

## GENERAL TERMS AND CONDITIONS OF PURCHASE (version Dec 1<sup>st</sup>, 2023)

These TESE General Terms and Conditions of Purchase (“Terms and Conditions”, as further defined in Clause 1 hereafter) accompanies and are incorporated into the Purchase Order by reference issued by TESE, and collectively with the Purchase Order, govern and apply to TESE’s purchase of certain Products and/or Services from a Supplier and the Supplier’s provision of such Products and/or Services to TESE, except and unless TESE and the Supplier have executed a prior written agreement for such purchase and supply, whereupon the terms and conditions of that agreement shall govern.

### 1. DEFINITIONS

For the purposes of these Terms and Conditions, the following capitalised terms and expressions shall have the meanings set out below, whether used in the singular or in the plural:

“**Agreement**” means the collective contractual documents set out in and defined in Clause 2(a), which makes up the entire agreement between TESE and the Supplier that govern the purchase by TESE and the supply by Supplier of Products, Works and/or Services.

“**Advance Payment Bond**” shall have the meaning set out in Clause 9(a)(ii).

“**Advance Payment Bond Maturity Date**” shall have the meaning set out in Clause 9(a)(ii).

“**Background IP**” means the Intellectual Property Rights owned by a Party which are in existence at the date of this Agreement or have come into existence after the date of this Agreement otherwise than in connection with this Agreement.

“**Change**” means the change required, requested or instructed by TESE in the supply of Products or Services under a Purchase Order, further defined in Clause 8(a).

“**Change Order**” means a written change order or document issued by TESE to the Supplier containing mutually agreed terms and conditions to carry out a Change and executed by the authorised representatives of the Parties.

“**Client**” means a customer of TESE.

“**Confidential Information**” means any information or data disclosed by TESE to the Supplier pursuant to this Agreement, either in writing, electronically, orally or visually, subject to the conditions set forth hereafter, and including without limitation any written or printed documents, samples, models, information, plans, designs, concepts, protocol, and certain other information which may include, but is not limited to, techniques, methods, processes, procedures, “know-how”, trade secrets, materials, prototypes, samples, tangible things, technical, financial or business information, terms and conditions of any pending or existing agreements between the Parties or any means of disclosing such Confidential Information that TESE may elect to use for the duration of this Agreement. Confidential Information so received hereunder from an entity belonging to TESE Group shall be considered as Confidential Information received by the Supplier and be subject to the confidentiality obligations of this Agreement.

“**Code of Conduct**” means, the code of conduct adopted by TESE Group.  
The Code of Conduct may be updated from time to time or be called by other names.

“**Country**” means the country in which TESE is incorporated and domiciled.

“**Defect**” or “**Defective**” means, in relation to any Product and/or Service, in TESE’s opinion, any fault, error, malfunction, issue, breakdown, misalignment or problem in the purpose, performance or functionality of such Product and/or Service, deriving from but not limited to any defect in design, workmanship and/or materials, including a failure to comply with the Specifications and/or any term in this Agreement, that further fails or ceases to meet any of the warranties given by the Supplier under this Agreement.

“**Delivery Point**” means the location at which the Purchase Order stipulates for the delivery of the Products and/or Works, or, if the Purchase Order fails to specify such a location, a location at which TESE may notify the Supplier in writing within a reasonable period before the scheduled delivery date.

“**Dispute**” shall have the meaning set out Clause 39.

**“Equipment”** means any mould, equipment and/or testing tool specifically paid for by TESE and used by the Supplier for the manufacture of Products.

**“Final Acceptance Certificate”** means the document that TESE issues to the Supplier confirming TESE’s acceptance of the Product, Work and/or Service in that such Product, Work and/or Service has been delivered, installed and completed in compliance with the Specifications and mutually agreed requirements, after having a reasonable opportunity to examine or inspect the Product, Work and/or Service according to Clause 15.

**“Foreground IP”** means all Intellectual Property Rights (present or future) created, discovered, generated or have come into existence as a result of, for the purpose of, or in connection with the Products, Works and/or Services, that either TESE or the Supplier develops (regardless of whether based on the Intellectual Property Rights TESE provides to it or otherwise) during the course of the performance of the Agreement.

**“Force Majeure Event”** means any unforeseeable and unavoidable event that results in or causes a total or partial failure of the Party affected in the performance of any of its obligations under this Agreement, but only if and to the extent that (i) such circumstance is unforeseeable and beyond the reasonable control of the Party affected, (ii) was not contributed to by the Party affected, and (iii) the Party affected could not reasonably overcome or avoid, such as but not limited to (i) war and other hostilities, invasion, act of foreign enemies, requisition or embargo, rebellion, revolution, insurrection or civil war, (ii) flood, lightning, typhoon, hurricane, or earthquake, (iii) epidemic/pandemic or acts of God, and/or (iv) changes in law, issuance of acts, directives or orders of any local or national authority. Force Majeure Event does not include (i) shortage and/or any inefficiencies of supervisors or labour, (ii) late delivery of Products, Equipment and/or materials caused by congestion at a manufacturer’s plant, factory or elsewhere, (iii) an oversold condition of the market, inefficiencies or other similar occurrences, (iv) any increase and/or fluctuations in the cost of plant or factory (overheads), Products, Equipment and/or materials required by the Supplier or its personnel for the supply of Products and/or Services, (v) breakdown of any of the Supplier’s or its subcontractor or supplier’s plant, (vi) employee strikes of or labour disputes of the Supplier, its subcontractor or suppliers, (vii) late delivery of Products, Equipment and/or materials by the Supplier’s subcontractors or suppliers, (viii) economic hardships of the Supplier, its subcontractor or suppliers, or (viii) any power failure, production stoppage or any similar event which are limited to the Supplier’s or its subcontractors or suppliers’ plant or factory.

**“INCOTERMS”** shall mean the effective current version of the International Commercial Terms issued by the International Chamber of Commerce at the date of issuance of a Purchase Order.

**“Intellectual Property Right”** means any intellectual property right, regardless of whether registered or not, including any (i) patent, (ii) copyright (including moral right and author’s right), (iii) database right, (iv) know-how or trade secret, whether or not developed or reduced to practice, (v) design or industrial design, (vi) trademark, service mark, logo, business name, domain name and keyword, and the goodwill associated with them, (vii) rights to sue for passing off, in the nature of unfair competition rights, publicity and (viii) confidentiality and any other proprietary right, whether relating to tangible or intangible property, applications to register any of the foregoing, rights to take action for past infringements in respect of any of the foregoing, and all rights in the nature of any of the foregoing anywhere in the world.

**“Notice of Change”** means a written notice issued by TESE to the Supplier to request a Change.

**“Notice of Defect”** means a written notice issued by TESE to the Supplier notifying the Supplier of any Defect found in the Products, Works and/or Services supplied to TESE under a Purchase Order, which may contain such instruction or deadline to rectify such Defect.

**“Notice of Dispute”** means a written notice issued by one Party to the other notifying the other Party that a Dispute has arisen, which shall include but not limited to the circumstances in relation to such Dispute and proposal to resolve such Dispute.

**“Party”** means either TESE or the Supplier.

**“Parties”** means both TESE and the Supplier collectively.

**“Payment Documentation”** means all documents which are either (i) specified in the Purchase Order which must be sent to and approved by TESE as the condition for payment of the Price or Purchase Order Price, or (ii) if the relevant Purchase Order fails to specify any documents, (a) a commercial invoice correctly stating the Price or Purchase Order Price and, if any, all requested details as per applicable law, (b) an original copy of the Final Acceptance Certificate bearing TESE’s company stamp and its authorised representative’s signature; and (c) if any third party Intellectual Property Right is involved in the manufacture, use, or delivery of the Products, Works and/or Services, all necessary

documents or certificates which prove that TESE has the license or right to use, sell or otherwise dispose of the Products and/or Services supplied by the Supplier.

“**Performance Bond**” shall have the meaning set out in Clause 9(a)(i).

“**Performance Bond Maturity Date**” shall have the meaning set out in Clause 9(a)(ii).

“**Price**” means the price of a Product, Work and/or Service supplied by the Supplier under and as per related Purchase Order.

“**Privacy Laws**” means (a) the General Data Protection Regulation (EU) 2016/679 (GDPR), together with any national implementing laws in any Member State of the European Union; (b) the GDPR as it forms part of the law of the United Kingdom or of any part of the United Kingdom and the Data Protection Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019; and (c) any relevant personal data protection laws and regulations of the Country.

