

**SINGAPORE CRUISE CENTRE PRIVATE LIMITED
PROCUREMENT TERMS AND CONDITIONS**

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1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless expressly agreed otherwise or unless the context otherwise requires, in these procurement terms and conditions:

- (1) **"the Company"** means Singapore Cruise Centre Pte Ltd or any other subsidiary company, and shall include any person authorised by the Company to act on its behalf;
- (2) **"Confidential Information"** means any information –
 - (a) obtained directly or indirectly from the Company;
 - (b) relating to the Contract; or
 - (c) compiled or generated by the Contractor for the purposes of the Contract which pertains to or is derived from such information;
- (3) **"Consortium"** means an unincorporated joint venture through the medium of a consortium or a partnership;
- (4) **"the Contract"** means the agreement made between the Parties for the Supply, including any Tender Offer, Instructions to Tenderers, Conditions of Contract, the Specifications, Letter of Acceptance, Purchase Orders and any Works Orders issued by the Company to the Contractor for the same, the formal agreement and any other terms specifically accepted by the Company as forming part of the Contract;
- (5) **"Contractor's Personnel"** means the Contractor's employees, agents and contractors and other persons employed or engaged by the Company for the performance or execution of the Works;
- (6) **"the Contractor"** means the Party that supplies the Goods and/or executes or performs the Works pursuant to the Contract;
- (7) **"days"** denotes calendar days unless otherwise specified;
- (8) **"event of Force Majeure"** means acts of God, riots or civil commotions, strikes, lock-outs or other events beyond the Contractor's reasonable control;
- (9) **"Equipment"** means the goods described as such in the Tender or the Purchase Order;
- (10) **"Goods"** means the goods (including the Equipment, if any) which the Contractor is required to supply under the Contract;

- (11) "**Laws**" means the laws of Singapore applicable to the Contract, the Supply, the Goods or the Works, from time to time;
- (12) "**Parties**" refers to the Company and the Contractor, and "**Party**" refers to either of them;
- (13) "**the Price**" means the sum stipulated in the Contract as payable for the supply of the Goods and/or the performance or execution of the Works, as the case may be;
- (14) "**Purchase Order**" means any purchase order issued by the Company and forming part of the Contract;
- (15) "**the Rules**" means the rules set by the Company from time to time for safety, security, traffic, privacy or for good order at and management of the Company's premises, including the General Terms and Conditions for Services of SCCPL, SCC Electronic Transactions Rules, the SCC Safety Rules, the SCC Security Rules, the SCC Traffic Rules and the SCC Privacy Policy, provided to the Contractor before the date of effect of the Contract (receipt of which is acknowledged by the Contractor) and copies of which are available at the Company's website or at the Contractor's request;
- (16) "**the Security Deposit**" shall have the meaning given in Clause 9.1;
- (17) "**Services**" means the services described as such in the Tender or the Purchase Order;
- (18) "**the Site**" means the place where the Works are to be performed or executed as provided in the Contract;
- (19) "**Site Works**" means the site works described as such in the Tender or the Purchase Order;
- (20) "**Supply**" means the supply of all or any Goods and/or the performance and/or execution of all or any part of the Works;
- (21) "**Warranty Period**" shall have the meaning given in Clause 15.2.1;
- (22) "**Works**" means supply of the Services and/or the Site Works, as the case may be, which the Contractor is required to perform or execute under the Contract; and
- (23) "**Works Order**" means the works order issued by the Company and forming part of the Contract.

1.2 Interpretation

- 1.2.1. Where the Contractor is a Consortium, the members of the Consortium shall be jointly and severally responsible to the Company for the due performance of the Contractor's obligations under the Contract.
- 1.2.2. The several documents forming the Contract shall be taken as mutually explanatory of one another and unless expressly agreed otherwise or unless the context requires otherwise:
 - (1) these procurement terms and conditions and 'INCOTERMS 2010' (Publication No. 715 of the International Chamber of Commerce, as amended from time to time) shall be deemed to be incorporated in and shall form an integral part of the Contract;
 - (2) the provisions of the Tender or the Purchase Order or Works Order shall prevail in the event of any contradiction or inconsistency between any provision of the Tender or the Order and any provision of these procurement terms and conditions;
 - (3) these procurement terms and conditions shall prevail in the event of any contradiction of or inconsistency between the provision of these procurement terms and conditions and any other document forming part of the Contract (except the Tender or the Purchase Order or Works Order);
 - (4) any terms or conditions of the Contractor are hereby excluded; and
 - (5) subject to paragraph (2) above, the Parties may only rely on any provision deviating from these procurement terms and conditions only if and to the extent that the Parties agreed such provision in writing.
- 1.2.3. Words importing the singular include the plural and vice versa.
- 1.2.4. The headings are for convenience only and not for the purpose of interpretation.

2 SCOPE OF CONTRACT

2.1 Supply

The Contractor shall supply the Goods and/or perform or execute the Works, as the case may be, with due care and diligence and in accordance with the Contract.

2.2 Provision of equipment

The Contractor shall provide all equipment other than the Equipment (including sheds, qualified personnel, work and services) necessary for the Supply in accordance with the applicable technical specifications and any and all other plans, procedures, specifications, drawings and requirements.

2.3 Purpose, quality and workmanship

- 2.3.1. The Contractor shall ensure that all facilities, services and equipment used for the Supply are fit for their intended purpose and of good quality and workmanship and shall provide all management services, supervision and Contractor's Personnel necessary for the Supply in accordance with the Contract.
- 2.3.2. The Contractor shall not make any variation to the Works except with the written consent of the Company. Any variation consented to shall be executed and completed according to the provisions of the Contract and shall not lead to an increase of the Price or an extension of the agreed time or date of delivery unless and to the extent reasonable, and provided that the Contractor has made a written proposal to the Company with respect to an increase or an extension before the execution of the variation and always provided that the Company has approved such price increase or extension of time in writing. If a change results in a decrease of the supply by the Contractor or a decrease of the Price, the Company is entitled to a proportional decrease of the Price.

