensure the Goods or Services were not defective.

12.6 Subject to as expressly provided in these conditions, all warranties, conditions, guarantees or other terms implied by statute or applicable law are expressly excluded or limited to the

fullest extent permitted by law. In the event exclusion of liability is prohibited by law, then the liability of the Company is expressly limited to Ringgit Malaysia One (RM1.00) only.

12.7 The Company shall have the right to make any changes to the Goods or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods or Services.

### **13. LIMITATION OF LIABILITY**

13.1 The Company does not in any manner whatsoever exclude or limit any liability which cannot legally be excluded or limited.

13.2 The Buyer agrees and accepts that the provisions of Conditions 11, 12 and 13 set out the entire liability of the Company to the Buyer and the exclusive remedies of the Buyer against the Company under or in relation to the Contract. Accordingly, save as set out herein, the Company shall have no liability of any nature whatsoever for (but without limitation to) any breach of its contractual obligations arising under the Contract, any representation or tortious act or omission, including negligence and breach of statutory duty, arising under or in connection with the Contract or in relation to other matter or thing whatsoever under or in relation to the Contract:

13.3 The Company shall not be liable for any economic loss of whatsoever nature or any kind (direct or indirect) including but without limitation to loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business howsoever arising.

13.4 The Company shall not be liable for any indirect, special or general consequential loss or damage howsoever arising.

13.5 If the Company fails to deliver the Goods (or any instalment delivery) in accordance with its obligations under the Contract for any reason other than as set out in Condition 14 or the Buyer's default, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods not delivered.

13.6 Subject to Conditions 13.1-13.5 (inclusive) above the total aggregate liability of the Company arising out of, or in connection with the performance or contemplated performance of the Contract whether for negligence or breach of contract or any case whatsoever shall in no event exceed 120% of the price paid or

payable by the Buyer for such quantity of Goods or such part of Services in issue herein under the Contract.

### **14. FORCE MAJEURE**

14.1 The Company shall not be in breach of the Contract or otherwise liable for any failure or delay to deliver the Goods and/or provide the Services arising from circumstances beyond the control of the Company (including but without limitation to act of God, war, riot, act of terrorism, explosion, abnormal weather conditions, fire, flood, lightning, strikes, lockouts, trade dispute Government action or regulations (Malaysian or otherwise), import or export restrictions, delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities).

14.2 Should the Company be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.

14.3 If the circumstances preventing delivery are still continuing three months after the Buyer receives the Company's notice, then either party may give written notice to the other cancelling the Contract without any liability to the other.

14.4 If the Contract is cancelled under this provision, the Company subject to its right of set off, will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Buyer including under Condition 5.1 which the Company cannot use to fulfil another equivalent order) however in any event the Company shall not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver herein.

### **15. INDEMNITY**

The Buyer agrees on demand to indemnify the Company and its Affiliates against all actions, losses, damages, injury, costs (including legal costs on an indemnity basis), claims and expenses of whatever nature suffered by the Company and its Affiliates to the extent that the same are caused by or related to:

15.1 any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Buyer's instructions whether express or implied;

15.2 design, drawings or specifications given to the Company by the Buyer in respect of Goods provided by the Company for the Buyer; or

15.3 defective materials or products supplied by the Buyer to the



Company and incorporated by the Company in Goods provided by the Company for the Buyer; or

15.4 the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer; or

15.5 any breach by the Buyer of its contractual obligations arising under the Contract, any representation or tortious act or omission, including negligence and breach of statutory duty, arising under or in connection with the Contract; or

15.6 the employment or termination of employment of any employee(s) of the Buyer or its Affiliates or persons providing services similar to the Services whose employment may transfer to the Company or one of its Affiliates in connection with the commencement or termination of the Contract or who claim that their employment is transferred or such claims so transfer; or

15.7 the termination of employment of any employee(s) of the Company or its Affiliates arising from the termination of the Contract.

## **16. SALES PROMOTION INFORMATION**

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other information provided in any media, it is hereby agreed that any such publications and information are for the Buyer's general guidance only and the particulars contained therein shall not constitute any representation or warranty by the Company and cannot be relied upon by the Buyer or any third parties or form a part of the Contract or a term or condition of the Contract and the Company shall not be bound thereby.