“**Product**” means any product manufactured or assembled by the Supplier or third-party product that the Supplier is licensed to sell, that is sold and supplied by Supplier to TESE at a certain Price and governed by the terms and conditions set out in the Purchase Order.

“**Purchase Order**” means the order document issued by TESE to the Supplier in which the Supplier shall supply certain Products, Works and/or Services to TESE for Purchase Order Price, governed by these Terms and Conditions.

“**Purchase Order Price**” means the total price of any and all Products, Works and/or Services that TESE has ordered or purchased under a Purchase Order, which TESE is obligated to pay to the Supplier subject to and in accordance with the payment schedule and/or payment milestone set out in the Purchase Order.

“**Reminder Notice**” shall have the meaning set out Clause 4(b).

“**Retention Monies**” shall have the meaning set out in Clause 11(g)(i).

“**Retention Monies Bond**” shall have the meaning set out in Clause 11(g).

“**Retention Monies Bond Maturity Date**” shall have the meaning set out in Clause 11(g).

“**Service**” means any service provided by Supplier to TESE at a certain Price and governed by the terms and conditions set out in the Purchase Order.

“**Site**” means the mutually agreed location at which Products and/or Works are to be installed, tested and commissioned by the Supplier and/or Services to be performed by the Supplier.

“**Specification**” means the mutually agreed specifications or requirements for Products, Works or Services.

“**Terms and Conditions**” means these standard terms and conditions governing the purchases made by TESE from the Supplier, and the supplies provided by the Supplier to TESE, which may be supplemented and amended by TESE from time to time.

“**TESE**” means the legal entity belonging to TESE Group which has issued the Purchase Order for the supply of Products, Works and/or Services.

“**TESE Content**” means any document, material and/or data, including Confidential Information, that TESE provides (or is provided on behalf of TESE by another) in any format to Supplier, including personal identifiable information or personal data of TESE, TESE Group, TESE and/or its TESE Group’s employees and/or the Client, in order for the Supplier to perform its obligations under the Agreement.

“**TESE Group**” means the company TMSS Holding, a French company registered under number 908 122 799 RCS NANTERRE and any legal entity it controls. For this purpose, “Control” means that more than 50 % (fifty percent) of the controlled entity’s outstanding shares or ownership interest representing the right to make decisions for such entity are, now or hereafter, owned or controlled, directly or indirectly, by the controlling entity.

“**Supplier**” means the individual or entity that has the license and right to sell or supply Products, Works and/or Services to TESE under a Purchase Order.

“**Warranty Period**” means the period or duration during which the Products and/or Services are respectively guaranteed by the Supplier under these Terms and Conditions for a period stated in the relevant Purchase Order or if the Purchase Order fails to state a Warranty Period,

- (a) with respect to any Product:
  - (i) a period of twenty-four (24) months from the date Products are sold by TESE to its Clients (either as a standalone or embedded into any TESE product), or
  - (ii) a period of thirty-six (36) months from the date TESE issues a Final Acceptance Certificate for any and/or all Products that the Supplier has supplied under a Purchase Order; and
  - (iii) for a repaired or replaced Product in accordance with Clause 13, twenty-four (24) months from the date of repair or the date the Defective Product was replaced to TESE's satisfaction.
- (b) or with respect to any Service:
  - (i) twelve (12) months from the date when TESE issues a Final Acceptance Certificate for the Service; or
  - (ii) for a reperfomed Service in accordance with Clause 13, after the Final Acceptance Certificate is granted, twelve (12) months after such reperformance has been carried out to TESE's satisfaction.

“**Work**” means any deliverable (real property, movable property, document or media) in relation to the Product and/or Service supplied, including but not limited to the ancillary work needed to be performed by the Supplier such as the installation and/or configuration, testing, inspection and/or commissioning work required for a Product and/or Service in order for the Supplier to qualify for and to obtain the Final Acceptance Certificate.

## 2. GENERAL AND INTERPRETATION

- (a) These Terms and Conditions are incorporated into a Purchase Order by reference and together with the following contractual documents form an integral part of the Purchase Order (together, the “Agreement”), in the following order of priority:
  - (i) The Purchase Order (highest priority);
  - (ii) If applicable, any special or particular terms and conditions set out in the Purchase Order;
  - (iii) These Terms and Conditions;
  - (iv) If applicable, any other appendix or attachment, however named.
- (b) Where there is any inconsistency between any provision in the Purchase Order and these Terms and Conditions, the specific terms set out in the Purchase Order shall prevail to the extent those specific terms set out in the Purchase Order supersede, amend or supplement these Terms and Conditions. Unless otherwise provided in the Purchase Order, these Terms and Conditions or otherwise agreed by TESE in writing, these Terms and Conditions shall also prevail over any terms and conditions issued by the Supplier at any time and any other documents providing for any aspect of the transaction contemplated under the Purchase Order (including but not limited to any standard/general terms and conditions which are contained in or referred to in an invoice, acceptance notice, delivery order, order acknowledgement or other commercial document).
- (c) If no Purchase Order has been entered into by and between TESE and the Supplier, or the Purchase Order fails to refer to these Terms and Conditions, for the purchase and supply of Products and/or Services, these Terms and Conditions shall be deemed to apply as the sole and only agreement between TESE and the Supplier governing that purchase and supply.
- (d) Provisions of these Terms and Conditions shall be interpreted according to the following rules:
  - (i) Headings and marginal notes are for convenience of reference only and are not part of the Agreement, and shall not be taken into consideration in their construction and interpretation;
  - (ii) Words importing persons shall include partnerships, firms, joint ventures, trusts, associations, companies and corporations and any organization or institution having legal capacity;
  - (iii) Words importing the singular also include the plural and vice versa where the context requires;
  - (iv) Words importing one gender also include other genders;
  - (v) Words “including” or “includes” shall be deemed to be qualified by a reference to “without limitation”.
- (e) For the purposes of the Agreement, if the Supplier engages a subcontractor or supplier approved by TESE to carry out the Supplier's obligations under the Agreement, the terms and conditions of the Agreement shall apply mutatis mutandis to such subcontractor or supplier to the extent applicable and/or relevant, and the Supplier hereby undertakes to TESE to procure compliance from the Supplier's subcontractor and supplier and ensure that they comply with the obligations set out in the Agreement as if such subcontractor and supplier is a party to the Agreement.
- (f) Acceptance
  - (i) Acceptance of the Purchase Order by the Supplier implies ipso facto acceptance of the Agreement governing the contractual relations between the Parties.
  - (ii) TESE rejects any and all of the Supplier's terms and conditions and any other written documentation related to its supply of Products, Works and/or Services to TESE, and unless any mistake, omission or non-compliance in



accordance with Clause 2(g) is discovered and rectified, any and all subsequent terms proposed by the Supplier in its acceptance or acknowledgement of the Purchase Order which add to, vary from or conflict with the Agreement.

- (iii) TESE's procurement commitment under the Agreement is dependent on the Supplier's acceptance of all the provisions of the Agreement, failing which the Purchase Order shall be null and void. Any modification of a Purchase Order, including the Terms and Conditions, shall be binding on TESE only if agreed in writing by TESE and if modified terms are inserted in the concerned Purchase Order.
- (g) The Supplier must examine all documents or drawings and any other information provided by TESE under the Agreement and the Supplier shall report any mistake, omission or non-compliance within five (5) calendar days from the date of the Purchase Order, failing which the Supplier shall be responsible for and bear all consequences of those mistake, omission or non-compliance at its own expense and risk.

### **3. PRICES**

- (a) Prices and/or Purchase Order Price shall remain firm and fixed for the duration of the Agreement and shall not be escalated for any reason whatsoever.
- (b) Prices and/or Purchase Order Price shall be full and complete compensation for due performance and completion of the Supplier's obligations under the Agreement to the satisfaction of TESE and subject to the tax provisions in Clause 11(h), shall include all taxes imposed by the relevant tax authority with respect to the Products, Works and/or Services, and all charges for but not limited to packaging, packing, insurance, transportation, handling, storage, and any other duties or levies imposed up to the Delivery Point.
- (c) The Supplier shall be deemed to have satisfied itself before entering into the Agreement as to the correctness and sufficiency of the Price and/or Purchase Order Price, which shall cover all of its obligations under the Agreement and all matters and things necessary for the proper delivery and completion of the Products, Works and/or Services, failing which the Supplier shall have no right to make any claim due to its failure to satisfy itself of the foregoing requirement or obligation.
- (d) Price is expressed in the currency of the Country or such other currency as the Parties may agree. If any expense, charge or other amount to be paid to TESE by Customer under this Agreement were incurred by TESE in a currency other than the currency agreed under the Agreement, the amount to be paid shall be calculated using the official foreign currency exchange rate published by the Country's central bank on the date of payment. Where the price of Products quoted is stated to be based in whole or in part on a conversion between two currencies, Customer shall indemnify TESE against any cost and expense, and loss incurred by TESE which results from any variation in the rates of foreign currency exchange between the date of the quotation of the Products and the date upon which payment becomes due to TESE.
- (e) Price and/or Purchase Order Price shall not be subject to revision or increase as a result of increase in the cost to the Supplier of its performance of its obligations under the Agreement, whether due to inflation or to any other reason.