2.4 Contractor's Personnel

2.4.1. Without prejudice to the generality of Clause 2.3:

- (1) the Contractor shall assign qualified Contractor's Personnel suitable for the Supply, each with at least the level of competence agreed (if any) or necessary, whichever shall be higher; and
- (2) the Contractor shall not substitute any Contractor's Personnel, without the Company's prior written approval.

2.4.2. For the avoidance of doubt, it is hereby agreed and declared by the Parties that:

- (1) the Company is not and shall not under any circumstances be regarded as the employer of or otherwise responsible or liable for the actions or omissions of any Contractor's Personnel; and
- (2) all expenses relating to travel by the Contractor's Personnel for the purposes of the Supply and lodging are for the account of the Contractor and not chargeable to the Company.

3 PURCHASE ORDERS AND WORKS ORDERS AND BINDING EFFECT

3.1 Purchase Orders and Works Orders

All offers or acceptances of Purchase Orders and Works Orders are binding and irrevocable.

3.2 Binding

Agreements are binding upon the Company only if and as accepted and/or confirmed and/or otherwise laid down by the Company in writing. In the absence of a binding agreement as described in the foregoing or in the Tender or the Purchase Order or

Works Order, the Supply shall be for the full risk and account of the Contractor and shall not bind the Company except and insofar as the Company accepts in writing.

4 PLANNING

4.1 Conformity with Company hours and planning

Subject to Clause 5, the Contractor shall conform to the working hours and/or planning of the Company and shall plan the Supply in such way that the activities of the Company and its employees, agents and contractors and other persons authorised by the Company are not interrupted or disturbed. For peak times, the Contractor shall without additional charge provide extra labour and have activities carried out in overtime or in shifts to the extent necessary for delivery in time to the Company and/or securing proper progress of the activities of the Company and its employees, agents and contractors and other persons authorised by the Company.

4.2 Contractor to inform

Subject to Clause 5, the Contractor shall inform the Company adequately in advance of the exact time of the Supply. The Contractor shall upon the Company's request provide the Company with the Contractor's production and/or progress plan for the Company's information and/or approval.

5 SUPPLY

5.1 According to Contract

5.1.1. The Contractor shall supply the Goods and/or perform or execute the Works by the dates specified in the Contract. Time shall be of the essence. The Contractor shall thereafter obtain an acknowledgment of receipt thereof from the Company. Unless expressly agreed otherwise, the issue of such receipt shall in no way relieve the Contractor from its obligations and responsibilities under the Contract.

5.1.2. The Supply shall not be deemed to be delivered or completed fully in accordance with the Contract until and unless the Contractor has also provided all related documentation such as test, quality, inspection and warranty certificates, drawings, maintenance and instruction manuals, user guides and, if applicable, signed certificates of acceptance.

5.1.3. Except where expressly agreed otherwise, partial Supply shall not oblige the Company in any way to make a partial approval of such Supply or give consideration as to whether the partial Supply complies with the Contractor's obligations.

5.2 Obsolete model

In the event that the model of the product offered by the Contractor in the Contract has become obsolete and cannot be supplied if a Purchase Order is issued for it, the Contractor shall make available an improved model to the Company at the same or lower price than that of the obsolete model, provided that the Contractor shall obtain the

written approval of the Company at least fourteen (14) days before supplying the improved model. If the written approval is granted, the obsolete model shall then be replaced by the improved model.

5.3 Acceptance, inspection and testing

5.3.1. The Contractor shall conduct all tests in accordance with any acceptance test plan and procedures set out in the Contract and to verify and demonstrate that the Goods meet the specifications set out in the Contract.

5.3.2. The Company may at any time carry out or procure the carrying out of any inspection, test or audit with regard to the Supply. Such inspection, test or audit shall not release the Contractor from its obligations under the Contract.

5.4 Removal and replacement of Goods or Works

The Contractor shall immediately at its own cost and when notified in writing by the Company:

- (1) remove and replace the goods delivered purportedly as the Goods that are found on delivery to be damaged, defective or in any way inferior to approved samples; or
- (2) remedy the Works that are found on performance or execution to be deficient

or otherwise not in accordance with the Contract, failing which the Company shall have the right to procure replacements elsewhere or from any third party or to make good any damage in any manner necessary and all costs thereby incurred shall be recoverable from the Contractor by deduction from any monies due to the Contractor under the Contract.

5.5 Replacement of personnel

If so requested by the Company, the Contractor shall replace any person employed or engaged by the Contractor for the purposes of the Contract, within the period set by the Company.

5.6 Meetings

The Contractor shall attend such meetings as the Company may call by notice in writing in order for updates to be provided on progress of the Supply.

5.7 Option to purchase

The Contractor grants the Company the option to purchase all or any Goods (“**the Option to Purchase**”) at a reasonable price determined by the Company at any time while the Contract is in force. The Option to Purchase shall be exercisable by written notice given by the Company to the Contractor within the period (if any) specified in the Contract.

