

GENERAL TERMS AND CONDITIONS
applicable to purchases by
Kawasaki Subsea (UK) Limited
as of April 2020

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ARTICLE 1. Definitions

1.1 The following terms used in these General Terms and Conditions have the meanings specified below respectively except where the context requires otherwise:

- (1) "Anti-corruption Laws" means Applicable Law relating to bribery, corruption and similar matters, including, but not limited to, (i) the Foreign Corrupt Practices Act of the United States, and (ii) the Bribery Act of the United Kingdom.
- (2) "Applicable Law" means all local, state, federal and national laws, orders, rules, regulations and ordinances applicable to the Works including, but not limited to, those of the countries where Seller will be manufacturing the Goods or performing the Services or where Buyer or Customer will be receiving or using the Works.
- (3) "Buyer" means Kawasaki Subsea (UK) Limited. (registered in Scotland with company number SC619908)
- (4) "Contract" means the contract for the supply of the Goods and/or the provision of the Services between Buyer and Seller, which comes into effect upon Seller's acceptance of the Purchase Order (either by written acknowledgement or performance thereof). For the avoidance of doubt, the Purchase Order, these General Terms and Conditions, these Special Terms and Conditions (if any), Specifications, and other documents designated by Buyer shall constitute the Contract and each shall be read and construed as an integral part of the Contract.
- (5) "Customer" means a party who, under a contract or otherwise, purchases or leases from Buyer or otherwise uses the products in which or for which the Goods and/or Services are to be incorporated or are intended.
- (6) "day" means a calendar day and shall include Saturdays, Sundays, national holidays and legal holiday, except that, in the event that an obligation to be performed under the Contract falls due on a Saturday, Sunday, national holiday or legal holiday, the obligation shall be deemed due on the next business day thereafter.
- (7) "Goods" means parts, materials, equipment or machinery, in whatever quantities, to be supplied by Seller to Buyer as described in the Purchase Order.
- (8) "Purchase Order" means the purchase order placed by Buyer with Seller for the supply of the Goods and/or the provision of the Services.
- (9) "Seller" means the person, firm or company with whom or with which the Purchase Order is or is to be placed by Buyer.
- (10) "Services" means any services to whatever extent, to be provided by Seller to Buyer as described in the Purchase Order.
- (11) "Special Terms and Conditions" means the terms and conditions agreed by the parties hereto in writing which complete or supplement the provisions of these General Terms and Conditions and are specific to the Purchase Order.
- (12) "Specifications" means all written documents or other agreed methods of defining the technical or commercial requirements for the Works ordered, including any amendment thereof and attachment thereto, issued by Buyer, which shall be deemed to be an integral part of the Contract even if not attached to the Purchase Order.
- (13) "Works" means the Goods to be supplied and/or the Services to be performed and rendered by Seller or its subcontractor as expressly set forth in the Purchase Order or Specifications, and all of Seller's activities that are reasonably inferable from the description of the Works for the completion of the Purchase Order by Seller. This shall include works or services performed pursuant to any authorization for the Works or changes which may be issued to Seller from time to time by Buyer and shall therein become part of the scope of the Works.

(14) "Warranty Period" means the period commencing from the date of the delivery of Goods or the completion of the Services, and ending twelve (12) months from the date of commencement of commercial operation of the products in which or for which the Goods and/or Services are to be incorporated or are intended.

1.2 The singular shall include the plural and the plural shall include the singular except where the context otherwise requires.

ARTICLE 2. Contract

- 2.1 The sole relationship between Buyer and Seller shall be that of buyer and seller. Nothing herein shall be deemed to create the relationship of employer or employee, partnership, association or joint venture of any nature whatsoever. Neither party hereto shall have the right, power or authority to assume or create any obligation, express or implied, for which the other may become liable.
- 2.2 If any terms in a written acceptance by Seller of the Purchase Order conflict with, or supplement, the terms of the Purchase Order or these General Terms and Conditions, such conflicting or supplemental terms shall be null and void and the terms of the Purchase Order or these General Terms and Conditions shall govern. Any previous correspondence, bid or quote from Seller characterized as an offer is hereby rejected in full, and in such situation Buyer's Purchase Order constitutes its counter-offer.
- 2.3 In case any ambiguity or conflict is found among these General Terms and Conditions, these Special Terms and Conditions (if any), the Specifications and the Purchase Order, the order of precedence with respect to such conflict shall be the order listed below

- (1) The Purchase Order
- (2) These Special Terms and Conditions (if any)
- (3) The Specifications
- (4) These General Terms and Conditions

Notwithstanding above, Seller shall immediately notify Buyer of any discrepancy, or any defects, errors, or inconsistencies, either in or among the Specifications, drawings, the Purchase Order, these Special Terms and Conditions (if any), these General Terms and Conditions or other related documents.