### **4. DELIVERY AND PERFORMANCE**

- (a) The Parties acknowledge that time is of the essence, and as such the Supplier shall commence performance of its obligations under the Agreement upon the effective date of the Agreement and shall proceed to, including but not limited to, deliver and complete Products, Works, and/or Services in accordance with mutually agreed INCOTERMS, Specifications, requirements, and time schedules (intermediate or final) to the satisfaction of TESE. Failing proper mention in the Purchase Order, the Products, Works and/or Services must be delivered according to the INCOTERMS 2020 (or carriage-paid for domestic sales) indicated on the Purchase Order, to the Delivery Point or Site, as the case may be.
- (b) In case of delay in the delivery of Products and/or the completion of Works or Services by the Supplier, TESE may at its sole and absolute discretion terminate the Agreement immediately in accordance with Clause 21 without liability whatsoever.
- (c) All extra costs and expenses incurred as a result of the late delivery or late provision (including but not limited to the costs to airship the delayed Products, and the increased costs in relation to manpower) shall be borne by the Supplier.
- (d) For the avoidance of doubt, unless otherwise stated in the Purchase Order, the Products or Works shall not be considered to have been delivered and the Service shall not be considered to have been performed until:
  - (i) TESE has received a written notification from the Supplier regarding the delivery and completion; and
  - (ii) all (and not part of) Products and all Works under the relevant Purchase Order have been placed at the Delivery Point and are ready for pick up, or for use; and
  - (iii) all documents set out in Clause 6 have been received by TESE; and
  - (iv) if any Product, Work or Service requires replacement or repair according to Clauses 5(b)(ii) and 13, the delivery of the Product and/or the Work and/or the completion of the Service with respect to which a Final Acceptance Certificate has been issued.
- (e) No early and/or partial delivery or performance of Products, Works and/or Services are permitted without TESE's prior written consent. In the event of any early or partial delivery or performance of Products, Works and/or Services, TESE reserves the right to reject such early or partial early or partial delivery or performance of Products, Works and/or Services, and the Supplier indemnifies and hold TESE harmless from all losses and expenses, and costs and

expenses which may be incurred by TESE including but not limited to taxes, duties, freight and warehousing charges, and administrative and legal costs.

## 5. PACKING AND SHIPPING

- (a) Unless otherwise stated in the Purchase Order, the INCOTERMS shall apply for Products and/or Works.
- (b) The Supplier shall adequately pack all Products and/or Works to protect the Products and Works from damage and hazards during delivery in accordance with industry standards, and/or in according with the packaging standards set out in Specifications or additional requirements specified in the Purchase Order. Notwithstanding the foregoing:
  - (i) Products and/or Works shall be carefully and properly packed to withstand long distance transportation including repetitive loading and unloading. Protective measures shall be taken by the Supplier to prevent damage from moisture, rain, rust, shock, vibration and corrosion according to the different characteristics and requirements of the Products and/or Works in order to ensure their pristine condition upon arrival at Delivery Point or other mutually agreed destination point of delivery, or Site. The Supplier shall arrange to have all said Products and/or Works suitably packed for a year storage period from the delivery date;
  - (ii) If the Products and/or Works are damaged or lost due to improper packing or defective prevention, the Supplier shall take measures to repair or replace such Products and/or Works at the Supplier's expense, and at TESE's option, compensate TESE any loss or damage suffered by TESE as a result of insufficient or bad packaging;
  - (iii) According to the characteristics of the Products and/or Works and the different requirements in transportation, loading and unloading, all the cases shall be conspicuously marked by the Contractor with "KEEP AWAY FROM MOISTURE", "HANDLE WITH CARE", "RIGHT SIDE UP" etc., and other appropriate international marks in bold English letters. Should any package weight be two (2) metric tons or more, weight and hoisting position shall be marked in English and with international trade practice marks on two sides of each case so as to facilitate loading, unloading and handling;
  - (iv) Each case shall contain at least one copy of the packing list and certificate of conformity to be issued by the Supplier to TESE;
- (c) The Supplier shall bear any loss or damage to the Products and/or Works due to insufficient or bad packing (including any cost, expense, freight and tax in relation to the return and redelivery of the damaged Products and/or Works).
- (d) The Supplier shall ensure that all shipping labels, marks and instructions, and shipping/commercial documents are properly prepared to avoid any delay in customs clearance at destination. All shipping documents shall be dispatched and reach TESE in time for insurance cover and for further processing for customs clearance, failing which the Supplier shall be liable to pay or indemnify TESE for any increased costs (including but not limited to storage, demurrage, tariff charges, etc.) which TESE suffers due to improper preparation of and/or delay in receipt of the required shipping documents.
- (e) TESE shall have the right to deduct any amount which the Supplier owes to TESE from any payment due or to be due to the Supplier, for any loss and damage, and cost and expense suffered and/or incurred by TESE as a result of the Supplier's failure to comply with this Clause 5, and if such amount due to the Supplier is insufficient to account for such loss or damage, and cost and expense, TESE reserves its right to demand as a debt due, the immediate payment of the balance amount of such loss or damage, and cost and expense.
- (f) Customs Duties
  - (i) The delivery of Products and/or Works shall be interpreted in accordance with INCOTERMS. Subject to the agreed INCOTERMS, and unless otherwise specified in the Purchase Order, the Supplier shall be responsible for export customs clearance of the Products and/or Works in the country of manufacture or transit (including the payment of customs duties and/or levies, if applicable), and TESE shall be responsible for import customs clearance of the Products and/or Works in the country of destination (including the payment of customs duties and/or levies, if applicable). Each Party shall comply with all applicable customs regulations in relation to the administration and control of export and import in accordance with Clause 24, and shall obtain the relevant permits, licenses and approvals and pay all customs duties, taxes and fees as required by such regulations.
  - (ii) For the purpose of the Agreement, the Supplier shall provide, to the best of its effort, all relevant assistance, information or documentation to TESE as required by the relevant customs authority. TESE shall inform the Supplier details of such assistance, information or documentation required at least seven (7) days in advance for the Supplier to confirm and comply.
- (g) Upon request by TESE, the Supplier shall provide TESE or any control officers a written declaration of compliance for the packaging used, covering all packaging from the packing station until the Delivery Point.
- (h) Upon shipment, the Supplier shall simultaneously send a copy of the consignment note to TESE, by post or using any other method agreed by the Parties, specifying (i) relevant reference numbers, (ii) date of the Purchase Order, (iii) the number of parcels containing the shipped Products and (iv) the accurate description of the shipped Products. The original consignment notes, certificates of compliance and the control certificates must travel with and accompany each parcel containing the shipped Products shipped.

## 6. DOCUMENTATION

- (a) Unless otherwise stated in the Purchase Order, the Supplier shall supply to TESE, at least one (1) day before the delivery of the Products or Works and/or completion of Services, the following documents, to the extent applicable:



- (i) three (3) copies of, but not limited to, the drawings, operating/user/maintenance/servicing manuals, technical catalogues, technical data, logic diagrams, progress reports, certificates of origin, export authorizations and licenses, and any such other documents or literature in relation to the Products, Works and/or Services required under the Agreement and/or applicable laws;
  - (ii) one (1) original copy of quality certificates with respect to the major materials used in manufacturing the Products or Works, or in providing Services;
  - (iii) three (3) copies of statements signed by the Supplier confirming the Products, Works and/or Service have passed inspection and testing in accordance with Clause 15;
  - (iv) one (1) original warranty certificate with respect to each Product and each Work, including but not limited to the Supplier's after-sales obligations; and
  - (v) if any third-party Background IP is used or incorporated into the Products, Works and/or Services, an irrevocable, worldwide, royalty-free, perpetual, non-exclusive, sublicensable and transferable license that such third party issues allowing TESE to use the Background IP necessary for TESE to enjoy the benefit of the Products, Works and/or Services for the purposes of or in connection with TESE's business.
- (b) All the documents set out in this Clause 6 shall be eligible, accurate, and free-of-error. Unless otherwise stated in the Purchase Order, all the documents shall be in the English or as per Country language. The Supplier shall be responsible for any loss or damage suffered by TESE as a result of the use of the documents which contains incorrect or inaccurate information.
- (c) Completion and delivery of the Products, Works and/or Services shall not be deemed to have occurred if the Products, Works and/or Services cannot be used as per the agreed scope of work due to delay in the submission or provision of the required documentation set out in this Clause 6.
- (d) The Supplier warrants that the documents or documentation it issues required under the Agreement or applicable law shall meet the requirements of the processing design, manufacture, quality assurance, installation, debugging, operation, maintenance, in-service inspection and, if applicable, for various licenses application for Products, Works and/or Services.