6 EQUIPMENT

Without prejudice to the generality of the other provisions of the Contract, the following provisions shall also apply where the Supply comprises or includes the supply of the Equipment:

- (1) The Contractor shall manufacture and/or supply all the Equipment in accordance with the applicable functional and/or technical specifications and any and all other applicable plans, procedures, specifications, drawings and requirements set by the Company.
- (2) The Contractor shall manufacture, document, deliver, install, test/commission and/or repair the Equipment in accordance with any reasonable instructions of the Company.
- (3) Upon the request of the Company, the Contractor shall furnish a detailed delivery plan in which the Contractor describes the order, timing and duration of the work for the assessment and approval of the Company. As soon as the Company has approved such delivery plan, the delivery plan forms an integral part of the Contract. Deviation from the approved delivery plan is only permitted with the prior written approval of the Company.
- (4) Upon the request of the Company, the Contractor shall deliver a critical and a full spare parts list of the Equipment with the Contractor's spare parts numbers, part names, full prices and expected lifetime.
- (5) Parts ordered from this list by a separate order within six (6) months of the effective date of the Contract shall be delivered on the basis of the INCO term DDP (Delivered Duty Paid) to the Company, within the agreed delivery time of the Equipment.
- (6) The Contractor shall supply all spare parts needed at competitive prices for a period of ten (10) years from the date of the certificate of acceptance, if the Company so requests.
- (7) The Contractor shall be responsible for the complete assembly, installation, construction and commissioning of the Equipment at the Site in accordance with the applicable specifications. The Contractor shall see to it that the Equipment is in good working condition and shall test the Equipment or parts thereof prior to the performance of the site acceptance test.
- (8) As soon as the Equipment or any part thereof has, in the opinion of the Contractor, been delivered and is ready for operational use by the Company, excluding minor items not materially affecting the operation, use or safety of the Equipment, the Contractor shall carry out the site acceptance test. The Company shall be notified of the time of such testing fourteen (14) days before the commencement of such test.
- (9) The Contractor shall supply the required personnel for the site acceptance test at the risk and account of the Contractor irrespective of the facilities used for testing

may belong to the Company or any third party. All costs associated with assembly, tests and commissioning shall be for the Contractor's account.

- (10) The Contractor shall issue the certificate of acceptance within five (5) days upon completion of the site acceptance test acceptable to Company. If the Equipment or any part thereof fails to pass the site acceptance test, the Contractor shall for its own account make such changes, modifications and/or additions to the Equipment or any part thereof as may be necessary to meet the applicable specifications and repeat such test.
- (11) If the Equipment or any part thereof fails to pass the repeated test, the Company may, at its own discretion:
 - (a) order necessary changes or modifications and/or additions and further performance tests;
 - (b) without prejudice to any other rights the Company has under the Contract, appoint for the Contractor's account, other contractors to bring the Equipment in compliance with the applicable specifications;
 - (c) reject the Equipment, or any part thereof; or
 - (d) request the Contractor to proceed with performing its obligations under the Contract as if the performance tests have been passed successfully and reduce the agreed price by such amount as may be agreed upon the Contractor and the Company in respect of such failure to pass the performance tests.
- (12) The Company has the right at any time to issue instructions to the Contractor to make any increases, decreases, omissions, substitutions and changes to the time schedules or any other part of the Equipment as regards its quality, form, character, kind or dimension, provided that Company submits a written change order to the Contractor.
- (13) Unless the Company has indicated that a third party will be responsible for the basic and/or detailed design of the Equipment, the Contractor shall be responsible for the basic and/or detailed design of the Equipment and shall deliver same in accordance with good engineering practice and any design conditions.
- (14) The Contractor shall be responsible for the accuracy and completeness of the specifications, drawings and other documentation provided by the Company and/or any third party and shall never be able to rely upon the inaccuracy or incompleteness of the documentation provided. The Contractor shall notify the Company within five (5) days after receipt when the specifications, drawings and other documentation received from the Company and/or any third party for the supply of the Equipment should be adjusted and/or amended.
- (15) Upon the request of the Company, the Contractor shall prior to the commencement of the work related to the manufacturing and supply of the Equipment, furnish to the Company for its review and approval, complete

drawings, calculations for the design and other construction documentation. The Contractor shall remain responsible for the design and the documentation related thereto, whether or not such documentation has been approved by the Company.

- (16) The Contractor shall provide progress reports of the work on a monthly basis, unless the Company requests for reports on a shorter or longer basis.
- (17) The Contractor shall prepare and handover a complete set of all documents in connection with the Equipment, including warranty and test certificates, PE (inspection) certificates of individual items and test results. All documentation and required certificates are included in the agreed price. Language of the documentation shall be in the English language. However, documents required by the applicable laws or regulations shall also be made available in the language prescribed in such laws or regulations.
- (18) The Company and its appointed representative(s) are at all times entitled to inspect or have inspected the Equipment or part(s) thereof, to examine or have examined and/or to test or have tested the Equipment or part(s) thereof, irrespective of where the Equipment or part(s) thereof are manufactured. For this purpose, they have free access to the sites at which the Equipment or part(s) of the Equipment are being manufactured.
- (19) Upon the discovery of any discrepancies or defects in or to the Equipment, the Company shall inform the Contractor. The Contractor shall repair and replace without cost or delay any discrepancy or defect discovered during inspection.
- (20) Failure of the Company to make such quality surveillance in or to the Equipment shall not relieve the Contractor from its obligations under the Contract nor prejudice the rights of the Company thereafter to reject or require correction of any defective Equipment in accordance with the provisions of the Contract.
- (21) Inspection, review, examination, testing, purchase, comment, approval and/or payment by or on behalf of the Company shall not release the Contractor from any obligation, warranty or liability.

7 SITE WORKS

Without prejudice to the generality of the other provisions of the Contract, the following provisions shall also apply where the Supply comprises or includes the Site Works:

- (1) The Contractor shall immediately visually inspect all materials and equipment furnished by the Company and its other suppliers before using same and shall notify the Company within five (5) days of any defect therein to permit replacement or repair. Upon completion, the Contractor shall return all relevant materials and equipment furnished by the Company and its other contractors in the same condition or better as received taking into account normal wear and tear.
- (2) The Contractor shall execute, document, commission and/or remedy the Site Works in accordance with any reasonable instructions of the Company.