ARTICLE 3. Price and Payment for the Works

- 3.1 The price is the consideration to be paid by Buyer to Seller for the completion of all Seller's obligations in accordance with the Contract. Such price (hereinafter referred to as "Price") shall be set forth in the Purchase Order.
- 3.2 The Price shall be a fixed price and not be subject to currency fluctuation, price escalation in respect of materials or labor costs, or any other adjustment for any reason whatsoever, including, but not limited to, any increase or decrease in cost resulting from any change in taxes, duties, surcharges, import fees, or levies after the date of the Contract, except as otherwise provided for in the Contract or as otherwise agreed by Buyer and Seller.
- 3.3 It is understood and agreed by Buyer and Seller that any requirements set forth in the Purchase Order or Specifications, these General Terms and Conditions, and all governmental regulations and safety standards applicable to the Works (including alternations or amendments thereto) shall be performed and/or supplied by Seller without increase in the Price.
- 3.4 Buyer shall have the right to deduct or set off from any payment to be made to Seller any monies due from Seller to Buyer, regardless of whether such monies are due under the Contract or not.

ARTICLE 4. Delivery

- 4.1 Unless otherwise stated in the Purchase Order or Specifications, title to and risk of loss with respect to the Goods shall pass to Buyer from Seller upon the completion of delivery to the destination set forth in the Purchase Order. For the avoidance of doubt, however, the passage of the title of the Goods in accordance with this Article 4.1 shall not be deemed to be an acceptance of the Goods by Buyer. Early shipment, partial shipment and/or transshipment shall be accepted in particular cases when Buyer provides its prior consent thereto in writing.
- 4.2 Seller warrants to Buyer that upon delivery to Buyer in accordance with the Contract Buyer will have full, complete and unrestricted title to all Goods supplied by Seller under the Contract, free of any lien or encumbrance. Seller hereby waives all liens, charges, restrictions, reservations, security interests, encumbrances, retention of title arrangements and any other like interests in the Goods or any part thereof furnished under the Contract.
- 4.3 All the Goods shall be packed and marked in accordance with instructions given by Buyer to Seller for the Goods. If no instructions are given by Buyer to Seller, Goods shall be packed and marked in accordance with industry standards for the relevant industry, and shall be reasonably protected from damage, rust, deterioration and loss during transit to their destination.
- 4.4 Seller shall be responsible and liable for any loss or damage caused by improper packing or preservation and shall, at Seller's own expense, effect all repairs, replacement or replenishment of the Goods necessitated by such loss or damage.
- 4.5 Seller shall submit the documents stipulated in the Purchase Order or the Specifications in accordance with Buyer's instructions. Unless otherwise stated in the Purchase Order or the Specifications, a packing slip shall be attached to the packaging with the following information legible: Seller's name, Buyer's Goods number, Buyer's Purchase Order number, the quantity of the Goods, and the invoice number. Seller shall immediately forward the invoice with all related documents, including, but not limited to, the packing list, bill of lading or airway bill and certificate of origin, to Buyer after shipment of the Goods.
- 4.6 Unless otherwise stated in the Purchase Order or Specifications, the interpretation of the Contract shall be in accordance with INCOTERMS 2010 (International Rules for the Interpretation of Trade Terms) established by the International Chamber of Commerce.

ARTICLE 5. Delay in Delivery

- 5.1 Seller shall deliver the Goods and complete the Services within the date set forth in the Purchase Order and perform its obligations in accordance with the manufacturing schedule under the Contract. Time is of the essence of the Contract. In the event of any delay in the delivery of the Goods or in the completion of any Services except as excused by Article 14 (Force Majeure), Seller shall pay Buyer the liquidated damages in an amount equal to one (1) % of the Price for each and every week or a part thereof from the due date of delay, provided that the total liquidated damages assessed against Seller shall in no event exceed ten (10) % of the total Price. Such payment shall not relieve Seller of its obligation to make and deliver the Goods, to complete the Services, or to perform any of its other obligations or pay or discharge any of its other liabilities under the Contract. Seller expressly agrees and acknowledges that (a) the liquidated damages roughly approximate the damages likely to be incurred by Buyer as a result of a delivery delay or a delay in completion, and (b) the actual damages to be incurred by Buyer as a result of a delivery delay or a delay in completion are sufficiently uncertain that the liquidated damages clause will save both parties hereto the future difficulty of calculating damages.
- 5.2 In the event of any delay in the delivery of the Goods or in the completion of any Services that is anticipated or any delay in the performance of its obligations in accordance with the manufacturing schedule under the Contract, regardless of whether such delay is excusable, Seller shall

notify Buyer immediately of such delay and provide to Buyer the anticipated actual delivery date or completion date. In addition, Seller shall use its best efforts to effect the actual delivery of such Goods or completion of such Services by a date as close as possible to the original delivery date or completion date as set forth in the Purchase Order.

- 5.3 In addition to the provisions of Article 5.2, in the event that any delay in delivery of the Goods is anticipated, Buyer has the right to require Seller to transmit such Goods by the soonest possible date and using the fastest method of transportation, and Seller shall be responsible and liable for all incremental costs associated with such expedited delivery.
- 5.4 In addition to the provisions of Article 5.1, if Seller fails to deliver any Goods or complete any Services by the delivery date or completion date specified in the Purchase Order and the liquidated damages for such delay to be paid by Seller have reached the maximum amount specified in Article 5.1, Buyer may, by further written notice to Seller, terminate the Contract in accordance with Article 19.2.
- 5.5 In the event that delivery of the Goods is delayed due to Buyer's inability to arrange delivery, Seller shall, for a period of thirty (30) days, either hold the Goods at its own factory or warehouse or place the Goods in storage in a manner approved by Buyer and without cost to Buyer. In addition, should such thirty (30) day period prove to be insufficient to resolve the situation giving rise to the delay, Seller shall continue to hold the Goods or store the Goods in a manner approved by Buyer and at Buyer's cost and expense.