#### 7. MOULDS, EQUIPMENT AND TESTING TOOLS

- (a) Any Equipment becomes the exclusive property of TESE as soon as the production of such Equipment begins and may only be used by the Supplier to perform the Purchase Orders placed by TESE. If that Equipment is stored at the Supplier's premises, it must be labelled with a TESE ownership plate and must be immediately returned to TESE, in good working order, if requested in writing. The Supplier is responsible, at its own expense, for servicing the Equipment and for routine repairs. The Supplier is responsible for the custody and preservation of the Equipment, at its own risk, and must ensure that the Equipment is properly covered by its own insurance policies.
- (b) If any Equipment is lost or damaged, the Supplier shall restore the Equipment to its original condition, at its own expense and as swiftly as possible, unless the Equipment is found to be unrepairable, in which case it shall compensate TESE for its fair market value, which may not be less than twenty-five percent (25%) of its replacement value.

#### 8. CHANGE

- (a) TESE shall have the right to alter the scope of the Products, Works and/or Services to be provided at any time before the Products and/ or Works are delivered, and/or the Services are completed (including but not limited to the quantities and specifications of the Products, Works and/or Services) ("**Change**") by serving a Notice of Change.
- (b) The Supplier shall send a response to TESE within five (5) days from the date of the Notice of Change, and the Supplier's response shall:
- (i) set out the additional cost and time (if any) required for performing the Change, together with full details supporting the additional cost and time;
  - (ii) set out the reasons why the Supplier cannot perform the Change; or
  - (iii) set out its agreement to perform the Change without additional charges to TESE or without additional time incurred for the delivery or performance due to the Change.
- (c) If the Supplier fails to send a response in accordance with Clause 8(b), the Supplier shall be considered and deemed to have agreed to perform the Change without additional charges or time.
- (d) Notwithstanding the foregoing, TESE shall have the right to terminate the relevant Purchase Order and/or Agreement in accordance with Clause 20, if the Supplier sends a response in accordance with Clause 8(b) but TESE does not agree with the additional charges or time and the Parties fail to find an agreement.
- (e) Not until and unless a Change Order is or has been formally issued by TESE to the Supplier, the Supplier must not perform any Change set out in the Notice of Change, and no payments for any Change shall be made by TESE to the Supplier until and unless a Change Order has been properly executed between the Parties, and such Change performed in accordance with the Change Order to TESE's satisfaction.
- (f) In the event the Supplier decides to:
- (i) stop the manufacture, sale or supply of the Products; or
  - (ii) apply any change to the Products or its manufacture thereof, and in particular any change that affects the process used (including any material change made to the information systems used by the Supplier or its subcontractors),

procurement of critical components, design of the Products or location of the production site(s), where such changes affect or could affect the technical specifications, regulatory compliance, useful life, reliability or quality of the Products,

- (iii) the Supplier shall notify TESE in writing at least nine (9) months before the effective date of the discontinuance or the scheduled date of implementation of any of the aforementioned change. TESE reserves the right to refuse any such change and, therefore, to terminate any on-going Purchase Order in accordance with Clause 20. In any case, the Supplier remains fully liable to comply with the provision and supply of the Products in accordance with the relevant Purchase Order and for the consequences of any such change.

## 9. BONDS AND GUARANTEES

- (a) If required by TESE, the Supplier shall provide the following:
  - (i) Performance Bond
    - (1) The Supplier shall furnish on-demand, but no later than thirty (30) days from the date of the Purchase Order, a performance bond in the form of a bank guarantee (the format of which shall be provided by TESE separately) opened with a bank domiciled in the Country that TESE regards as satisfactory, for an amount equal to ten percent (10%) of the Purchase Order Price ("**Performance Bond**").
    - (2) The Performance Bond shall be valid for a further six (6) months after the expiration of the relevant Warranty Period with respect to all Products, Works and/or Services provided under a Purchase Order ("**Performance Bond Maturity Date**"). Upon the Performance Bond Maturity Date, and if TESE does not utilize the Performance Bond or if there is a positive balance due to the Supplier, TESE shall release the Performance Bond or the remainder to the Supplier without interest or liability.
  - (ii) Advance Payment Bond
    - (1) If TESE is required to make any payment in advance before the actual commencement or delivery of the Products, Works and/or Services, the Supplier shall furnish to TESE on demand, but no later than fifteen (15) days before the date the advance payment is to be made by TESE to the Supplier, an advance payment bond in the form of a bank guarantee (the format of which shall be provided by TESE separately) opened with a bank domiciled in the Country that TESE regards as satisfactory, for an amount equal to the advance payment made by TESE ("**Advance Payment Bond**").
    - (2) The Advance Payment Bond shall be valid for a further and total period of sixty (60) days after the actual delivery of the Products and/or Works, and/or the completion of Services ("**Advance Payment Bond Maturity Date**"). Upon the Advance Payment Bond Maturity Date, and if TESE does not utilize the Advance Payment Bond or if there is a positive balance due to the Supplier, TESE shall release the Advance Payment Bond or the remainder to the Supplier without interest or liability.
- (b) Without prejudice to the generality of Clauses 9(a), TESE may utilize the Performance Bond, Advance Payment Bond and Retention Monies Bond (collectively, the "**Bonds**"), including making a call or demand on the Bonds, to make good any loss or damage sustained or likely to be sustained as a result of any breach of this Agreement whatsoever by the Supplier (including any claim for liquidated damages) and/or any debt recoverable by TESE from the Supplier under this Agreement.
- (c) The provisions of this Clause 9 and the utilization of the Bonds by TESE shall in no way affect TESE's rights and remedies expressly reserved in this Agreement or bar TESE from claiming any loss or damage incurred or sustained by TESE from the Supplier in the event of any breach of the provisions of this Agreement by the Supplier.
- (d) The Supplier shall provide additional Bonds to TESE forthwith such that at any one time, the total amount of the amount guaranteed under each Bond is equivalent to the amounts stated in Clauses 9(a) if:
  - (i) the Bonds are utilized by TESE or TESE makes a call or demand on the Bonds for either the whole or part of the guaranteed sum(s); or
  - (ii) the Purchase Order Price is increased.
- (e) At any time before the maturity of the Bonds, TESE may for reasonable cause instruct the Supplier to provide a new Performance Bond whether or not from another financial institution in substitution of the Performance Bond.

## 10. INVOICING

- (a) A single original of all invoices must be sent to the invoicing address stated in the Purchase Order. Each invoice shall state the references used by TESE and those of the corresponding Purchase Order and comply with the provisions of TESE's invoice charter as set out in the Purchase Order.
- (b) Unless otherwise expressly agreed by TESE, a separate invoice must be issued for each Purchase Order and each invoice must contain a description of the invoiced Products, Works and/or Services and the unit prices and amounts delivered.

## 11. PAYMENT

- (a) Unless otherwise mutually agreed and expressly stated in the Purchase Order, TESE shall pay Purchase Order Price to the Supplier within and no earlier than sixty (60) days after the receipt by TESE of the Payment Documentation in accordance with the mutually agreed payment schedule or payment milestone.
- (b) Unless otherwise expressly stated in the Purchase Order, TESE shall have the right to select the method which it





considers appropriate for the payment of the Price and/or Purchase Order Price. TESE DISCOURAGES AND WILL DECLINE ANY PAYMENT BY LETTER OF CREDIT OR NEGOTIABLE INSTRUMENTS.

