



DSI Underground Canada

General Terms and Conditions for the Purchase of Goods by DSI Underground

1. Preamble

- 1.1. These General Terms and Conditions for the Purchase of Goods apply to the purchase of goods by Customer (as defined below) by way of reference in a Contract, RFQ, Purchase Order (each defined below) or in any other document intended to regulate the purchase of goods by the Customer.
- 1.2. These General Terms and Conditions for the Purchase of Goods apply unless Customer agrees in writing to apply different terms and conditions (Modified Terms and Conditions). Should Customer agree in writing to apply Modified Terms and Conditions, these General Terms and Conditions for the Purchase of Goods will apply only in part which does not contradict to the Modified Terms and Conditions.

2. Definitions & Interpretation

2.1. Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in the place of Customer's incorporation are open for business.

Effective Date: the date when Contract becomes effective.

Expiration Date: the date when Contract becomes ineffective.

Conditions: these General Terms and Conditions for the Purchase of Goods as amended from time to time.

Confidential Information: any information exchanged between the Parties that relates to the Customer or DSI Underground Group, any object, document (including Contract) or other confidential information that is, or will become, the property of the Customer (or any copy or record of any such object, document or confidential information), or any confidential report concerning the business or finances of the Customer or DSI Underground Group.

Contract: a contract between the Parties for the supply of Goods. Contract might be executed in a form of Contract Details, or in any other form (including acceptance of a Purchase Order).

Contract Details: a form signed by the Parties which sets out commercial and other agreed terms of the supply of the Goods.

Customer: entity belonging to the DSI Underground Group which purchases the Goods under the Contract.

Customized Goods: Goods manufactured or fabricated to satisfy the Special Requirements.

Delivery Date: the date for delivery of the Goods specified in the Contract.

Delivery Location: site or another location for delivery of the Goods specified in the Contract.

DSI Underground Group: DSI Underground Canada Ltd. / Souterrain DSI Canada Ltée and its Affiliated bodies corporate (in the meaning of the Canada Business Corporations Act).

Employee Claims: any claim in respect of any death, injury or occupational disease of any person employed or engaged by the Supplier which arises out of, or is caused by, the supply or non-supply of the Goods.

Force Majeure Event: has the meaning given in the clause 15 of these Conditions.

Goods: the goods to be delivered to the Customer under the Contract.

Incoterm 2020: term of Incoterms 2020 regulating the delivery of Goods specified in the Contract.

Intellectual Property Rights: all intellectual property rights and interests existing anywhere in the world including any current and future registered and unregistered rights in respect of patent, design right, copyright, trade mark, protected circuit layout, trade secret, Confidential Information, or other right whether existing under statute, at common law or in equity or otherwise.

Liabilities: all liabilities, losses, damages, outgoings, costs and expenses of whatever description, and whether present, unascertained, prospective, contingent, direct, indirect, special, punitive or consequential, including without limitation economic losses, loss of profit or loss of opportunity.

Order: a form to be sent (or communicated otherwise) in accordance with a Contract indicating the reference of the relevant Contract, Goods, their Quantity, Delivery Date, Delivery Location and any other necessary delivery terms (including reference to the relevant Incoterm 2020). For avoidance of doubt, if an Order is titled with the words "Purchase Order", however, it is placed in continuation of an existing Contract, such document will be treated as an "Order" under these Conditions notwithstanding its title.

Purchase Order: a purchase order or any other request of the same nature (including a telephone or e-mail request to deliver goods) placed by the Customer for acceptance by the Supplier; once the Purchase Order is accepted by the Supplier, it becomes a valid Contract between the Parties.

Party: Customer or Supplier and "Parties" means both.

Price: the price for the Goods specified in the Contract.

RFQ: a request for quotation (including invitation to tender) submitted by the Customer to the Supplier asking for the availability of certain goods and their prices.

Quantity: the quantities of the Goods to be delivered to the Customer under the Contract.

Special Requirements: modifications of the standard configuration of the goods (including technical, design, performance, business, regulatory or any other requirements) to satisfy specific Customer's needs.

Supplier: entity or a person which is under obligation to supply Goods under the Contract.