ARTICLE 6. Schedule Control by Buyer

- 6.1 Seller shall, upon the request of Buyer, or if so instructed in the Purchase Order, provide Buyer with one or more progress report by the date specified by Buyer, which shall specify the then current status of the Works, including, but not limited to, the manufacturing status, the expected date of shipment of the Goods and/or the expected date of completion of the Services, as well as other appropriate information which may relate thereto.
- 6.2 Buyer and any person authorized by it shall have access at all reasonable times to Seller's or its subcontractor's facility and elsewhere.
- 6.3 If at any time during the performance of Seller's obligations under the Contract, Seller's progress appears to Buyer to be inadequate to meet the delivery date or completion date set forth in the Purchase Order, Seller shall take all the reasonable actions instructed by Buyer necessary to improve its progress, including, but not limited to, producing a revised work schedule acceptable to Buyer and accelerating the order of raw materials needed for the Goods. Neither such instruction by Buyer nor Buyer's failure to issue such instruction shall relieve Seller of its obligation to achieve the quality of work and rate of progress required by the Contract.

ARTICLE 7. Tests and Inspections

- 7.1 Seller shall conduct at its expense all tests and inspections required by the Contract and/or Applicable Law.
- 7.2 Buyer and Customer shall be entitled to send representatives or inspectors to attend such tests and inspections carried out by Seller or its subcontractor. Seller shall notify Buyer of the scheduled date and place of such tests or inspections not less than three (3) weeks in advance of the scheduled date of such tests or inspections, unless otherwise stated in the Purchase Order or Specifications. Seller shall give such representatives or inspectors reasonable access to the tests and inspections referenced in Article 7.1
- 7.3 Seller shall provide Buyer with a certified report in accordance with the form specified by Buyer of the results of any such tests and inspections. If Buyer's or Customer's representatives or inspectors fails to attend the tests or inspections, or if it is agreed between the parties hereto that such representatives or inspectors shall not attend such tests or inspections,

then Seller may proceed with the tests and inspections in the absence thereof.

7.4 In the event that a defect or non-conformity with the requirements under the Contract is identified by the representatives or inspectors of Buyer or Customer, Seller shall make (or cause its subcontractor to make) reasonable corrections to or replacements of the Works at Seller's expense within the time instructed by Buyer. Thereafter, Seller shall repeat the tests and inspections after giving Buyer written notice of such repeated tests and inspections in accordance Article 7.2.

7.5 Buyer shall have the right to inspect the Works within a reasonable period of time after the Goods are delivered or the Services are provided, and Buyer has the right to reject the Works to the extent of any defect or non-conformity with the requirements under the Contract.

7.6 In the event that Buyer rejects any Works pursuant to Article 7.5, Seller shall, at Buyer's option, do any of the following at Seller's cost and expense:

- (1) repair, replace or re-perform the Works that were defect or non-conformity,
- (2) supply the shortage in the Goods, in the case of any such shortage, and/ or
- (3) refund the Price which Buyer has paid.

In the case of replacement or replenishment of the Goods, delivery shall be made to Buyer in accordance with Buyer's directions. In the case of refund, Seller shall reimburse such amount to Buyer. In addition to the above remedies, Seller shall reimburse Buyer for any and all costs, expenses, losses and damages incurred by Buyer in connection with the defect or non-conformity.

7.7 Neither the execution of a test or inspection, nor the attendance or non-attendance by the representatives or inspectors of Buyer or Customer, nor the issue of any tests or inspections report by Seller pursuant to the Article 7.3, shall relieve Seller of its obligations or responsibilities under the Contract.

ARTICLE 8. Warranty

8.1 Seller hereby warrants to Buyer as follows:

- (1) all the Works shall conform to all requirements set forth in the Contract, and all governmental regulations and safety standards applicable to the Works (including alternations or amendments thereto); and
- (2) all the Goods shall be new, merchantable, of high quality and free from defects in design, materials and workmanship.

In addition, unless otherwise agreed by the parties hereto in writing, Seller shall be deemed to know of Buyer's intended use of all Works provided, and Seller hereby warrants that all Works that have been selected, designed, manufactured or assembled by Seller based upon Buyer's intended use will be fit and sufficient for such use.

These warranties shall run to Buyer, its successors, assigns and Customers, and other users of the Works. The foregoing warranties (as well as the warranty of title set forth in Article 4.2) are not exclusive and shall not limit Buyer's right to avail itself of any other warranty provided by the Contract or at law. Any attempt by Seller to disclaim any implied warranties is hereby rejected.

8.2 In the event that any defect in any of the Works appears, or if it appears that the Works, or any portion thereof, do not conform to the warranties specified in Article 4.2 or Article 8.1 or otherwise implied by law within the Warranty Period, then Buyer may give Seller notice of such non-conformity or defect, and in such event Buyer may at its option:

- (1) require Seller to repair, replace or re-perform, as the case may be, the defect or non-conformity, and perform such tests or inspections as Buyer may require to verify that such repair, replacement or re-performance conforms to the requirements of the Contract, in each case at Seller's cost and expense, including, but not limited to, costs for transportation, duties, taxes and any disassembly and re-assembly required, or
- (2) itself perform such repair, replacement or re-performance the defect or non-conformity, or provide for such repair, replacement or re-performance to be effected by Customer or by any third party designated by Buyer or Customer, in which case the costs, charges and expenses in carrying out such work shall be borne by Seller, and Seller shall reimburse such costs, charges and expenses within thirty (30) days following receipt by Seller of the invoice therefor.