- (3) The Contractor shall furnish a detailed working plan in which the Contractor describes the order, timing and duration of the Site Works as well as the number and disposition of workmen, sheds at the site of the Company and utility requirements during the various stages and phased of the Site Works for the assessment and approval of the Company.
- (4) As soon as the Company has approved such working plan, the working plan forms an integral part of the Contract. Deviation from the approved working plan is only permitted with the prior written approval of the Company.
- (5) If the term for completion of the Site Works is described in workable days, workable days shall only qualify as unworkable if and when the Site Works could not be executed more than five (5) hours on a day due to circumstances that are for the risk and account of the Contractor.
- (6) The Contractor shall submit reports at three-monthly intervals to the Company detailing the Site Works executed.
- (7) If the Site Works cannot be executed by the Contractor due to a waiting period occurring on the Site, the first hour of the waiting period is for the account of the Contractor. Where applicable, the Company shall pay to the Contractor the agreed fees of Contractor's Personnel during the following hour(s) of the waiting period against the presentation of time sheets approved by the Company and provided that the waiting time has been notified by the Contractor to the Company within thirty (30) minutes after occurrence of the waiting period.
- (8) The Contractor shall be responsible for the complete execution of the Site Works in accordance with the applicable specifications and requirements. The Contractor shall see to it that the Site Works have been properly executed and shall verify this prior to the agreed date or time for acceptance by the Company.
- (9) Upon completion of the Site Works, the Company may instruct an independent surveyor to conduct a survey with regard to the (results of the) Site Works. If the surveyor holds the opinion that (the results of) the Site Works does not meet the applicable specifications and requirements, the Contractor shall for its own account make such changes, modifications and/or additions to the Site Works or any part thereof as may be necessary to meet the applicable specifications and requirements. The same shall apply if and when the Company establishes such non-compliance by the Contractor.

8 SERVICES

Without prejudice to the generality of the other provisions of the Contract, the following provisions shall also apply where the Supply comprises or includes the Services:

- (1) Where the Services comprise or include professional services, the Contractor shall also ensure that such Services shall be supplied in a professional workmanlike manner and in a manner that meets or exceeds reasonably accepted industry practices for such services.

- (2) The Parties shall regularly communicate concerning the execution of the Contract on an operational level. The Contractor shall furnish a detailed working plan in which the Contractor describes the order, timing and duration of the Services, for the assessment and approval of the Company. As soon as the Company has approved such working plan, the working plan forms an integral part of the Contract. Deviation from the approved working plan is only permitted with the prior written approval of the Company.
- (3) The Company and its appointed representative(s) are at all times entitled to inspect or have inspected the Services or part(s) thereof, to examine or have examined the Services and/or to test or have tested the Services or part(s) thereof, irrespective of where the Services or part(s) thereof are performed. The same applies to all results of the Services. For this purpose, they have free access to the sites on which the Services or part(s) of the Services are being performed.
- (4) Upon the discovery of any discrepancies or defects in or to the Services, the Company shall inform the Contractor. The Contractor shall repair and replace without cost or delay any discrepancy or defect discovered during inspection.
- (5) Failure of the Company to make such quality surveillance in or to the Services or to discover defective design, materials or workmanship shall not relieve the Contractor from its obligations under the Contract nor prejudice the rights of the Company thereafter to reject or require correction of the defective or deficient Services, in accordance with the provisions of these conditions.
- (6) Inspection, review, examination, testing, purchase, comment, approval and/or payment for the Services, by or on behalf of the Company not release the Contractor from any obligation, warranty or liability.
- (7) The Contractor shall be responsible for the complete supply of the Services in accordance with the applicable specifications and requirements. The Contractor shall ensure it that the Services have been properly performed and shall verify this prior to the agreed date or time for acceptance by the Company.
- (8) Upon completion of the supply of the Services, the Company may instruct an independent surveyor to conduct a survey with regard to the (result of the) Services. If the surveyor or the Company holds the opinion that (the results of) the Services do not meet the applicable specifications and requirements, the Contractor shall for its own account make such changes, modifications and/or additions to the Services or any part thereof as may be necessary to meet the applicable specifications and requirements.

9 SECURITY

9.1 Contractor to provide

The Contractor shall at its own expense and within twenty-eight (28) days of the date of the Company's acceptance of the Contractor's tender or quotation for the Contract or

within such other time as may be required by the Company, deposit and maintain with the Company at all times (“the Security Deposit”) the sum equivalent to five (5%) of the Price or the sum of Singapore Dollars Two Thousand (S\$2,000.00) or such other sum as may be required by the Company, whichever is highest, as security for the due and proper performance by the Contractor of its obligations under the Contract. The Security Deposit shall be, as the Company may choose, in the form of cash or a guarantee or bond in the form required by the Company and issued by a bank or other entity approved by the Company, as the Company may decide.

9.2 Validity period

The Security Deposit shall be valid for such period as the Company may decide including the Defects Liability Period as specified. If the Supply is delayed due to any reason, the period of validity of the Security Deposit shall be correspondingly extended by the Contractor at its own expense.

9.3 Company may draw

In the event of any failure by the Contractor to perform its obligation under the Contract due to any reason and if the Contractor has been notified by the Company of such failure and fails to remedy such failure within the time permitted by the Company, the Company may draw on the Security Deposit to satisfy any losses, damages, costs or expenses which the Company has or may suffer as a result of such failure.

9.4 Release and refund

The Security Deposit (or any balance thereof remaining for the credit of the Contractor) shall be released and refunded without interest subject to any deduction as may be made therefrom.

10 PRICE

10.1 Fixed and all inclusive

10.1.1. Unless expressly agreed otherwise, the Price is fixed and shall not be subject to any increase or surcharge in any event. The Price includes all costs and rights, proper packaging, inspections, tests, certificates, (un)loading and transport charges, cost of insurance, duties, taxes, cost of compliance with the requirements of all Laws, delivery costs and all other items specified in the Contract, and similar costs that the Company may reasonably expect to be included in the agreed price.

10.1.2. Without prejudice to the generality of the other provisions of the Contract, the Contractor shall only be entitled to payment for time which is actually spent on the required level of competency by the Contractor’s Personnel supplying the Goods or executing the Works for the Company and approved as such by the Company.