Site Operator: has the meaning given in the clause 13 of these Conditions.

Term: time period starting on the Effective Date and expiring on the Expiration Date.

Third Party Claim: any claim by any person who is not a party to the Contract in respect of loss or destruction of, or injury or damage to, or loss of use of any real or personal property; or any personal injury to or death of any person, arising out of, or caused by, the supply or non-supply of the Goods by the Supplier.

Warranty Period: time period equal to twelve (12) months after the date of first placing the Goods into service or twenty-four (24) months after Delivery Date, whichever is the later.

2.2. Interpretation:

- (a) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (b) a reference to writing or written includes notices sent via fax and e-mails;

- (c) unless the context otherwise requires, words in the singular shall include the plural and vice versa; and
- (d) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (e) each and every clause of the Contract shall be construed as though both Parties participated equally in the drafting of same, and any rule of construction that a document shall be construed against the drafting Party, including without limitation, the doctrine commonly known as contra proferentem, shall not be applicable to the Contract.

3. The Agreement to Supply

- 3.1. Supplier agrees to supply to the Customer the Goods under the terms and conditions of the Contract and the Customer agrees to pay the Price for the duly delivered Goods.
- 3.2. The delivery of Goods includes the provision of:
 - (a) all ancillary services (transportation, offloading, custom clearance etc.); and
 - (b) any equipment, parts and materials, software, manuals, documentation, personnel and other resources, necessary or required to be used in order to provide such Goods to Customer and in order for Customer to use the Goods, whether or not such services, equipment, parts and materials, software, documentation, personnel or other resources are expressly described in the Contract.
- 3.3. Nothing in the Contract obliges the Customer to acquire any minimum quantity or amount of the Goods from the Supplier.

4. Quantity

- 4.1. Supplier shall supply the agreed Quantity of the Goods.
- 4.2. The Customer is entitled to return all or part of the delivered Goods notwithstanding the fact that these Goods are in compliance with quality requirements under the Contract subject to the following conditions:
 - (a) the returned Goods are not Customized Goods; and
 - (b) the Customer reimburses the Supplier the transportation costs associated with shipment of the Goods back to the Supplier.

For avoidance of doubt, the Customer is not obliged to pay for the Goods which have been returned in accordance with this clause 4.2. reimbursement of the transportation costs under the item (b) of this clause 4.2. is the only remedy for the Supplier, in case the Customer returns the Goods.

- 4.3. If the Supplier fails to supply the agreed Quantity of the Goods by the Delivery Date or if the Customer has reasonable grounds to believe that the Supplier will fail to supply the agreed Quantity of the Goods by the Delivery Date, the Customer may at its own discretion and without prejudice to any of its rights and remedies purchase substitute goods from a third party. In this case, Supplier must reimburse the Customer's costs associated with such purchase of substitute goods, including the difference in prices and transportation costs.

5. Quality

- 5.1. The Supplier warrants that at the date the Goods are delivered they shall:
 - (a) conform with their description (in the Contract or any advertising or other material published or provided by Supplier) and Special Requirements;

- (b) shall be new;
- (c) shall be free of all charges, liens and encumbrances; and
- (d) comply with all applicable statutory requirements and regulations, including without limitation those relating to the manufacture, packaging, packing, carriage and delivery of the Goods.

5.2. The Supplier warrants that at the date the Goods are delivered and during the Warranty Period the Goods shall:

- (e) be free from any defects in design, material and workmanship;
- (f) be fit for their normal purpose or any specific purpose which Customer made known to Supplier or for any other purpose which Supplier ought reasonably to have been aware of.

5.3. Supplier, at its own expense, shall perform quality control testing in accordance with its own procedures to ensure that the Goods meet the quality requirements of the Contract.

5.4. Supplier warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods prior to entering the Contract and acknowledges Customer's reliance upon the same.

5.5. Customer shall have the right to inspect and test the Goods at any time during its manufacture prior to its shipment; and/or following its delivery at the Delivery Location.

5.6. To assist Customer in this respect, Supplier shall give Customer reasonable notice of readiness for inspection of all Goods before the same are ready for shipment.