In addition, Seller shall render to Buyer or Customer, as the case may be, reasonable technical and engineering assistance, including, but not limited to, dispatch of one or more engineers for the above work at no cost to Buyer and Customer.

8.3 For any Works repaired, replaced or re-performed under the provisions of Article 8.2, the Warranty Period for the repaired, replaced, or re-performed part of the Works shall newly begin on the date when such Works pass the tests and inspections or, if no such tests and inspections is required, on the date when the Works are satisfactorily completed and expire twelve (12) months thereafter.

8.4 In the event of a dispute in respect of liability for a defect or non-conformity, Seller shall nevertheless proceed with repair, replacement or re-performance if so required by Buyer.

8.5 Without prejudice to Buyer's other rights and remedies, Seller shall compensate Buyer for any loss or damage directly or indirectly resulting from any breach of the warranties set forth in Article 4.2 or Article 8.1 or otherwise implied by law.

ARTICLE 9. Property of Buyer

9.1 In case Buyer furnishes to Seller any article, including, but not limited to, jigs, tools, or molds, in connection with the performance of Seller's obligations under the Contract, such article shall remain the property of Buyer and shall be returned to Buyer on request in good and usable condition, reasonable wear and tear excepted.

9.2 If any material, part or equipment is furnished by Buyer to Seller for incorporation in the Goods and/or use in the Services, such material, part or equipment shall remain the property of Buyer unless otherwise agreed by the parties hereto, and shall be returned to Buyer on request in good and usable condition (unless reasonably consumed in connection with production of the Goods or provision of the Services or unless incorporated into the Goods).

9.3 Seller shall receive, unload and appropriately handle such article or material, part or equipment (hereinafter referred to as "Items") when delivered to Seller. Seller shall visually inspect all Items and check all supporting documentations and shall notify Buyer of any discrepancy or damage within five (5) working days of receipt or such other period as may from time to time be agreed upon by the parties hereto. Receipt of all Items shall be recorded in writing. In the absence of any notification of discrepancy or damage, the Items shall be deemed to have been delivered in a complete and undamaged state.

9.4 Seller shall not use the Items for purposes other than for the performance of its obligations under the Contract, and further shall not rent, give or otherwise pass on to a third party any of the Items without the prior written consent of Buyer.

9.5 The Items shall be maintained at the risk of Seller and Seller shall be fully responsible and liable for and indemnify Buyer for any loss of or damage to any Items.

9.6 Seller shall conspicuously identify Buyer's property as belonging to Buyer and shall take all reasonable measures specified by Buyer in

connection therewith. No such property shall be removed from Seller's facilities without Buyer's prior written consent.

ARTICLE 10. Approval/Review of Technical Documents by Buyer

- 10.1 Seller shall, at its own expense, furnish all documents and data, including, but not limited to, specifications, drawings, inspection reports, mill certificates and microfilms, in accordance with Buyer's directions. Any part of the Works covered by or related to the documents to be approved by Buyer shall be executed only after Buyer's approval thereof. The following Articles 10.2 and 10.3 shall apply to those documents requiring Buyer's approval but not to those furnished to Buyer for its review only.
- 10.2 Within a reasonable period after receipt by Buyer of any document requiring Buyer's approval in accordance with Article 10.1, Buyer shall either return one copy thereof to Seller with its approval endorsed thereon or notify Seller of its disapproval thereof.
- 10.3 If Buyer disapproves a document, Seller shall modify the document and re-submit it for Buyer's approval in accordance with this Article 10.1.
- 10.4 Such review and approval by Buyer of the document furnished by Seller shall not relieve Seller of its obligations or responsibilities for the accuracy and adequacy thereof under the Contract. Under no event shall Buyer assume any such responsibility as a result of such review or approval.

ARTICLE 11. Change of Designs and Specifications

- 11.1 Buyer reserves the right, from time to time by written notice to Seller, to make changes in or additions to the Specifications for the Works or the scope of the Works covered by the Contract, including, but not limited to, with respect to such matters as tests, inspections or quality control. Seller shall comply with such changes or additions, and such changes or additions shall become a part of the Contract. If such changes or additions cause an increase or decrease in the obligations of Seller under the Contract or affect the delivery schedule of the Goods or the completion schedule of the Services, and if so requested by Buyer, Seller shall, within the time instructed by Buyer, prepare and submit to Buyer a change proposal, including, but not limited to, a detailed cost estimate of such changes or additions in the Works and the delivery schedule of the Goods or the completion schedule of the Services. Buyer reserves its right to reject such change proposal wholly or partly in the opinion of Buyer. Buyer may make an equitable and reasonable amendment of the Price and/or the delivery schedule of the Goods or the completion schedule of the Services. While the amendment of the Price, the delivery schedule of the Goods, or the completion schedule of the Services are in dispute, Seller shall proceed with its obligations under the Contract in accordance with the instructions of Buyer.
- 11.2 Notwithstanding the Article 11.1, no change made necessary due to any default of Seller in the performance of its obligations under the Contract or errors or omissions by Seller in its drawings, specifications, or workmanship shall be deemed to be the change authorized by Buyer subject to the Article 11.1 and such change shall not result in any adjustment of the Price or the delivery schedule of the Goods or the completion schedule of the Services.