10.1.3. If the Works cannot be executed by the Contractor due to a waiting period occurring on the Site, the first hour of the waiting period is for the account of the Contractor. Where applicable, the Company shall pay to the Contractor the agreed fees of the Contractor’s Personnel during the following hour(s) of the waiting period against the presentation of

time sheets approved by the Company and provided that the waiting period has been notified by the Contractor to the Company within thirty (30) minutes after occurrence of the waiting period.

10.1.4. All expenses relating to travel by the Contractor's Personnel to the Site and lodging are for the account of the Contractor and not chargeable to the Company.

10.1.5. With respect to all Services supplied for the Company by all Contractor's Personnel, the Contractor agrees to submit to the Company quarterly reports to the Company detailing the Works executed.

10.2 Taxes

10.2.1. The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the Laws, by the Contractor or Contractor's Personnel in performing their obligations under or in relation to the Contract.

10.2.2. If the Company receives a request from the tax authorities to pay on behalf of the Contractor and/or any Contractor's Personnel, or to withhold payments from the Contractor or any Contractor's Personnel in order that the Company may subsequently so pay, any of such taxes, fees, duties, fines, levies and assessments, the Contractor hereby authorises and shall procure the authority of such Contractor's Personnel to the Company to comply with the terms of such request.

10.2.3. The Company shall pay to the Contractor any goods and services tax chargeable on the Supply under the Goods and Services Tax Act (Cap. 117A). Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if it is a taxable person for the purpose of the goods and services tax, be in the same form and contain the same information as if it were a tax invoice for the purposes of the Goods and Services Tax Act (Cap. 117A).

10.3 Deduction and withholding

Without limiting the Company's right under the Contract:

- (1) the amount of any payment or debt owed by the Contractor to the Company under the Contract may be deducted by the Company from any monies payable by the Company to the Contractor pursuant to the Contract; and
- (2) the Company may withhold payment of any disputed or insufficiently documented sum or any sum claimed by any competent authority, included in any invoice.

11 **PAYMENT**

11.1 Invoices

The invoices of the Contractor shall include:

- (1) the invoice number;

- (2) the order number;
- (3) certified copies of the time/material sheets earlier approved by the Company on which the Contractor has relied in calculating the amount of the invoice if no fixed price for the Goods or Works has been agreed;
- (4) the amount of any Goods and Services Tax payable, together with the Contractor's GST number (if any);
- (5) reference to the applicable part of the payment schedule (if any); and
- (6) details as to the Contractor's personnel and any of its contractors engaged.

11.2 Times for payment

The Contractor shall render its invoice in accordance with Clause 11.1 to the Company for the Supply:

- (1) according to the payment schedule (if any) agreed under the Contract; or
- (2) in the absence of such agreement, within thirty (30) days of the Supply

whereupon, the Company shall make payment to the Contractor of the full value of the Supply so made provided that no payment shall constitute acceptance of the Goods or Works covered by the invoice or be considered as evidence of the quality of any Goods or Works to which such payment relates nor shall it relieve the Contractor from its responsibilities under Clause 5.4, and shall be without prejudice to any claim the Company may have against the Contractor in connection with the Contract.

12 PACKAGING AND TRANSPORT

The Goods shall be marked to the Company's instructions and shall be properly packed according to the requirements of transport and destination. The Goods shall be packed in a way to prevent damage or deterioration during transportation. All packaging used shall be taken back by the Contractor immediately upon the request of the Company.

13 SUPPORTING MATERIALS, TOOLS, ENERGY, ETC

13.1 Contractor to provide

The Contractor shall provide all auxiliary materials, tools, personal protection equipment (including necessary clothing and safety devices) for the performance of its obligations under the Contract.

13.2 Company may provide

The Company may at its discretion and at the Contractor's risk and expense, provide auxiliary materials, tools, personal protection equipment or gas, electricity, light or water for the Contractor's performance of the Contractor's obligations under the Contract.

14 DELAY

14.1 Notice of delays

When the Contractor encounters or should reasonably anticipate any delay in the Supply, it shall as soon as practicable within three (3) days, give written notice to the Company of such occurrence and specifying:

- (1) the cause of the delay;
- (2) the likely period of the delay; and
- (3) the measures which the Contractor shall take to reduce or avoid such delay, and to mitigate the effects of such delay

provided that any partial Supply or premature Supply requires the Company's prior written approval.

14.2 Failure to Supply

If the Contractor fails to Supply by the date specified in the Contract, the Company shall have the right:

- (1) to cancel all or any such items of Goods or Works, as the case may be, from the Contract without being liable to the Contractor for damages or compensation, and to obtain such items from third parties and all increased costs thereby incurred shall be deducted from any monies due or to become due to the Contractor or shall be recoverable as damages; or
- (2) to deduct from any monies due or to become due to the Contractor or require the Contractor to pay:
 - (a) a sum calculated at the rate of Singapore Dollars Two Thousand (S\$2,000.00) per incident/occurrence/day (including Saturdays, Sundays and Public Holidays) or such other rate as may be stipulated by the Company and up to a maximum of fifteen per cent (15%) of the Price or such other maximum sum as may be stipulated by the Company, as liquidated damages for the period during which the Supply remains unperformed or unsatisfactorily performed or incomplete; or
 - (b) such other sum or sums as may have been specified by the Company in the Tender or the Purchase Order or the Works Order, as the case may be

whichever shall be highest.

15 WARRANTY

15.1 By Contractor

15.1.1. The Contractor warrants that the Goods and the Works shall be of the best international standards in terms of design, construction, performance, material, composition and quality in accordance with drawings, other documentation and the standards and specifications used by the Company, fit for the intended use, safe and in conformity with any government regulation, and that the Goods and the Works are free from any defects in terms of design, construction, material or manufacturing.

15.1.2. The Contractor hereby assigns to the Company all rights and benefits under warranties given by manufacturers or suppliers of goods, works or services forming the entire or part of the Goods or the Works. The Company hereby authorizes the Contractor to rely on such rights, if necessary for the performance of the Contractor's obligations under the Contract.