- (c) TESE has the right to return to the Supplier any incorrectly prepared Payment Documentation failing to comply with the applicable regulatory provisions and/or the provisions of Clause 10 for rectification and re-submission, and to withhold payment of the Price and/or Purchase Order Price until the correct Payment Documentation is received. Upon receipt of the corrected invoice and Payment Documentation, TESE shall pay such invoice within and no earlier than the payment term set out in Clause 11(a).
- (d) Notwithstanding, any payment made by TESE to the Supplier shall not be construed as acceptance of the Products, Works and/or Services.
- (e) Unless local applicable law applies, imposition of any late payment penalty, seeking of cost or expense or suspension of performance of the Supplier's obligations under a Purchase Order and/or Agreement is prohibited due to TESE's payment default.
- (f) Retention Monies
  - (i) To the extent permitted by applicable law and unless otherwise stated to the contrary in the Purchase Order, TESE shall have the right to retain five percent (5%) of the amount invoiced by the Supplier at each payment milestone ("**Retention Monies**").
  - (ii) Retention Monies shall be held by TESE from the date of each relevant payment milestone for the remaining duration of the Agreement, and if the Supplier does not breach of the provision of this Agreement or is able to cure or remedy such breach within the time specified by TESE, TESE shall release the Retention Monies to the Supplier sixty (60) days after the last payment date of the mutually agreed payment schedule or payment milestone without interest or liability.
  - (iii) In lieu of such Retention Monies being retained at each payment milestone, the Supplier may opt to provide a Retention Monies Bond in accordance with the following terms:
    - a. If the Supplier opts to provide Retention Monies in the form of a bank guarantee, the Supplier shall on-demand, but no later than thirty (30) days from the date of the Purchase Order, furnish a retention monies bond in the form of a bank guarantee (the format of which shall be provided by TESE separately) opened with a bank domiciled in the Country that TESE regards as satisfactory, for an amount equal to five percent (5%) of the Purchase Order Price ("**Retention Monies Bond**").
    - b. The Retention Monies Bond shall be valid for a further and total period of sixty (60) days after the last payment date of the mutually agreed payment schedule or payment milestone under the Agreement ("**Retention Monies Bond Maturity Date**"). Upon the Retention Monies Bond Maturity Date, if TESE does not utilize the Retention Monies Bond or if there is a positive balance due to the Supplier, TESE shall release the Retention Monies Bond or the remainder to the Supplier without interest or liability.
- (g) Tax, Duties, Levies and Other Charges
  - (i) Unless otherwise stated in the Purchase Order, Price as set out in Clause 3 includes taxes (including but not limited to value added tax and goods and services tax) charges, duties, levies, and other fees payable for Products, Works and/or Services to the relevant governmental or tax authority in TESE's country of establishment or in the country where the Products, Works and/or Services are supplied and/or performed, which in accordance to applicable local law shall be borne by TESE. Such taxes, charges, duties, levies, and other fees shall be separately itemized in the Supplier's invoice, and upon TESE's written request, the Supplier shall forward a valid copy of such tax, customs or other registration issued by the relevant governmental or tax authority confirming that the Supplier is licensed under the relevant statute(s) as a taxable or dutiable person and/or a copy of the tax or duty certificate or receipt that such tax, charge, duty, levy or other fees have been duly remitted to the relevant tax authority on behalf of TESE.
  - (ii) In the event any applicable indirect tax (i.e. sales and services tax, goods and services tax, value added tax, etc.) is chargeable for any Product, Work and/or Service considered to be a taxable supply and/or service supplied by the Supplier under the Agreement in accordance with applicable law where such Product, Work and/or Service is supplied, TESE shall be responsible for and pay such taxes when invoiced by the Supplier, provided the Supplier provides to TESE as documentary proof a valid copy of such tax registration issued by the relevant tax authority confirming that the Supplier is licensed under the relevant statute(s) as a taxable person and/or a copy of the tax certificate or receipt that such taxes have been duly remitted to the relevant tax authority on behalf of TESE.
  - (iii) Withholding Tax. If TESE is required by relevant authorities under applicable law to withhold any tax from payment due to the Supplier under the Agreement ("**Withholding Tax**"), TESE shall have the right to deduct from such amount of Withholding Tax from the amount paid or payable to the Supplier (in respect of which such deduction or withholding is required to be made) and remit it to the relevant tax authority. Upon written request by the Supplier, TESE shall forward a copy of the tax certificate or receipt to the Supplier as documentary proof that such taxes have been duly remitted to the relevant authorities on behalf of the Supplier. Under no circumstances shall TESE pay or be required to pay, and the Supplier has no right to claim from TESE for the payment of, the corresponding amount equivalent to the Withholding Tax so withheld by TESE that has been remitted to the relevant authorities under applicable law.
  - (iv) The Supplier shall be responsible for and pay at its own expense when due and payable any and all relevant taxes and duties arising from the Supplier's obligations and supply of Products, Works and/or Services under the



Agreement to the relevant tax authority in the Supplier's country of registration. The Supplier shall indemnify and hold TESE harmless from and against any liability resulting from the Supplier's non-compliance or failure to make timely reporting and payment of such relevant taxes in accordance with this Clause 11.

- (v) TESE shall be responsible for and pay at its own expense when due and payable any and all relevant taxes in connection with the execution of the Agreement, and shall indemnify and hold the Supplier harmless from and against any liability resulting from TESE's non-compliance or failure to make timely reporting and payment of such relevant taxes in accordance with this Clause 11.
- (vi) The indemnities set out in this Clause 11 shall include without limitation all penalties, compensation, awards and judgements, court and arbitration costs, attorney's fees and other reasonable expenses associated with such claims, demands and causes of action.

## 12. TITLE AND RISK

- (a) Title and Ownership. Unless otherwise stated in the Purchase Order, the Supplier shall pass to TESE the title and ownership (including any necessary Intellectual Property Rights) in the Products, Works, Services or any other deliverables under the Agreement (including but not limited to any work-in-progress, data, drawings, technical documents, and any other works and ideas created during the process of manufacture or the delivery of the Products or Works, or the provision of the Services) when:
  - (i) the Products and Works are individualizable and identifiable;
  - (ii) the Services are completed; and/or
  - (iii) if any Purchase Order is terminated for whatever reason before the delivery of the Products or Works, or before the completion of the Services, when the Supplier receives the termination notice according to Clauses 20 or 21, for the Products, Works or Services TESE will elect to retain.
- (b) Risk. The risk of loss and damage of the Products, Works or Services shall nevertheless remain with the Supplier until the Supplier receives the Final Acceptance Certificate. For the avoidance of doubt, the issuance of the Final Acceptance Certificate does not release the Supplier from its obligations under this Agreement.
- (c) For the avoidance of doubt, notwithstanding anything stated to the contrary, any trading terminology, whether defined in the effective version of INCOTERMS used in the Purchase Order, shall not be interpreted to alter any provision in or intent of this Clause 12.

## 13. WARRANTY AND GUARANTEE

- (a) With respect to the Products, Works and/or Services, the Supplier warrants that:
  - (i) it has full right to manufacture the Products, to provide the Services and to deliver the Products and Works pursuant to the Agreement;
  - (ii) all ownership, title and rights in the Products, Works and/or Services are free from any claims, liens, charges, pledges with or without dispossession, option, equity, power of sale, hypothecation, right of pre-emption, retention of title, mortgages, easements, guarantees, promises, security interest right of first refusal or other third party right or security interest of any kind or an agreement, arrangement or obligation to create any of the foregoing or any other encumbrances; and
  - (iii) TESE has full right to use, re-sell or otherwise dispose the Products, Works and/or Services at its discretion without recourse to the Supplier.
- (b) With respect to the Products, the Supplier warrants that such Products shall be:
  - (i) unless otherwise stated in the Purchase Order, new at the time when they are delivered to the Delivery Point;
  - (ii) manufactured with good workmanship by using materials of the commercially best quality, and if the context applies, in accordance with mutually agreed Specifications or requirements;
  - (iii) free from any Defect;
  - (iv) able to achieve the function stated in the Agreement or, if the Purchase Order fails to state the function, to meet the requirements of merchantability and fit for purpose for such type of Products and that are, if the context applies, in accordance with mutually agreed Specifications or requirements;
  - (v) in compliance with the latest quality assessment standards or any other internationally recognized standards applicable to the manufacture and delivery of the Products; and
  - (vi) in compliance with any other requirements set out in the Agreement.
- (c) With respect to the Works and Services, the Supplier warrants that:
  - (i) the Services under the Purchase Order shall be performed by duly competent and capable personnel of the Supplier or suppliers or subcontractors employed by the Supplier, and with commercially highest level of care;
  - (ii) the Services shall meet the standard set out in the Agreement or, if the Agreement fails to state the standard, the highest standard in the relevant market;
  - (iii) the Works shall comply with the Specifications stated in the Agreement or, if the Agreement fails to state any Specification, conform to the specification which they are normally designed to achieve;
  - (iv) the Services shall comply with the latest quality assessment standards or any other internationally recognized standards applicable to the provision of the Services; and
  - (v) the Services shall satisfy any other requirements set out in the Agreement.
- (d) At any time during the Warranty Period, if TESE finds, either by itself or by one of its Clients, that any Product, Work



and/or Service is Defective, TESE shall have the right to send a Notice of Defect to the Supplier and the Supplier shall, at TESE's sole discretion and election:

- (i) repair/replace the Defective Product and Work, and/or rectify the Service, at the location where the Defective Product, Work and/or Service is located and in such configuration in which the Defective Product, Work and/or Service is found in (which shall include but not limited to any travel expenses and any disassembly/reassembly costs, etc.) so that the repaired/replaced Product and Work and/or rectified Service operates in compliance with the provisions of the Purchase Order and in the manner required for its intended use, in all respects, at the Supplier's cost and expense within the period TESE specifies in the Notice of Defect, or if the Notice of Defect fails to specify the period, fourteen (14) days from the date of the Notice of Defect; or
  - (ii) immediately collect at its own cost, the Defective Product, Work and/or Service (to the extent applicable) and repay TESE (or its designated Client) the Price for the Defect Product with interest at two percent (2%) above the local prime interest rate calculated from the date when TESE paid the Price, and indemnify TESE against any loss and damage arising from the purchase, use or resale of the Defective Product, Work and/or Service, including the cost of sourcing alternative suppliers and any liabilities owed to the Clients.
- (e) If the Supplier fails to repair, rectify, or replace the Defective Product, Work and/or Service within the period stated in the Notice of Defect or this Agreement, TESE reserves the right to repair, rectify or replace the Defective Product, Work and/or Service directly or through any third party engaged by TESE at the Supplier's expense and risk.
- (f) Any Product, Work and/or Service provided and/or repaired, rectified, or replaced under this warranty shall be covered by the renewed Warranty Period as defined in the definition of Warranty Period.
- (g) Unless otherwise decided and elected by TESE to be unnecessary, the Supplier shall provide TESE with a parent company guarantee in the format to be provided by TESE and/or its Client.
- (h) Epidemic Failure
- (i) For the purpose of this Agreement, "Epidemic Failure" means a defect in any Product, Work and/or Service, whether latent or not, where a substantially similar repetitive defect occurs in any Product, Work and/or Service supplied by the Supplier to TESE across multiple Purchase Orders, indicating a common or systemic failure of such Product, Work and/or Service rendering such Product, Work and/or Service not of merchantable quality, unfit for purpose or use to which it was intended and non-compliant in accordance with mutually agreed Specifications and requirements of the Agreement.
  - (ii) Notwithstanding anything stated to the contrary and in addition to any other remedies TESE may have under contract or law, TESE may, at its sole option, terminate the Agreement in part or whole upon the occurrence of an Epidemic Failure without any liability whatsoever. As such, the Supplier shall refund to TESE (i) the partial amounts of the Purchase Order Price already paid by TESE to the Supplier for the part(s) of the Purchase Order so terminated, or (ii) the entire amount of the Purchase Order Price already paid by TESE to the Supplier if the entire Purchase Order is so terminated. If the Purchase Order Price has not yet been paid by TESE to the Supplier, TESE is and shall not be liable to pay the Supplier any part of or the full Purchase Order Price for any respective part of the Purchase Order so terminated or if the entire Purchase Order is so terminated.
  - (iii) Any and all costs and expenses incurred, and/or losses and damages suffered by TESE as a consequence of any such Epidemic Failure shall be borne by the Supplier as a debt owed by the Supplier to TESE, and the Supplier shall pay such costs and expenses and/or losses and damages within thirty (30) days from TESE's written letter of demand.
- (i) Recall Responsibility
- (i) Notwithstanding anything stated to the contrary, all relevant Products, Works and/or Services, where the context applies, provided under this Agreement are in compliance with the European Union's Directive 2002/96/EC on Waste Electrical and Electronic Equipment, as amended from time to time ("WEEE Directive").
  - (ii) If the Supplier, TESE or any governmental agency or court having jurisdiction finds that any Product, Work and/or Service contains a safety hazard or other defect or condition that requires or would make advisable a field repair, user/customer notification campaign, update, rework or recall of any such any Product, Work and/or Service (including any contravention of the WEEE Directive), the Supplier shall communicate all relevant facts, information and data to the TESE within three (3) calendar days upon the Supplier becoming aware. TESE shall promptly undertake all necessary or required corrective actions, and shall file all necessary form, corrective action programs and other documents required under applicable law or regulation; provided that TESE shall reasonably cooperate with and assist the Supplier in any such filing or correction action, at the Supplier's expense. Nothing in this Clause 13 shall preclude TESE from taking any action required under any applicable law or regulation or business purpose against the Supplier if such fault or default of which is caused by or wholly attributable to the Supplier. The Supplier shall perform all necessary updates, repairs or modifications to any Product, Work and/or Service at its sole expense.
  - (iii) In the event of a recall of any Product, Work and/or Service, TESE shall work with the Supplier to have such Product, Work and/or Service under its custody returned to the Supplier. If any Product, Work and/or Service issued to TESE is not barred or deactivated in accordance with this Clause 13, the Supplier shall, at its best endeavours, issue such new and available Product, Work and/or Service to TESE to replace such recalled Product, Work and/or Service without further or additional fees, charges, costs, expenses or whatsoever imposed on TESE.



- (iv) Any and all costs and expenses incurred by TESE as a consequence of any such associated with the correction of a safety hazard or other defect caused by or associated with any Product, Work and/or Service or any recalled any Product, Work and/or Service, including without limitation, reasonable attorneys' fees, court costs and other litigation expenses, shall be borne by the Supplier as a debt owed by the Supplier to TESE, and the Supplier shall pay such costs and expenses within thirty (30) days from the Customer's written demand.

#### 14. SPARE PARTS

(a) During Start-Up / Commissioning

The Supplier shall at its own cost and expense purchase, procure and deliver spare parts and special tools necessary to maintain any part of Products, Works and/or Services up to the formal acceptance of the Products, Works and/or Services by TESE. The Supplier shall at its cost and expense, transport, install, store and maintain such spare parts at the Delivery Point or other mutually agreed location, or Site.

(b) During Warranty Period

(i) The Supplier shall, wherever and whenever necessary, be fully responsible, at its own cost and expense, for the provision of the relevant spare parts, excluding consumables parts, necessary for repairing and replacing any defective material and Equipment for which the Supplier shall be liable under the Agreement to ensure the continuous operation of the related Products, Works and/or Services during the Warranty Period and shall perform all procurement services (including but not limited to ordering, expediting, transportation to and delivery at, receiving, resolution of shortages, damage and handover to TESE and/or the Client(s) at its designated stores).

(ii) The Supplier shall provide TESE with details of all proposed operating spare parts for a minimum of two (2) years in TESE designated form for each and every maintainable spare part. These proposals are to be accompanied by comprehensive technical back-up data. The Supplier shall also provide a fully priced recommended list of spare parts and special tools for a minimum of two (2) year's operation. The validity of these quotations shall be extended to three (3) months beyond the relevant expiry date of the Warranty Period for the relevant Products, Works and/or Services.

(c) After Warranty Period

The Supplier undertakes to maintain and supply spare parts necessary to maintain any part of Products, Works and/or Services for a period of ten (10) years, commencing on the date of the delivery or acceptance of the Products, Works and/or Services.

#### 15. TEST, INSPECTION AND ACCEPTANCE

(a) Before the Supplier notifies TESE of the delivery or completion, to the extent required by law, applicable industrial standards or Purchase Order or Agreement, the Supplier shall carry out (and ensure its subcontractors and suppliers carry out), at no (additional) cost to TESE, all testing and inspection of the Products, Works and/or Services, and if the context applies, in accordance with testing and inspection Specifications or requirements set by TESE.

(b) Pursuant to Clause 15(a), the Supplier shall give written notice to TESE of such testing or inspection, and TESE shall have the right (but not obligation) to witness such testing and inspection. The Supplier shall provide TESE with full access to such testing or inspection and all related results.