ARTICLE 12. Patent Infringement and Grant of License

- 12.1 Seller represents and warrants to Buyer that the Works shall not infringe or violate any third party's patent, utility model, design right, trademark, copyright, trade secret or other intellectual property rights (whether registered or not) at the time of delivery of the Goods to Buyer or completion of the Services (hereinafter referred to as "Intellectual Property Rights"). Seller shall indemnify, hold harmless and defend Buyer, Customer and their employees, directors and officers from and against any and all suits, actions or administrative proceedings, claims,

demands, losses, damages and costs and expenses of whatsoever nature, including, but not limited to, attorney's fees and expenses, which Buyer or Customer may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of Seller's performance for the Works by Seller or the use, sale, operation and maintenance of the Goods supplied under the Contract, except to the extent that such infringement or alleged infringement arises out of a design furnished by Buyer or Customer. If the use, sale, operation or maintenance of the Goods, or any part thereof, is enjoined, Seller shall, at its own expense, with the prior written consent of Buyer, either (a) procure for Buyer or Customer the right to continue to use, sell, operate or maintain such Goods or parts thereof; (b) modify such Goods or parts thereof so that they become non-infringing without loss of functionality; or (c) accept return of such Goods and refund the Price and transportation and installation costs, if any, thereof or related thereto.

- 12.2 For the use, sale, operation and maintenance of the Goods by Buyer or Customer, Seller hereby grants an irrevocable and non-exclusive world-wide royalty-free license to Buyer and Customer in respect of any relevant intellectual property rights owned by Seller or by its subcontractors. Seller hereby also grants to Buyer and Customer an irrevocable and non-exclusive world-wide royalty-free license to use the know-how and other technical information disclosed to Buyer or Customer under the Contract. Seller shall obtain from its subcontractors the same undertaking and shall indemnify Buyer and Customer for any failure by Seller to do so.
- 12.3 Any patent, utility model, design right, trademark, copyright, trade secret or other intellectual property rights arising out of any work, process or performance of the Works shall vest in and be the sole property of Buyer or Customer, as the case may be, and Seller undertakes upon Buyer's or Customer's request to do so all acts and things necessary to vest such ownership in Buyer or Customer and to assure its title thereto.

ARTICLE 13. Non-Disclosure

- 13.1 All information which is orally disclosed or furnished in tangible form by Buyer, directly or indirectly, including, but not limited to, information regarding the Works, processes involved in the Works, the transactions covered by the Contract, and any other information or know-how supplied by or on behalf of Buyer, whether such information has been furnished prior to, during the pendency of or following the termination or cancellation of the Contract, shall be treated as confidential information (hereinafter called "Confidential Information") by Seller. Notwithstanding the above, Confidential Information shall not include information that Seller can demonstrate conclusively:
 - (1) was in the public domain at the time of disclosure by Buyer;
 - (2) entered the public domain, subsequent to disclosure by Buyer, through no fault of Seller;
 - (3) was in the possession of Seller at the time of disclosure by Buyer ;
 - (4) was rightfully received by Seller without any confidential obligation from any third party who has the lawful right to disclose the information; or
 - (5) was developed or created independently by Seller without referring to the Confidential Information disclosed by Buyer.
- 13.2 Seller shall keep any Confidential Information in confidence and shall not disclose such Confidential Information to any third party, including, but not limited to, a subsidiary or affiliate of Seller, without prior written consent of Buyer. Seller shall not use any Confidential Information for any purpose other than Seller's performance for the Works. Notwithstanding the foregoing provision of this Article 13.2, Seller may disclose the Confidential Information to its employees, directors, officers and subcontractors who are involved in Seller's performance for the Works (hereinafter referred collectively to as "Seller's Personnel") on a need to know basis; provided, however, that Seller shall impose on Seller's Personnel to whom such Confidential Information is disclosed the confidentiality obligations set forth in these General Terms and

Conditions. The breach of any obligation hereof by Seller's Personnel shall be deemed to be a breach by Seller.

- 13.3 At all times during the performance of Seller's obligations under the Contract and thereafter, all Confidential Information pursuant to these General Terms and Conditions shall be and shall remain the property of Buyer.
- 13.4 Upon termination or cancellation of the Contract or upon Buyer's written request at any time, the written data, any copies, disks and other material or media containing the Confidential Information shall be promptly returned to Buyer or destroyed by Seller, at Buyer's option.