5.7. The making or failure to make any inspection of, or payment for or acceptance of the Goods, shall in no way impair Customer's rights to reject nonconforming Goods, or to avail itself of any other remedies to which Customer may be entitled, notwithstanding Customer's knowledge of the non-conformity, its substantiality or the ease of its discovery. For avoidance of doubt, Supplier is not relieved of its responsibilities under the Contract because Customer has reviewed, inspected, examined or witnessed any testing of the Goods.

5.8. Customer shall have the right, by providing Supplier with reasonable written notice, to inspect Supplier's facilities and/or books and records to verify:

- (a) the existence of adequate internal control procedures and security surrounding the manufacturing and delivery of the Goods;
- (b) Supplier's compliance with the Contract, including the amounts billed;
- (c) compliance with applicable laws; and
- (d) any claims made by Supplier.

Supplier agrees to promptly respond in writing to any observations made in connection with such inspection, including the correction of any errors or the refund of any overpaid amounts.

5.9. Upon discovery that some or all of the Goods do not comply with the warranties set out in clauses 5.1. and 5.2. of these Conditions (non-conforming Goods), the Customer is entitled to claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of non-conforming Goods, and, without prejudice to any of its rights or remedies, the Customer may reject those Goods and at its discretion:

- (a) require the Supplier to repair or replace within a reasonable time period the rejected Goods at the Supplier's risk and expense; or

- (b) require the Supplier to repay the Price of the rejected Goods in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Goods).
- 5.10. If the Supplier does not arrange for the return of the rejected Goods at its expense, no responsibility for the rejected Goods shall rest upon the Customer, and the Customer may dispose of them after a reasonable time, however it sees fit.
- 5.11. The Customer's rights and remedies under this clause 5 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample.
- 5.12. If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 5.9.(a) of these Conditions, the Customer may, without affecting its rights under Clause 5.9.(b) of these Conditions, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurred in doing so.
- 5.13. Any Goods repaired or replaced pursuant to this clause 5 will be subject to a separate and additional warranty period, commencing from the date the Goods are repaired or replaced and extending for a period equal to the initial Warranty Period. The terms of this clause 5 shall apply to any repaired or replaced Goods supplied by the Supplier.

6. Orders

- 6.1. The Parties may agree in the Contract that before each shipment of the Goods the Customer shall place with the Supplier an Order specifying delivery details.
- 6.2. The Orders shall be given in a form and manner agreed by the Parties in the Contract.
- 6.3. The Supplier shall give the Customer all necessary information relating to the Goods that the Customer reasonably requires to fill in the Order form.
- 6.4. The Customer may amend already submitted Order or cancel it in part or entirely at any time before the Delivery Date.

If the Order does not relate to any Customized Goods, then Customer's liability to the Supplier shall be limited to payment to the Supplier of actual costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation of an Order, provided that the Supplier is not in default. For avoidance of doubt, the Customer is not obliged to pay for the Goods which have been cancelled or which do not comply with the amended Order.

- 6.5. If the Order relates to any Customized Goods, then upon receipt of the notice of amendment or cancellation of such Order, the Supplier shall cease performance of the Order in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any cost incurred by cancellation or amendment. In relation to Customized Goods under the amended or cancelled Order, provided that the Supplier is not in default, the Customer shall pay to the Supplier in full and final satisfaction of its rights against the Customer the actual and direct costs incurred by the Supplier in connection with fulfilling the Order prior to the date of the notice of amendment or cancellation of such Order.
- 6.6. Customer might give the Supplier forecasts of the Goods it expects to order in the future. Such forecasts are given for informational purposes only and do not constitute an Order. If the Supplier anticipates that it will be unable to meet the Customer's forecasted requirements, the Supplier shall immediately inform the Customer about this. Without prejudice to its rights and remedies, the Customer may at its option agree alternative Delivery Dates for the relevant Goods or obtain from any other person substitute goods

for the Goods which the Supplier anticipates it will be unable to supply.