## **17. SERVICE OF NOTICE AND LEGAL PROCESS**

17.1 Any notice required to be served hereunder shall be in writing and shall be deemed duly served on the other party if addressed

to the other party and left at or sent by prepaid registered post, email or facsimile to the other party or the address mentioned herein.

Any notice sent by prepaid registered post shall be deemed to have been duly served after the expiration of five (5) days from the

date it is posted and if delivered by hand, email or facsimile on the day it is delivered or transmitted.

17.2 The service of any Legal Process i.e. writ or originating

summons from the courts may be personally delivered or served by

prepaid registered post on the other party if addressed to the other party and left at or sent by registered post to the address mentioned herein and such Legal Process shall be deemed to have been duly served after the expiration of five (5) days from the

date it is posted and if delivered by hand, on the day it is delivered.

17.3 No change in the address for service howsoever brought about shall be effective or binding on either party unless that party has

given to the other actual notice of the change of address for service and nothing done in reliance on sub-clause 17.1 or 17.2 above

shall be affected or prejudiced by any subsequent change in the address for service over which the other party has no actual

knowledge of at the time the act or thing was done or carried out.

## **18. ASSIGNMENT**

The Buyer shall not assign or transfer or purport to assign or transfer the Contract or any of the benefits thereof to any other person without the prior written consent of the Company and the consent if requested, shall be at the absolute discretion of the Company. The benefit of the Contract is freely assignable by the Company and, in the event of any such assignment; all references in the Contract to the Company are deemed to include its assigns. The Company may at any time subcontract, transfer, mortgage, charge or deal with in any manner any or all of its rights and obligations under the Contract to any third party.

## **19. LAW**

The Contract and any issues, disputes or claim arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with the laws of Malaysia (to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG)).

## **20. JURISDICTION**

All disputes or claims arising out of or relating to the Contract shall be subject to the non-exclusive jurisdiction of the Malaysian courts to which the parties hereby irrevocably agree to submit.

Notwithstanding the foregoing, at the sole option of the Company, any dispute or claim arising out of or in connection with the Contract may be finally settled under the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration by one arbitrator appointed in accordance with such rules. Such arbitration shall take place in the English language in Kuala Lumpur, Malaysia with the application of the laws of Malaysia. In the event that a court action has been initiated by the Buyer at the time that the Company chooses to submit the matter to arbitration, then it is agreed that such court action shall be discontinued or stayed.

## **21. HEADINGS**

The headings of these conditions are for convenience only and shall have no effect upon the interpretation thereof.

## **22. HEALTH AND SAFETY**

The Buyer agrees to abide by and comply with any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to comply with all instructions as may be specified by the Company from time to time to ensure that, as far as reasonably practicable, the Goods and Services will be safe, unprejudiced and without risk to health at all times as mentioned above and shall procure that any of its Affiliates and any subsequent possessor of the Goods is so advised and follows such steps in accordance with this Condition. For these purposes, the Buyer is deemed to have been given reasonable opportunity to test and examine the Goods before delivery.

## **23. GENERAL**

23.1 The Company's Affiliates shall be entitled to enforce the provisions of the Contract. A person who is not party to the Contract who is not an Affiliate of the Company shall have no right

under applicable law to enforce any provision of the Contract. This condition 23 does not affect any right or remedy of any person which exists or is otherwise available. The rights of the parties to the Contract to terminate, rescind, or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person that is not a party to the Contract.

23.2 Each clause and sub-clause of these Conditions is separate severable and distinct and, accordingly, in the event of any of them being for any reason whatsoever unenforceable according, the others shall remain in force and effect.

23.3 The Contract sets out the entire agreement and understanding between the Buyer and the Company in connection with the sale of the Goods and provision of the Services and shall supersede and replace all documentation previously issued by the Company or the Buyer purporting to set out its terms and conditions of sale of Goods/Services. The Buyer acknowledges that the Contract has not been entered into wholly or partly in reliance on, nor has the Buyer been given, any warranty, statement, promise, or representation by the Company or on its behalf other than as expressly set out in the Contract. The Buyer confirms that it has obtained independent legal advice and has entered to the Contract voluntarily without any inducement. The Buyer agrees that the only rights or remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had.