ARTICLE 14. Force Majeure

- 14.1 For purposes of the Contract, "Force Majeure" shall mean an occurrence beyond the control and without the fault or negligence of the party hereto affected including acts of God, war, rebellion, or riots; floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions, catastrophes, or other similar occurrences which are not within the control of the party affected. However, the following shall not be considered Force Majeure.
- (1) delay caused by lack of or inability to obtain raw materials, congestion at Seller's or its subcontractor's facilities or elsewhere, market shortages, or similar occurrences,
 - (2) delay, either on the part of Seller or its subcontractors, caused by a shortage of supervisors or labor, inefficiency, or similar occurrences, or
 - (3) sabotage, strikes, or any other concerted acts of workers at the facilities or elsewhere of Seller or its subcontractors.
- 14.2 Any delay or failure in performing the obligations under the Contract by either party hereto shall not constitute default under the Contract or give rise to any claim for loss, damage or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure.
- 14.3 Should Seller be delayed or envisage delay in delivering the Goods and/or completing the Services by an occurrence which Seller reasonably judges to be Force Majeure, and Seller cannot avoid or prevent said delay by any reasonable effort, Seller shall immediately notify Buyer of the occurrence and furnish Buyer with convincing evidence such as official certificate from competent authorities substantiating the occurrence and nature of the alleged occurrence, and Buyer, if it agrees, shall then give notice to Seller confirming the existence of Force Majeure and shall authorize an unavoidable delay to the extent such delay is caused by Force Majeure.
- 14.4 Seller shall take all reasonable measures to mitigate the effect thereof upon its performance for the Works and to fulfill its obligations under the Contract, including, but not limited to, the efforts to effect the actual delivery of such Goods or completion of such Services by a date as close as possible to the original delivery date or completion date as set forth in the Purchase Order.
- 14.5 Should the circumstances of Force Majeure continue over a period of thirteen (13) weeks, Buyer has the right, if no other understanding is reached, to terminate the Contract or any part thereof without incurring any obligation or responsibility to Seller. At the time of such termination, Buyer may require Seller to refund immediately to Buyer the total amount paid by Buyer under the Contract up to the time of the termination.

ARTICLE 15. Indemnification

- 15.1 Notwithstanding any provisions to the contrary in the Contract, Seller hereby releases and agrees to defend, indemnify and hold harmless Buyer, Customer and their employees, directors and officers from and against any and all claims, including, but not limited to, any liabilities, losses, damages and judgments as well as costs, attorney's fees and expenses

incident thereto, on account of personal injury or death or on account of damage to, destruction of, or loss of any property (including, but not limited to, Customer's facilities) arising from or in connection with:

- (1) any Works or other products or services supplied by Seller to Buyer; or
- (2) any act or omission of Seller, its officers, directors, agents, employees, subcontractors.

The foregoing agreement shall apply to any and all such claims, liabilities, losses, damages and judgments, whether asserted by any and all persons, including, but not limited to, Seller's officers, directors, agent or employees, or Customer or any third party, and regardless of the theory of action or claim, including, but not limited to, contract, tort, strict liability, product liability or breach of warranty, express or implied.

ARTICLE 16. Subcontractors

Seller shall not subcontract or use a subcontractor for any work for the performance of any substantial part or portion of the Works to be provided pursuant to the Contract without obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any such Buyer's consent shall not relieve Seller of any of its duties, obligations, warranties, liabilities or responsibilities for the performance of its obligations under the Contract. Seller acknowledges that it is fully responsible to Buyer for the acts and omissions of its subcontractors as if the work performed by subcontractors had been performed directly by Seller.

ARTICLE 17. Assignment

Seller shall not assign or transfer the Contract or any of its rights or obligations under the Contract to any third party, including, but not limited to, a subsidiary or affiliate of Seller, in whole or in part, directly or indirectly, by sale, assignment, merger, consolidation, succession, operation of law or otherwise, except with the prior written consent of Buyer.

ARTICLE 18. Suspension

- 18.1 Buyer has the right to suspend the execution of all or any of Seller's performance for the Works with immediate effect by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice otherwise requires:
- (1) immediately discontinue its performance for the Works on the date and to the extent specified in the notice;
 - (2) place no further purchase orders, and enter into no further subcontracts or agreements, for raw materials or other items related to the suspended Works;
 - (3) immediately use its best effort to suspend, on terms satisfactory to Buyer, all purchase orders, subcontracts and agreements with third parties to the extent they relate to the performance of the suspended Works;
 - (4) continue to protect and maintain the Works already completed, including, but not limited to, those portions relating to the Works which have been suspended; and
 - (5) use its best efforts to minimize the costs and expenses associated with the suspension.

- 18.2 Seller shall resume its performance for the Works immediately following receipt of written notice from Buyer to resume the suspended portion of the Works. Within ten (10) working days after receipt of such notice, Seller shall submit for Buyer's review the revised work schedule.
- 18.3 If Seller's performance for the Works is suspended pursuant to this Article 18.1, Buyer shall make an equitable and reasonable amendment to the delivery date of the Goods and/or the completion date of the Services or reimburse Seller for the equitable and reasonable additional costs or expenses incurred by Seller as a result of such suspension, except in the case of suspension by reason of Seller's default or breach of the Contract or Force Majeure. The extent and the amount of such amendment and additional costs shall be discussed and agreed upon by both parties hereto. While the extent and the amount of such amendment or additional costs are in dispute, Seller shall proceed with its performance for the Works in accordance with Buyer's notice pursuant to the Article 18.2.