15.2 Warranty Period

15.2.1. Subject to Clause 15.2.2, the warranty given or assigned by the Contractor under Clause 15.1 shall be for the period of twelve (12) months or such other period as may be agreed between the Parties, whichever is longer ("**the Warranty Period**"), from the date of the Company's receipt of the Goods in Singapore or the performance or execution of the Works, as the case may be.

15.2.2. If pursuant to this Clause, parts of the Goods delivered and/or the Works performed or executed are replaced, rectified, repaired, altered or remedied, the Warranty Period shall apply to such parts of the Goods and/or the Works as of the time of delivery.

15.2.3. Where during the Warranty Period, any Goods are found to be:

- (1) damaged, defective or deficient in design, materials or workmanship;
- (2) not in accordance with the Contract or any specifications incorporated therein by reference or otherwise; or
- (3) having been installed, operated, stored and maintained in accordance with the written instructions of the Contractor, fails to function properly or fails to meet any performance guarantees set forth in the Contract or specifications published by the Contractor as applicable to the Goods then unless the Contractor proves that the foregoing was caused solely by improper use or mishandling by the Company, the Contractor shall, at its own expense (including transportation costs), at the written notification of the Company, replace, rectify, repair, alter or remedy the damaged or defective Goods.

15.2.4. If the Contractor is requested to remedy a defect, and in the event that the Contractor does not commence work to correct the warranty claims within seven (7) days, the

Company has the right, after written notice to the Contractor, to arrange the repair/correction at the Contractor's expense. In such event, the Contractor shall furnish to the Company the Contractor's technical instructions within one (1) day of the written notice in order to bring Company in the position to follow such instructions. In the event the Contractor does not provide technical instructions, the technical instructions are incomplete or otherwise inadequate to resolve the claimed issue, the Company has the right, after one (1) day of written notice to the Contractor, to define the repair/correction based on the local knowledge and arrange repair/correction at the Contractor's expense. The Contractor's warranty shall remain in full force and effect, including any repairs made by the Company.

15.2.5. The Warranty Period in respect of the defective or deficient Goods or Works shall be extended by the period from the date of remediation to the Company's satisfaction

15.3 Other warranties

15.3.1. The Contractor warrants that the Contractor and all Contractor's Personnel shall not directly or indirectly trade in securities (including stocks, options and derivatives) on the basis of information obtained in connection with the Services.

15.3.2. The Contractor warrants that it has obtained all requisite licenses and permits for supplying the Services and has at all times complied with all terms and conditions of those licenses and permits and nothing might prejudice the continuation or renewal of any of those licenses and permits.

15.3.3. The Contractor warrants that all data and other information which it collects during the execution of the Contract shall be stored within the Contractor's organization in such a manner that these are logically separated from any data or other information which the Contractor has collected and stored within the Contractor's organization from the data or other information of the Contractor or third parties.

16 **TITLE AND RISK**

16.1 Title

16.1.1. The Contractor warrants that the Goods are not and shall not be subject to any retention of title or any other rights of third parties. Upon the request of the Company, the Contractor shall provide proof of its full and unencumbered title to the Goods.

16.1.2. Title to the Goods shall pass from the Contractor to the Company upon successful completion of the acceptance test (or upon delivery if there is no acceptance test).

16.1.3. If the Company makes any payment prior to delivery and acceptance, the title to the Goods in respect of which such payment was made, and/or the parts or materials present at the Contractor's site that pertain to the Goods shall pass to the Company at the time of payment. The Contractor shall identify and keep identifiable the Goods it holds on behalf of the Company and give the Company free access to and control of such Goods. The Contractor shall be considered to hold the Goods on behalf of the Company and shall undertake to have the Goods insured adequately with a reputable insurance company until the completion of the delivery in accordance with the Contract.

16.1.4. Where the Goods comprises or includes the Equipment, upon the transfer of ownership of the Equipment, the Contractor shall handover to the Company, all documentation, including certificates of ownership, and do all that is necessary to effect the transfer. The Contractor hereby grants to the Company, an irrevocable power of attorney to do all that is necessary to effect the transfer of legal title of the Equipment or any part thereof to the Company.

16.2 Risk

The risk of loss or damage to the Goods shall pass from the Contractor to the Company after receipt of the Goods by the Company in Singapore, or upon the expiry of the warranty period (if any) in respect of the Goods, or where the Goods comprises or includes the Equipment, upon the signing of the certificate of acceptance (if any) of the Goods, whichever shall be latest. Notwithstanding the foregoing, risk of loss or damage to the Goods shall be borne by the Contractor from the time the Goods are received by the Contractor for the purpose of modification, replacement, repair or rectification until the Goods are modified, replaced, repair or rectified to the Company's satisfaction and re-delivered to the Company.

17 **INTELLECTUAL PROPERTY RIGHTS**

17.1 Contractor's warranties

The Contractor warrants:

- (1) that the Goods do not infringe any copyrights, and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, knowhow and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields ("**Intellectual Property**"). Notwithstanding the above, the Contractor shall indemnify the Company, its employees, agents and contractors against all Intellectual Property infringement claims including any costs, charges and expenses in respect thereof;
- (2) that it has obtained or shall in due time obtain all rights, relating to the use of any Intellectual Property which may be required for the purpose of the Contract without requiring any assistance from the Company;
- (3) that the use of the Goods and the Works do not infringe any intellectual or industrial property right; and

- (4) any software and any documents or files in any electronic format provided in connection with the Contract to the Company as well as any software used as tools by the Contractor in the supply of the Services shall be free from any and all computer viruses. Computer viruses shall include all software traps, viruses, worms, or code (including any passwords unknown to the Company, disabling devices or codes whatsoever) which would interfere with access to and intended use of the software, documentation or files or which would destroy or alter the Company's data or in any way prejudice the integrity thereof.