7. Delivery and Packaging

- 7.1. Time of delivery is of essence. Supplier must comply with Delivery Dates and Delivery Locations set out in the Contract.
- 7.2. Delivery of the Goods shall be made to Delivery Locations and the Supplier shall offload the Goods. Customer shall accept no liability for, risk of loss of or damage to the Goods delivered to destinations other than Delivery Locations. The Supplier shall be liable for any difference in freight charges or other costs arising from the failure to follow any delivery instructions from the Customer.
- 7.3. Delivery shall take place in accordance with the Incoterm 2020, or if not so specified, then upon physical receipt of the Goods by Customer and acceptance by Customer after the inspection.
- 7.4. If the Goods are to be delivered by instalments, the Contract shall be treated as a single contract and not severable.
- 7.5. The Supplier shall ensure that all packaging, labelling and transport of the Goods complies with all applicable laws and recognized industrial standards.
- 7.6. The Supplier shall ensure that each delivery of Goods (each delivered instalment of the Goods) is accompanied by a delivery note that shows the number of the Contract (Order) or Purchase Order, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 7.7. The Supplier shall enclose one copy of the packing list within each package, crate or pallet and affix a second copy to the outside.
- 7.8. Supplier must ensure that the Goods are packaged in a manner to protect them adequately before, during and after delivery and, if required by the Customer, each delivery shall be accompanied by a certificate of analysis and/or up-to-date material safety data sheet in a form acceptable to the Customer.
- 7.9. If the Supplier requires the Customer to return any packaging materials to the Supplier, that fact shall be clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 7.10. The Supplier shall clearly state whether the Goods contain any asbestos or other hazardous substances and shall provide the Customer with full details of the extent of such content.
- 7.11. Prior to delivery of any Goods containing any hazardous substances to premises occupied by or on behalf of the Customer, the Supplier shall supply Material Safety Data Sheets containing information required for the safe handling, storage and application of such Goods. Packaging, storage and conveyance of such Goods shall be in accordance with the applicable laws.
- 7.12. Any hazardous material supplied must be marked by Supplier with its international danger symbol(s) and the name displayed in English. Transport and other documents must contain the same, together with emergency information in English. Supplier shall ensure that transportation, packing, labelling and carriage of hazardous goods shall comply with all local and international laws, agreements, regulations and codes of practice in the country of Delivery Location.
- 7.13. Supplier must ensure that any export/import licenses, certificates of origin and any other governmental authorizations or necessary documentation has been obtained prior to shipment. Supplier agrees to provide all information necessary for the Customer to comply with all applicable laws, regulations and any related legal reporting obligations in the country(ies) of destination, including,

but not limited to, customs-related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable.

7.14. The Customer may request the Supplier to affix to the packages with Goods the Customer's own logo and labelling.

8. Title & Risk

8.1. Title to the Goods and the risk of loss or damage with respect thereto shall pass to Customer upon delivery in accordance with clause 7.3. of these Conditions. Customer shall accept no liability for, risk of loss of or damage to the Goods before they are delivered in accordance with clause 7.3. of these Conditions.

9. Price and payment

9.1. Customer shall pay the Price for the duly delivered Goods in accordance with the Contract. The Price is fixed and shall not be changed during the Term of the Contract.

9.2. The Price shall include all charges for packaging, shipping, carriage, insurance and delivery of Goods to the Delivery Location. The Price excludes goods and services tax (VAT, GST or any equivalent sales tax).

9.3. The invoices shall be paid within a reasonable time period from the date when Customer received them from the Supplier provided that the Goods have been duly delivered in accordance with the terms of the Contract.

9.4. The Supplier shall ensure that an invoice includes the date and number of the Contract / Purchase Order, the invoice number, the Supplier's GST/VAT registration number, and any supporting documentation that the Customer may reasonably require.

9.5. For the Goods, unless the Customer has entered into an agreement with the Supplier whereby the Customer issues valid Recipient Created Tax Invoices for Goods received, the Supplier shall issue a valid tax invoice against each supply. The invoice shall detail the value of all Goods (exclusive of GST) covered by the invoice, with the total amount for Goods and Services Tax shown separately. The sum of the total value of all Goods (exclusive of GST), and the total amount for Goods and Services Tax, shall be the amount that the Customer shall pay to the Supplier in respect of the Goods.