ARTICLE 19. Termination for Cause

- 19.1 If Seller breaches any of the terms or conditions of the Contract and does not cure such breach within thirty (30) days after its receipt of notice from Buyer requesting the cure of such breach, Buyer may terminate the Contract forthwith by serving written notice to such effect upon Seller, without incurring any obligation or responsibility to Seller and without prejudice to the right of Buyer to claim damages or any other remedy available to Buyer under law and the Contract.
- 19.2 Buyer may terminate the Contract with immediate effect by serving written notice to such effect upon Seller without incurring any obligation or responsibility to Seller and without prejudice to the right of Buyer to claim damages or any other remedy available to Buyer under law and the Contract if any of the following events occur or is deemed likely by Buyer to occur:
- (1) Seller becomes bankrupt or insolvent, or makes a composition or arrangement with its creditors, or a bankruptcy petition is filed by or against Seller, or, being a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes amalgamation or reconstruction), or a receiver, liquidator, administrator, trustee or other court officer is appointed over any part of its undertaking or assets, or Seller becomes voluntarily or involuntarily dissolved, or makes an assignment for the benefit of creditors, or any proceeding under the bankruptcy or insolvency laws of any country or state is brought by or against Seller;
 - (2) Seller ceases or threatens to cease to carry on its business or Seller disposes of the whole or any substantial part of its undertaking or its assets;
 - (3) the ownership, management or control of Seller is substantially changed;
 - (4) Seller fails, neglects, refuses, or is unable to proceed its performance for the Works at a rate deemed sufficient by Buyer to reasonably assure that Seller will complete the Works on the work schedule;
 - (5) Seller's financial condition deteriorates or begins to deteriorate in Buyer's opinion, absent reasonable assurances for future Seller's performance for the Works; or
 - (6) the liquidated damages to be paid by Seller have reached the maximum amount specified in Article 5.1.
- 19.3 In the event of termination under Article 19.1 or Article 19.2, Buyer reserves the right to be paid by Seller damages commensurate with any loss sustained because of, but not limited to, the stoppage of the Works and the fact that the Works must be completed by a third party.
- 19.4 At the time of termination, Buyer may require Seller to refund immediately to Buyer the total amount paid by Buyer under the Contract up to the time of termination.

ARTICLE 20. Termination for Convenience

- 20.1 Buyer may terminate the Contract at any time for its convenience without incurring any obligation or responsibility to Seller, except for the payment provided in Article 20.2, by serving written notice to such effect upon Seller.
- 20.2 In the event of a termination by Buyer of the Contract pursuant to Article 20.1, Seller shall be entitled to be paid for the outstanding costs and expenses reasonably incurred for its performance for the Works that have been completed on the date in accordance with the Contract and not previously paid by Buyer, provided that such payment shall in no event exceed the total Price. Seller shall submit to Buyer such claim for payment in writing within thirty (30) days after its receipt of the termination notice from Buyer pursuant to Article 20.1 together with all documentation reasonably requested by Buyer to evidence such claimed amount, and Seller shall forfeit the right to receive payment pursuant to this Article 20.2 if such claim and documentation are not provided in such thirty (30) day period.

ARTICLE 21. Effect of Termination

Unless otherwise directed by Buyer, upon receipt of a notice of termination of the Contract for any reason, Seller shall immediately:

- (1) cease its performance for the Works on the date and to the extent specified in the notice;
- (2) terminate all subcontracts to the extent they relate to work terminated, except those to be assigned to Buyer pursuant to paragraph (3) below;
- (3) to the extent legally possible and upon Buyer's request, assign to Buyer all right, title and benefit of Seller in the Works as at the date of termination and in any subcontracts related thereto between Seller and its subcontractors; and
- (4) upon Buyer's request, deliver to Buyer or Buyer's designee the Goods, the Goods in process, jigs and tools, drawings, specifications, data sheets, materials, supplies and equipment and other matters that Seller has prepared for its performance for the Works and have been paid or are to be paid for by Buyer either directly or indirectly, and Buyer shall have the right to make use of same for such purposes as Buyer may desire. In case of termination other than Article 20, the cost and expense of such delivery shall be borne by the Seller.

ARTICLE 22. Governing Law and Compliance with Law

The Contract shall in all respects be governed by and interpreted in accordance with the substantive law of Japan, excluding its conflicts of law provisions. The rights and obligations of the parties in the Contract shall not be governed by the United Nations Convention on Contracts for the International Sales of Goods (1980), the application of which is expressly excluded.

Seller shall comply with all Applicable Law including, but not limited to, Anti-corruption Law. Seller shall not pay bribes to anyone for any reason, whether in dealings with governments or the private sector. Buyer may immediately terminate the Contract under Article 19.2 or suspend performance under the Contract if Seller breaches its obligations under this paragraph. Seller shall maintain true, accurate and complete books and records concerning any payments made to another party by Seller under the Contract, including, but not limited to, payments made on behalf of Buyer. Upon reasonable notice of possible violations of this paragraph, Seller shall permit Buyer or its designated representative to inspect Seller's books and records to verify such payments for compliance with this paragraph.

Seller agrees to cooperate fully with Buyer's and Customers' audit and inspection efforts by providing information and other data needed by Buyer or Customers to comply with Applicable Law (including, but not limited to, completing and returning questionnaires and providing audit rights). Seller further agrees at Buyer's request to provide certificates relating to any applicable legal requirements and to update any and all of the representations, warranties, certifications and covenants under the Contract in form and substance satisfactory to Buyer. In furtherance of Seller's obligations under this paragraph, Buyer and Customer shall have the right to audit all pertinent records of Seller, and to make reasonable inspections of Seller's facilities and elsewhere.

ARTICLE 23. Language

All correspondence and communications to be given and all documentation to be prepared and supplied under the Contract shall be written in the English language. The Contract shall be construed and interpreted in accordance with that language.