17.2 Ownership by Company

Drawings, sketches, illustrations, designs, models, calculations, formulas, working methods, equipment and other such information and tools furnished by the Company under the Contract or made under orders of the Company or made by or on behalf of the Contractor in connection therewith, and the intellectual and industrial property rights related thereto, shall vest in the Company only. The Company shall be considered as their maker and designer, all irrespective of whether they have been separately charged to the Company. The Contractor hereby to the extent necessary and possible transfers or shall procure the transfer of such rights to the Company without additional charge and shall do all what is necessary or conducive to enable the Company to exercise these rights. The Company shall not be obliged to enter into any further agreement with the Contractor or any third party in respect of the use of such Intellectual Property. The Contractor shall indemnify and hold the Company harmless for and against any claim by third parties in this respect, and pay any loss or costs incurred on the part of the Company in that respect.

18 **SITE AND COMPLIANCE WITH LAWS AND RULES**

18.1 Site

18.1.1. The Company shall allow the Contractor and Contractor's Personnel access to the Site during the normal working hours of the Company and where necessary for the execution of the Contract, subject to their compliance with the Rules which the Contractor shall be bound to communicate to all Contractor's Personnel needing access to the Site.

18.1.2. All persons who enter and remain on the Site at their own risk, even if they have been granted access by or on behalf of the Company or if they are under escort by the Company or persons on its behalf, and even if they adhere to the Rules.

18.1.3. The Contractor shall for its own risk and account, clean and restore the Site and/or any other premises used for the supply of the Services, to their original condition not later than the date of completion of supply of the Services in accordance with the Contract.

18.1.4. The Contractor shall remove from the Site all waste material and other residues that resulted from the supply of the Services and/or any activities undertaken by the Contractor under the Contract.

18.2 Contractor's obligation

18.2.1. The Contractor shall comply with all Laws and the Rules (including the SCC Safety Rules), at its own cost, including obtaining and maintaining in a timely manner from the

relevant authorities and certifying agencies, all licences, authorisations and permits and other authorisations or certification required without any restrictions or qualifications whatsoever, so as to enable the Contractor to perform its obligations under the Contract.

18.2.2. Without prejudice to the generality of the other provisions of the Contract, if the Company permits the Contractor and/or any Contractor's Personnel to use of the Company's computers and computer facilities, the Contractor shall ensure that such use shall at all times be in accordance with the Company's procedures, guidelines, directions and sound data processing practices and procedures, and with no interference with the Company's own data processing activities.

18.3 Specifically

Without prejudice to the generality of Clause 18.2, the Company may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the Company or for showing or forbearing to show favour to any person in relation to any contract with the Company, or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Company the Contractor or any person employed by it or acting on its behalf shall have committed any offence under Chapter IX of the Penal Code or Prevention of Corruption Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under Chapter IX of the Penal Code or the Prevention of Corruption Act.

19 **LIABILITY, INDEMNITY AND INSURANCE**

19.1 Liability

The Company, its employees, agents and contractors shall not be liable for any loss, damage or destruction of any property or any injury or death of the Contractor or any Contractor's Personnel arising from or related to the Contract, except where caused by the proven gross negligence or wilful default of the Company. In any event, the liability of the Company shall not exceed the Price.

19.2 Indemnity

The Contractor shall keep the Company fully indemnified against all actions, claims, proceedings, costs (including solicitor and client costs), losses and damages and all legal costs or other expenses and losses incurred or suffered by the Company arising directly or indirectly out of or in relation to:

- (1) arising from the act or omission of the Contractor or any Contractor's Personnel or by any defect or deficiency in the Goods delivered or the Works performed or executed; or

- (2) any claim (including without limitation claims by any Contractor's Personnel or the general public) for any damage, injury, loss or accident sustained in relation to the Contractor's performance of its obligations under the Contract

provided that such damage, injury, loss or accident is not caused by the gross negligence or wilful default of the Company, its employees, agents or contractors.

19.3 Insurance

- 19.3.1. The Contractor shall purchase the necessary insurances against any damage, loss or injury which may occur to any person or property whatsoever in performing its obligations under the Contract. When requested by the Company, the Contractor shall provide the Company with evidence of such insurance.
- 19.3.2. The Contractor shall furnish promptly to the Company upon request reasonable evidence of the insurance coverage set out in this Clause (and undertakes promptly to ensure similar co-operation from its subcontractors).
- 19.3.3. Without prejudice to the generality of Clause 19.3.1, the Contractor shall at its own cost and throughout the term of this Contract obtain and maintain in effect adequate and sufficient insurance in respect of the Contractor's responsibilities and liabilities under the Contract, including but not limited to Public Liability Policy against liability for death or injury, liability for property damage and liability for financial loss, Work Injury Compensation, Professional Indemnity Policy, Motor Vehicle Policy, Contractor's All Risks Policy, Goods Insurance Policy including coverage for transportation and goods in transit, Land Based Equipment Insurance, Employer's Liability Insurance and any other insurance which the Contractor is obliged to carry out under applicable legislation. The Contractor shall furnish promptly to the Company upon request reasonable evidence of such insurance and undertakes promptly to ensure similar co-operation from its subcontractors.
- 19.3.4 The Contractor shall also procure that its insurers for the purposes of Clause 19.3.3 shall waive all rights of subrogation against the Company and its employees, agents and contractors.
- 19.3.5 For the purposes of the Contract, each of the Parties comprising the Insured under the policies described in Clause 19.3.2 shall be considered as a separate and distinct unit. The words "The Insured" shall be considered as applying to each Party in the same manner as if a separate policy has been issued to each of the Parties and the insurers shall agree to waive all rights of subrogation or action which they have or acquire against any of the Parties arising out any occurrence in respect of which a claim is made under the policies.

20 **RELIEF, SUSPENSION, RESCISSION OR TERMINATION**

20.1 Relief

If there is a delay in the Supply due to any event of Force Majeure, then in any such case the Contractor shall for such duration as the Company may consider reasonable,

be relieved of its obligation to Supply thereby affected but the provisions of the Contract shall remain in full force in regard to any Supply not affected by such event.