(c) If any Defect is discovered in the Products, Works and/or Services during testing or inspection, at the request of TESE or its representative, upon receipt of the Notice of Defect, the Products, Works and/or Services shall be deemed unaccepted and the Supplier shall rectify such Defect and organize another testing or inspection session, bearing all cost and expense for retesting or re-inspecting including cost and expense incurred by TESE in attending such retesting or reinspection. Upon receipt of such Notice of Defect, the Supplier shall, at TESE's election, retrieve, replace and/or rectify the Defect according to Clause 15.

(d) For the avoidance of any doubt, TESE's attendance at the testing and inspection (or retesting and reinspection) or failure to do so shall not be interpreted as TESE's endorsement of or acquiescence to the quality of the Products, Works and/or Services, or a waiver of any right or remedy TESE has or may have under this Agreement or applicable law, and shall not relieve the Supplier from its obligations set out in the Agreement.

(e) TESE reserves its right to test and inspect any Product, Work and/or Service from time to time in the course of the Agreement, and the Supplier shall accede to such testing and inspection, and fully cooperate and provide reasonable assistance at such testing and inspection at the cost and expense of the Supplier, in which case Clause 13(c) shall apply to the extent applicable or relevant.

(f) TESE reserves its right to examine the Products, Works and/or Services independently upon the delivery of all Products or all Works to the Delivery Point, or upon the completion of all Services under a Purchase Order, in which case Clause 13(c) shall apply to the extent applicable or relevant.

(g) If after any testing and inspection (or retesting and reinspection) of the Products, Works and/or Services under this Clause 15, and no issue is found by TESE or if the examination does not reveal any Defect in the Products, Works and/or Services, TESE shall issue a Final Acceptance Certificate to the Supplier. Products, Works and/or Services shall not be considered delivered and completed without the Final Acceptance Certificate. TESE's issuance of the Final Acceptance Certificate does not vitiate any of the Supplier's warranty and guarantee obligations under the Agreement nor a waiver of any right or remedy TESE has or may have under this Agreement or applicable law if a Defect is later found or discovered.



## 16. INDEMNITIES

- (a) The Supplier shall indemnify and hold TESE (including but not limited to TESE's directors, officers, employees, agents, representatives and assigns) harmless against any and all liabilities, losses, damages, costs and expenses (including legal or attorney's fees) which are imposed against, and incurred or suffered by TESE (including its directors, officers, employees, agents, representatives and assigns), including direct and indirect, consequential and incidental loss and damage, loss of profit, loss of revenue, data/information, interest, capital, financing, good will, business reputation, use, business and business opportunity in connection with the manufacture, delivery, Defect or non-conformity of the Products, Works and/or Services, or otherwise arising from any performance or non-performance or breach of any representations, warranties or obligations under the Agreement, including but not limited to death and personal injury, and loss and damage to property.
- (b) The Supplier acknowledges that TESE may resell to its Clients the Products, Works and/or Services or any other products or services which include the Products, Works and/or Services supplied by the Supplier and as such, the indemnity as set out in Clause 16(a) shall apply regardless.

## 17. INSURANCE

- (a) Unless otherwise provided in the relevant Purchase Order, the Supplier shall at its own costs, purchase and maintain the following insurance policies in respect of all Products, Works and/or Services, and all raw materials used for producing and providing the Products, Works and/or Services, in the respective amounts or amounts to be specified in the Purchase Order, for the duration of the Agreement and a further six (6) years after the expiration or termination of the Agreement:
  - (i) Commercial General Liability insurance to cover, including but not limited to, public and product liability, premises/operations liability, products/completed operations liability, contractual liability to Supplier's indemnities and save harmless obligations under the Agreement, broad form property damage and all risk property damage and independent contractors coverage, insurance—Five Million United States Dollars (USD 5,000,000) per claim
  - (ii) Automobile Liability insurance to cover bodily injury and property loss and damage for any owned, non-owned, leased, rented or hired automobile and used in the fulfilment of the Agreement—Two Million United States Dollars (USD 2,000,000) combined single limit per claim;
  - (iii) Professional Indemnity (if applicable) for Two Million United States Dollars (USD 2,000,000) per claim per annum;
  - (iv) Workers' Injury Compensation/Employer's Liability insurance (if such covers are required by the law of the Country), as required by local applicable law and/or statute governing such insurance in the jurisdiction where work is to be performed and/or as applicable to the employees conducting the work; and
  - (v) Other insurance as required by law, stipulated in the Purchase Order or otherwise requested by TESE from time to time.
- (b) The Supplier shall take up insurance from reputable insurance companies rated A VIII or better by A.M. Best Company of the United States of America and/or in accordance with local applicable law, licensed to do business in the jurisdiction(s) where the Products, Works and/or Services are to be supplied, delivered or performed. Any required insurance policy shall include TESE (and the Client if TESE so require) as a named co-insured or additional insured and contain a cross liability clause and waiver of subrogation right by the Supplier's insurers against TESE (and its Clients, employees, officers, agents, representatives, successors, and assigns).
- (c) Within fourteen (14) days from the execution of the Agreement and within fourteen (14) days prior to the expiration of the required insurance policies under the Agreement and at TESE's request from time to time, the Supplier shall produce satisfactory documentary evidence that the Supplier has taken up such insurance policies and had paid such insurance fees or premiums in the form of insurance certificates and receipts issued by the Supplier's insurers. The Supplier shall comply with all provisions under the relevant insurance policies.
- (d) The consent of TESE to the insurance and limits set out in this Clause 17 shall not be considered as a limitation of the Supplier's liability under the Agreement nor an agreement by TESE to assume liability in excess of the said amounts or for risks not insured. Failure of the Supplier to maintain complete insurance coverage does not lessen the Supplier's liability and may be deemed a material breach allowing TESE to terminate the Agreement.
- (e) Upon execution of the Agreement, and thirty (30) days prior to the expiration of the required insurance policies, the Supplier shall furnish TESE with a Certificate of Insurance, in a form acceptable to TESE. The Certificate of Insurance must be signed by an authorized representative of the Supplier's insurers and show that the insurance coverages and limits of liability itemized in the insurance paragraph are being provided by the Supplier's insurers, showing the effective and expiration dates, policy numbers and insurer, acknowledging contractual liability insurance for the Agreement, name TESE, its parent company and subsidiaries and their respective directors, officers and employees as additional insured, confirm deletion of the "Other Insurance Clause" of the General Commercial Liability insurance policy and waive rights of subrogation by insurers in favor of TESE. If an umbrella or excess liability insurance policy is used to meet minimum insurance requirements, the Certificate of Insurance must state the policy follows the form of the General Commercial Liability insurance policy as respects the requirements stated in this Clause 17. The Certificate of Insurance shall also contain the following statement: "No reduction, cancellation or expiration of any of these insurance policies shall become effective until at least thirty (30) days written notice thereof is received by TESE." Upon request, the Supplier shall furnish TESE with a copy of each such policy.



- (f) Without prejudice to any remedy available under the Agreement or any applicable law, TESE shall have the right to order the Supplier to suspend the performance of any relevant Purchase Order unless and until the Supplier produces the proof of insurance coverage, payment of insurance premiums and the rectification of any breach of the insurance policy (if any).