ARTICLE 24. Arbitration

24.1 All disputes arising out of or in connection with the Contract shall be settled amicably through negotiations between the parties hereto. If such negotiations fail to yield an amicable settlement, then such disputes shall be settled by arbitration in London, United Kingdom, under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The language of the arbitration shall be the language specified in Article 23. The award therefrom shall be final and binding upon the parties hereto.

24.2 While any matter or matters are in dispute, Seller shall proceed with the performance of obligations under the Contract.

ARTICLE 25. Survival

Article 8 (Warranty), Article 12 (Patent Infringement and Grant of License), Article 13 (Non-Disclosure), Article 15 (Indemnification), Article 21 (Effect of Termination), and Article 24 (Arbitration) shall survive any termination or cancellation of the Contract.

ARTICLE 26. Non-waiver

No provision of the Contract shall be deemed waived by Buyer unless written notice of waiver is given in writing by Buyer to Seller. Even if such notice has been given, such waiver shall not be construed as being a waiver of any other past or future right of Buyer under the provisions of the Contract, unless otherwise expressly provided in the Contract. Neither Buyer's failure to insist upon strict performance of any of the terms and conditions of the Contract nor Buyer's delay in exercising any acts, rights, or remedies provided in the Contract or by law shall relieve Seller of liability under the Contract, and no such failure or delay shall be deemed a waiver of any right of Buyer to insist upon strict fulfillment of the Contract or of any of Buyer's rights or remedies provided in the Contract or by law.

ARTICLE 27. Severability

If any terms or provisions of the Contract shall be determined to be illegal or unenforceable, all other terms and provisions of the Contract shall nevertheless remain effective and shall be enforced to the fullest extent permitted by law.

ARTICLE 28. Notice

All notices, requests, demands, consents, or other communications shall be given in writing, to the address provided by each party hereto separately.

ARTICLE 29. Entire Agreement

The Contract constitute the entire agreement between Buyer and Seller with respect to the matters addressed in the Contract and may only be modified in writing by the authorized representatives of the parties thereto. The Contract supersedes any and all previous oral or written representations, inducement or understandings related to the matters set forth in the Contract.

ARTICLE 30. Health and Safety

The Seller undertakes to ensure that all Goods supplied by the Seller to the Buyer pursuant to the Purchase Order shall comply with the requirements of the Health and Safety at Work Act 1974 and subsequent additions and legislation thereto.

ARTICLE 31. Export and Import Regulations

31.1 Foreign Sellers; In respect of the Goods the Seller shall be responsible for ensuring compliance with its Government's export resolutions and any other country's export regulations, such as the US Government's export administration regulations, from where parts of the Goods originate and the Seller upon receipt of any order placed indemnifies the Buyer against any costs of violation or breach of the said export regulations.

31.2 UK Sellers; In respect of the Goods the Seller shall be responsible for ensuring compliance with other country's export regulations, such as the US Government's export administration regulations, from where parts of the Goods originate and the Seller upon receipt of any order placed indemnifies the Buyer against any costs of violation or breach of the said export regulations.

31.3 Foreign Sellers not in The European Community; If you are a Seller from outside of the European Community whose Goods will eventually be consigned to a country outside of the European Community as detailed in the Purchase Order, Sellers are to advise the following in writing, to the Buyer's representative,:

- (1) The anticipated delivery date of the shipment to a UK port or airport;
- (2) Flight/shipment details including reference to the Purchase Order;
- (3) The import agent who will be carrying out the transaction.

ARTICLE 32. General Data Protection Regulations

The Buyer may share data with the Seller in respect of its employees, including but not limited to names and contact details including email addresses, necessary for the purposes of legitimate interests pursued by the Buyer where that necessity has not been overridden by the interests, rights or freedoms of the employees concerned. The data will be shared for a period of time in order for the Seller to fulfil the conditions of the Purchase Order.

The Seller may use this data only under the written instructions of the Buyer (unless required by law to act without such instructions). The Seller must ensure that people processing the data are subject to a duty of confidence. The Seller must take appropriate measures to ensure the security of processing. The Seller must only engage a sub-processor with the prior consent of the Buyer and a written contract. The Seller must assist the Buyer in providing subject access and allowing data subjects to exercise their rights under the General Data Protection Regulations. The Seller must assist the Buyer in meeting its General Data Protection Regulations obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments. The Seller must delete or return all personal data to the Buyer as requested at the end of the duration of the Purchase Order. The Seller must submit to audits and inspections, provide the Buyer with whatever information it needs to ensure that they are both meeting their General Data Protection Regulations Article 28 obligations, and tell the Buyer immediately if it is asked to do something infringing the General Data Protection Regulations or other data protection law of the EU or a member state. Nothing within these terms and conditions relieves the Seller of its own direct responsibilities and liabilities under the General Data Protection Regulations.

ARTICLE 33. Software

Where software forms all or part of the requirement of the Purchase Order, the Seller warrants that the Buyer has been provided with any condition of use or license terms relating to such software prior to the order date identified on the Purchase Order. In the event that such conditions or license terms have not been provided the Seller agrees to waive their application. The Seller warrants that it is the owner of the copyright or other intellectual property in such software to be supplied or has a valid license from the owner of the copyright or intellectual property to sell or sub-license the software to the Buyer.