9.6. Customer may set off, counterclaim or withhold against the Price any sums due to the Customer by the Supplier under the Contract or any other contract between the Parties.

10. Insurance

10.1. Supplier shall take out and maintain insurance of a level and value sufficient to insure itself against all potential Liabilities under the Contract.

10.2. Supplier shall provide, at Customer's request, a certificate of insurance detailing insurance policies held by Supplier naming Customer as an additional named insured and any documentary evidence of duly paid insurance premiums.

10.3. The Supplier shall:

- (a) do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
- (b) notify the Customer if any insurance policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

10.4. The Supplier's obligations under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies.

10.5. Where the Customer has made any payments on account of the Goods prior to delivery of the Goods then the Supplier shall insure and keep insured in the joint names of the Supplier and the Customer the Goods for their full value against all insurable risks while such Goods are on the Suppliers premises, against all risks of loss or damage from time of leaving the Supplier's premises during transit and until delivered to the Delivery Location.

10.6. If the Supplier fails or is unable to maintain insurance in accordance with the Contract, or fails to provide evidence that it has paid the insurance premiums, the Customer may at its own discretion purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all costs and expenses it incurs in doing so from the Supplier.

11. Liability and Indemnity

11.1. The Supplier releases the Customer from any Liability or obligation to the Supplier (or any person claiming through or on behalf of the Supplier) in respect of:

- (a) physical loss of or damage to any real or personal property;
- (b) personal injury, disease or illness to, or death of, persons; or
- (c) financial loss or expense,

arising in connection with the supply of the Goods and the performance of Supplier's other obligations under the Contract.

11.2. Except to the extent that the Liabilities are caused by the Customer's wilful misconduct, the Supplier will be liable for and will indemnify the Customer against, and must pay the Customer an amount equal to, all Liabilities suffered or incurred by the Customer or its personnel arising out of or in connection with:

- (a) breach by the Supplier of the Contract;
- (b) any Third Party Claims;
- (c) the presence of the Supplier or any of its personnel on or about the Delivery Location;
- (d) any infringement or alleged infringement by the Supplier or the Supplier's personnel of Intellectual Property Rights of a third party or of the Customer;
- (e) any Employee Claims; or
- (f) any non-compliance by the Supplier of any applicable laws.

11.3. Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination, completion or expiration of the Contract. It is not necessary for a Party to make any payment before enforcing a right of indemnity conferred by the Contract. The making of a claim by a Party under an indemnity contained in the Contract in respect of a particular event does not preclude that Party from subsequently making further claims under that indemnity in respect of any further loss arising out of the same event for which it has not previously been indemnified.

11.4. Notwithstanding anything in the Contract to the contrary, the Customer shall not be liable to the Supplier for any indirect loss or damage of any nature whatsoever whether based on contract, warranty, tort (including negligence) or otherwise including loss of production or business interruption, loss of revenue or loss of profits howsoever arising and the Parties agree that such loss or damages will not be claimed as direct loss or damage. The Customer's aggregate liability to the Supplier under the Contract shall be limited to the amount outstanding under any issued invoice.

12. Compliance with relevant laws and policies

- 12.1. In performing its obligations under the Contract or any other transaction involving Customer, Supplier shall comply with all applicable laws and regulations, including but without limitation the U.S. Foreign Corrupt Practices Act ("FCPA"), U.K. Bribery Act 2010 ("Bribery Act"), all other applicable anti-corruption laws and regulations and DSI Underground Global Supply Chain Policy (available at: <https://www.dsiunderground.com/fileadmin/downloads/global/underground/group/en/dsi-underground-global-supply-chain-policy.pdf>).
- 12.2. For the avoidance of doubt, Supplier has not and will not, directly or indirectly, promise, offer or grant to a person any undue advantage or to request or accept any undue benefit or advantage to improperly influence actions.
- 12.3. Customer may terminate the Contract immediately upon written notice in the event the Supplier has failed to meet its obligations under this clause 12. If the Customer reasonably believes that the event given rise to such termination also constitutes a violation of the FCPA, Bribery Act, or any other applicable anti-corruption laws and regulations, any claims for payment by the Supplier under the Contract shall be automatically terminated.