20.2 Suspension

The Company is entitled to suspend its obligations in whole or in part and without any prior notice of default, if and when the Contractor fails to timely or adequately fulfil any of its obligations towards the Company, as well as in case of filing a petition for moratorium or bankruptcy of the Contractor, attachment of a part of the Contractor's property or the goods intended for the execution of the Contract, closing down or liquidation of its business.

20.3 Termination

20.3.1. The Company may at any time terminate the Contract either in whole or in part:

- (1) immediately by written notice to the Contractor, in any of the events specified in Clause 18.3, or in Clause 20.2 if the failure and/or occurrence have not been fully remedied within the period specified by the Company; or
- (2) notwithstanding Clause 20.2, by giving to the Contractor not less than thirty (30) days' written notice.

20.3.2. If due to any event of Force Majeure, either Party shall be unable to fulfil its obligations under the Contract for a period exceeding thirty (30) days, either Party may terminate the Contract immediately by written notice given to the other Party.

20.3.3. In the event of termination of the Contract under Clause 20.3.1 or 20.3.2:

- (1) the Company shall compensate the Contractor at the pro-rated Price for Goods or Works insofar as they have been supplied or performed or executed, as the case may be, in accordance with the Contract; and
- (2) the Company shall have the right to purchase from other sources all the Goods which remains undelivered or similar goods and all increased costs reasonably incurred by the Company shall be recoverable from the Contractor.

20.3.4. If the Contract is terminated under Clause 20.3.1(2), the Company shall also compensate the Contractor for the costs actually incurred in respect of legally binding obligations already assumed by the Contractor for the performance of its obligations under the Contract. In any case, the Company shall not be liable for any loss or damage suffered by the Contractor as a result of termination of the Contract and the Company shall then possess such Goods and have the benefit of such Works without prejudice to the Company's other rights and remedies.

20.3.5. Notwithstanding anything contained herein, the Contractor shall not be entitled to claim for any reimbursement but not limited to loss of anticipation profit for the value of any of the Goods not supplied prior to the termination of the Contract.

20.3.6. For the avoidance of doubt, it is hereby agreed and declared that if any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or ceases to exist in accordance with the laws of the country of incorporation:

- (1) the Contract shall continue to have effect unless and until the Company shall terminate the Contract by reasonable notice in writing, and
- (2) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

20.3.7. Upon or prior to termination of the Contract and if requested by the Company, the Contractor shall diligently cooperate with the Company to effect a smooth and orderly transition of the Services from the Contractor to the Company or to any third party designated by the Company.

21 VARIATION OF CONTRACT

No variation whether oral or otherwise in the terms of the Contract shall apply thereto unless such variation shall have first been expressly accepted in writing by the Contractor and the authorised signatory of the Company.

22 ASSIGNMENT, CHANGES TO CONSORTIUM AND THIRD PARTIES

22.1 Assignment

The Contractor shall not assign or otherwise transfer or share its rights or obligations under the Contract without the prior written consent of the Company.

22.2 Changes to Consortium

Where the Contractor is a Consortium, the Contractor shall not add or replace any person as a member of the Consortium without the prior written consent of the Company. In the event of the Company's consent to such addition or replacement, the expression "the Contractor" or "Consortium" shall incorporate such changes.

22.3 Third parties

A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms or conditions.

23 CONFIDENTIALITY

23.1 Contractor's obligation

Except with the written consent of the Company, the Contractor shall keep strictly confidential and shall not disclose the Contract or any supply made under the Contract or any provisions thereof or any information issued or furnished by or on behalf of the Company in connection therewith to any person, and undertakes to use the Confidential

Information only for the purpose of performing the Contractor's obligations under the Contract.

23.2 Return

The Contractor shall at the termination or completion of the Contract, upon demand by the Company, deliver to such person as may be appointed by the Company all Confidential Information (whether original or copies; and in all manner of form including but not limited to print and electronic) obtained directly or indirectly from the Company or compiled or generated by the Contractor in the course of the Contract which pertains to or is derived from such information, including but not limited to information in the form of data, analyses, charts, reports or presentation material.

23.3 References

Without prejudice to the Contractor's obligation regarding Confidential Information, the Contractor explicitly acknowledges that without the Company's prior written approval the Contractor is not entitled to refer to the Contract or to its relationship with the Company for marketing or other commercial purposes.

24 **NON-SOLICIT**

The Contractor shall during the execution of the Contract as well as during a period of one (1) year following the termination of the Contract not in any way, direct or indirect, approach and/or entice away any employees of Company to terminate their employment contract with the Company and/or to enter into a contract with the Contractor or a Contractor's affiliate. For the purposes of this clause "employees of Company" include all persons who work for the Company.

25 **WAIVER**

No forbearance, delay or indulgence by either Party in enforcing the provisions of the Contract shall operate as a waiver or prejudice or restrict the rights of that Party nor shall any single or partial exercise of any right or remedy preclude any further exercise of that right or remedy or exercise of any other right or remedy. The rights and remedies provided to parties under the Contract are cumulative and not exclusive of any rights or remedies provided at law.

26 **SURVIVAL**

Clauses 15, 17, 19, 23 and 27 shall survive the termination or expiry of the Contract.

27 **GOVERNING LAW AND DISPUTE RESOLUTION**

27.1 Governing Law

The Contract shall be governed by the laws of Singapore.

27.2 Mediation

27.2.1. Notwithstanding anything in the Contract, in the event of any dispute, controversy or claim arising out of or relating to the Contract, no Party shall proceed to any form of dispute resolution UNLESS the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre.

27.2.2. A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 27.1.

27.2.3. Failure to comply with Clause 27.1.1 or 27.1.2 shall be deemed to be a breach of the Contract.

27.3 Arbitration

Subject to Clause 27.2, any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference into this Clause.