13. Compliance with Safety Policies

- 13.1. Supplier and any of its personnel responsible for the manufacturing and delivery of the Goods shall, when delivering the Goods to performing any ancillary services at the Delivery Location or entering any premises of Customer:
- (a) comply with any policies regarding safety (including mine safety training, the use of identification badges and contractor cards, and rules concerning hours of work and arrival to and departure from the site);
 - (b) comply with all occupational health and safety requirements as set out in manuals, procedures, safety and sustainability policies, regulations and other written materials provided by Customer or by any third party operating and managing the site (Site Operator) to Supplier from time to time;
 - (c) comply with all lawful directions and orders given by Customer and/or by Site Operator;
 - (d) deliver the Goods in a manner that minimizes disruption to the normal work and production activities at the Delivery Location, including leaving that location secure, clean and orderly having regard to the condition of such location immediately prior to access by Supplier or Supplier's personnel;
 - (e) ensure that the Goods are delivered in a safe manner that does not prejudice safe working practices, safety and care of property and continuity of work at the Delivery Location;
 - (f) prior to entering the Delivery Location or any premises of Customer, shall contact the relevant Customer officer(s) to arrange for site safety induction or to arrange for escort by a Customer officer for the duration of the visit; and
 - (g) provide all such information and assistance as Customer and/or Site Operator reasonably requires in connection with any statutory or internal health and safety investigation in connection with the Contract or the Goods.
- 13.2. The Supplier must advise of any matters of which it is aware, which may affect the safety of persons handling or using the Goods, or any equipment or materials related to the Goods.

14. Termination

- 14.1. The Customer may at any time terminate the Contract by giving the Supplier thirty days' written notice.
- 14.2. Either Party may terminate the Contract immediately upon giving the other Party written notice if the other Party:
- (a) has breached any term of the Contract, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (b) has breached the provisions of clauses 12 or 13 of these Conditions; or
 - (c) has a liquidator, administrator, receiver or manager appointed to it or any of its assets, enters into a scheme of arrangement (other than for the purposes of a solvent restructuring) or has execution levied against any of its property.
- 14.3. Upon delivery of a termination notice pursuant to clauses 14.1. or 14.2. of these Conditions, the Supplier will:
- (a) immediately comply with all reasonable directions given by the Customer regarding performance of the supply of the Goods;
 - (b) immediately take all possible actions to mitigate any Liabilities incurred by it as a result of such termination;
 - (c) fully co-operate with the Customer to facilitate a smooth, efficient and effective takeover of the performance of the supply of the Goods; and
 - (d) take any other action reasonably required by the Customer in relation to the termination.
- 14.4. If the Contract is terminated, and provided that the Supplier is not in default, Customer shall pay to the Supplier (less any amounts previously paid and subject to any rights which the Customer may have to suspend, withhold or set-off payments) the amount under the outstanding invoices.
- 14.5. Notwithstanding the termination of the Contract each Party shall remain responsible for any obligations or Liabilities owed at or arising out of circumstances or transactions occurring prior to the date of termination until satisfied in accordance with the terms of the Contract as though the Contract had not been terminated.
- 15. Force Majeure**
- 15.1. Force Majeure Event means any event or circumstance not within the control of a Party affected by such event or circumstance (affected party), and which by the exercise of reasonable care, the affected party is not able to prevent or overcome, including any:
- (a) war (declared or undeclared), revolution, riot or insurrection;
 - (b) lightning, fire, earthquake or other natural disaster; or
 - (c) quarantine restriction or epidemic/pandemic.
- Shortage of supply via the Supplier's usual supply chain shall not constitute force majeure, and the Supplier is required to use best endeavours to source alternative supply.
- 15.2. If the affected party is prevented from carrying out the whole or any part of its obligations under the Contract by reason of a Force Majeure Event, the affected party must give to the other Party notice of the occurrence of the Force Majeure Event, and the particulars thereof.
- 15.3. The obligations of the affected party, so far as they are affected by that Force Majeure Event, will be suspended during, but no longer than, the continuation of that Force Majeure Event.

- 15.4. An affected party must use its best endeavours to remedy or circumvent the effect of any Force Majeure Event and comply with its obligations under the Contract.
- 15.5. If the Force Majeure Event lasts for more than six (6) months, either Party may terminate the Contract by giving a notice to the other Party.

16. Confidentiality and Intellectual Property

- 16.1. The Supplier must:
- (a) not, without the consent of the Customer, directly or indirectly disclose to any person or use the Confidential Information in whole or in part except in fulfilling its obligations under the Contract;
 - (b) not copy or otherwise reproduce any documents containing Confidential Information except as is necessary in fulfilling its obligations under the Contract;
 - (c) on termination of the Contract or on demand by the Customer return all documents containing any Confidential Information including any documents created by the Supplier which contain any Confidential Information;
 - (d) use its best endeavours to protect the confidentiality of the Confidential Information; and
 - (e) comply with all reasonable requests by the Customer regarding the protection of the Confidential Information.
- 16.2. The clause 16.1 of these Conditions does not apply to Confidential Information which the Supplier proves is required to be produced by order of any court or under the requirements of any applicable law, provided in those circumstances the Supplier must, to the extent it is legal to do so, notify the Customer as soon as reasonably practicable so as to allow the Customer to take any steps it may consider necessary to resist production, pending which the Supplier must take all reasonable steps to resist (or where that is not practicable to minimise) production.
- 16.3. Supplier must not use Customer's name or the names of its affiliates for the purposes of discussions with any third party, or for the purposes of any advertisement or publicity, without obtaining the prior written consent of the Customer.
- 16.4. Supplier shall, upon Customer's request, assign and transfer free of charge, with full title guarantee, any Intellectual Property Rights created or prepared by Supplier specifically for the Customer under the Contract.
- 16.5. Any documents, specifications, plans, drawings, samples, information with regards to the Goods delivered to the Customer under the Contract shall remain the Customer's property.
- 16.6. Nothing in the Contract shall be construed as granting the Supplier with a license or any other right to use any Intellectual Property Rights belonging to the Customer.
- 16.7. The Supplier warrants that performance of the supply of the Goods in accordance with the Contract will not infringe the Intellectual Property Rights of any third party.
- 16.8. To the extent that Intellectual Property Rights subsist in the Goods, the Supplier grants the Customer a royalty-free, perpetual, assignable, non-exclusive right to use those Intellectual Property Rights with respect to the use of those Goods as a part of normal business operations.
- 16.9. This Clause 16 will survive rescission, termination or expiration of the Contract.

17. General

- 17.1. Assignment and other dealings. The Supplier shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer; notwithstanding any such consent given by the Customer, the Supplier shall be held responsible for compliance with the Contract. The Customer may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract without prior consent of the Supplier.
- 17.2. Entire agreement. The Contract constitutes the entire agreement between the Parties and supercedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.3. Variation. No variation of the Contract shall be effective unless it is in writing and signed by both Parties.
- 17.4. Waiver. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 17.5. shall not affect the validity and enforceability of the rest of the Contract.
- 17.6. Notices. Unless expressly stated otherwise in the Contract, all notices, certificates, consents, approvals, waivers and other communications in connection with the Contract must be in writing, in English, and signed by an authorised representative of a Party. Proof of posting by couriered mail of a notice in accordance with this clause 17.6. is proof of receipt of such notice on the second Business Day after posting. Any notice sent via email will be deemed to have been delivered at the time when it enters the recipient's mail server. Notwithstanding the foregoing, if any notice, certificate, consent, approval, waiver or other communication in connection with the Contract is received after 5.00pm in the place of receipt or on a non-Business Day, then it is to be taken to be received at 9.00am on the next Business Day. The provisions of this clause 17.6. shall not apply to the service of any proceedings or other documents in any legal action.
- 17.7. Third party rights. No one other than a Party to the Contract shall have any right to enforce any of its terms.
- 17.8. Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the laws of the state where the Customer is incorporated. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 17.9. Jurisdiction. Each Party irrevocably agrees that the courts of the state where the Customer is incorporated shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.