#### 18. INTELLECTUAL PROPERTY RIGHTS

- (a) Supplier warrants and declares that the Supplier has the unencumbered right to supply Products, deliver Works and provide Services, and to permit TESE's use/disposal of the Products, Works and/or Services according to the Purchase Order without infringing any Intellectual Property Right of any third party.
- (b) For the purposes of this Agreement, the Supplier grants to TESE an irrevocable, worldwide, royalty-free, perpetual, non-exclusive, sublicensable and transferable license to use the Supplier's Background IP and Foreground IP necessary for TESE to enjoy the benefit of the Products, Works and/or Services for the purposes of or in connection with TESE's business.
- (c) Each Party shall retain all of its Intellectual Property Rights in its respective Background IP.
- (d) Notwithstanding the foregoing, for TESE's Background IP which TESE provides to the Supplier for the Supplier to perform any obligation under the Agreement shall remain the absolute property of TESE, and for the purpose of the Agreement, TESE grants to the Supplier a limited, royalty-free, non-exclusive and non-transferable license to use TESE's Background IP necessary for the Supplier to perform any obligation under the Agreement, but such license to use shall not include the right for the Supplier to reengineer, reverse engineer or recompile TESE's Background IP for any purpose.
- (e) All Foreground IP shall be owned by TESE, and as such, any Foreground IP that the Supplier develops during the course of the performance its obligations under the Agreement, which shall be deemed work-for-hire, shall belong to and be owned by TESE, and as such be vested in and are hereby assigned, and Supplier agrees to assign, at no cost to TESE, by the Supplier to TESE on the date of creation of related Foreground IP.
- (f) If the Supplier reengineers, reverse engineers or recompiles TESE's Foreground IP and Background IP for any purpose whatsoever, whether or not for its benefit, the Supplier shall be deemed to have committed a serious and material breach of this Agreement, and as such the Agreement shall be immediately terminated and the Supplier shall be liable for any and all losses and damages that TESE would incur or suffer as a result of such breach and termination of Agreement.
- (g) Pursuant to Clause 18(e):
  - (i) if required by TESE or applicable law, the Supplier shall fully cooperate and provide all necessary assistance, including procuring and securing from its employees and related third parties any and all such rights or release, to put into written effect the vesting of any title, interest, benefit and right of the Supplier's Foreground IP to TESE; and
  - (ii) accordingly, the Supplier shall notably, but not limited to:
    - (1) provide to TESE, on request, the source and object programs/codes for the software that forms part of the Foreground IP and any associated documentation;
    - (2) not file any application to register any industrial or intellectual property rights in the Foreground IP, and acknowledges and agrees that TESE is the only person authorised to take the necessary steps to establish and protect its rights in the Foreground IP; and
    - (3) not directly or indirectly exploit the Foreground IP, in any manner whatsoever, for any purpose other than for the fulfilment of the Agreement.

The rights assigned under this clause are assigned worldwide, for the entire period of statutory protection afforded to the intellectual property rights in the Foreground IP, and in accordance with foreign legislation and any international agreements applicable in that respect.

- (i) Infringement
  - (i) If any party brings or threatens to bring any action or claim against TESE or the Clients for infringement (including contributory infringement or inducement to infringe) of any Intellectual Property Right, whether real or alleged, the Supplier shall hold TESE harmless from and against any and all legal action and indemnify TESE against all and any liability, losses, damages (including legal counsel's fees, costs of court proceedings, and other costs for resolving the claims) and defend such action or claim at Supplier's sole expense. In such situation, TESE shall reserve the right to withhold any money due or to be due to Supplier or call upon Supplier to furnish additional security, in an amount which in the opinion of TESE, acting reasonably, is necessary.
  - (ii) Without prejudice to any remedy available under the Agreement or otherwise provided by applicable law, the Supplier shall at its entire and own expense:
    - (1) procure from such third party, the right for the continued use by TESE and its Clients of the affected Products, Works and/or Services; and/or
    - (2) upon TESE's consent, modify or replace the Products, Works and/or Services with non-infringing items without changing the quality, specification, performance characteristics or functionality of the relevant Product, Works and/or Services.

#### 19. SUSPENSION



- (a) At any time during the course of the Agreement, through written notification, TESE reserves the right to suspend and/or order the Supplier to suspend the performance of the Agreement for convenience without the need to provide the Supplier with any reason.
- (b) .In the event of such suspension, TESE shall pay the Supplier any prior mutually agreed cost of suspension, which may include demobilization and storage, or, if not previously agreed, the costs that the Supplier must face as agreed through good faith discussion and that the Supplier must substantiate with documentary proof that it has incurred or will incur such costs.
- (c) Notwithstanding the foregoing, the Supplier agrees that it shall NOT be entitled to and TESE shall not be liable for any indirect or consequential loss and damage, or direct or indirect loss of profit, revenue, business opportunity or any other loss for forms of loss arising from such suspension under this Clause 19.

**20. TERMINATION FOR CONVENIENCE**

- (a) TESE has the sole right to terminate for convenience a Purchase Order and/or Agreement in part or whole, without cause or reason, by giving notice with immediate effect to the Supplier, who shall:
  - (i) immediately cease (and cause its subcontractors and suppliers to cease) any performance under that Purchase Order and/or Agreement (including but not limited to the manufacture and/or provision of Products, Works and/or Services, placing of orders with its subcontractors or suppliers, etc.) without affecting any other Purchase Order and/or Agreement, or any part of the Purchase Order and/or Agreement which is not terminated;
  - (ii) make its best efforts to protect all Products and Works which are ready for delivery, and hand over the same, together with all relevant documentations set out in Clause 6; and
  - (iii) use best efforts to terminate existing orders placed with its subcontractor or suppliers in respect of the terminated Purchase Order and/or Agreement, and at TESE's request, assign all rights and obligations under such existing orders to TESE.
- (b) The Supplier shall be paid (and only be paid) for the Products which have been manufactured, Works which have been delivered and Services which have been provided at the time when TESE serves a termination notice under this Clause 20(a), provided that such Products, Works and Services satisfy all requirements under the Agreement to the extent applicable and relevant. Such payment by TESE shall be final and forms the sole and exclusive remedy available to the Supplier for the termination of the Purchase Order and/or Agreement under this Clause 20 by TESE.
- (c) The termination of any Purchase Order under Clauses 20 shall not affect any obligation of the Supplier with respect to Products, Works and/or Services which TESE has received and paid for.
- (d) The Supplier agrees that it shall NOT be entitled to and TESE shall not be liable for any indirect or consequential loss and damage, or direct or indirect loss of profit, revenue, business opportunity or any other loss for forms of loss arising from such a termination under this Clause 20.

**21. TERMINATION FOR DEFAULT**

- (a) TESE shall have the right to terminate at TESE's discretion, wholly or partially, the Purchase Order and/or Agreement by notice with immediate effect and without any compensation to the Supplier, if the Supplier:
  - (i) commits a breach of any material obligation or provision under the Agreement;
  - (ii) commits any breach of any provision of the Agreement and fails to rectify such breach (if such breach is capable of rectification) within thirty (30) days after the notice from TESE of such breach;
  - (iii) fails to deliver the Products or Works, or complete Services as set out in the Purchase Order and/or Agreement;
  - (iv) refuses to proceed with the performance of the relevant Purchase Order without good or acceptable reasons;
  - (v) violates any applicable law in relation to the supply of the Products, Works and/or Services under this Agreement;
  - (vi) violates any of TESE's company policies, including but not limited to the TESE's Code of Conduct, health and safety, anti-bribery and anti-corruption policies;
  - (vii) become insolvent or bankrupt, file a petition for voluntary winding up except for reorganization, appoint a receiver or under judicial management under a court order, assign his substantial assets for his creditors and/or perform an act which in TESE's view, may deprive TESE from any substantial benefit under the Purchase Order and/or Agreement; or
  - (viii) be deemed to be unable to pay its debts.
- (b) If TESE exercises its termination right under this Clause 21, it shall pay (and only pay) to the Supplier the Price or Purchase Order Price for the Products, Works and/or Services which TESE has received and elects to keep. TESE has the sole discretion to return to the Supplier any Products or Works received, at Supplier's costs and risks. For the avoidance of any doubt, the Supplier shall repay to TESE the Price or Purchase Order Price for any Products or Works which TESE has paid but has either not received or has elected to return to the Supplier.
- (c) The exercise of the termination right according to this Clause 21 shall not prejudice any right or remedy TESE may have at law or in equity.
- (d) The termination of any Purchase Order under Clause 21 shall not affect any obligation of the Supplier with respect to Products, Works and/or Services which TESE has received and paid for.
- (e) The Supplier agrees that it shall NOT be entitled to and TESE shall not be liable for any indirect or consequential loss and damage, or direct or indirect loss of profit, revenue, business opportunity or any other loss for forms of loss arising from such a termination under this Clause 21.



## 22. LIMITATION OF LIABILITY

- (a) Notwithstanding anything stated to the contrary, TESE shall not be liable to each other under the Agreement for:
  - (i) any indirect, consequential, special, incidental, or punitive/exemplary loss or damage incurred by the other Party; and
  - (ii) the other Party's loss of:
    - (1) profit/anticipated profit;
    - (2) revenue/anticipated revenue;
    - (3) data/information;
    - (4) interest, capital, financing, good will, business reputation; and
    - (5) use, business/business opportunity.
- (b) The maximum overall aggregate liability of TESE for any claim or claims arising out of the Agreement shall not exceed the Purchase Order Price under any circumstances, regardless of the theory of liability on which recovery is sought.
- (c) The exclusion and limitation provisions under this Clause 22 shall not apply to the following claims for loss and damage pertaining to:
  - (i) death and personal injury;
  - (ii) fraud, willful misconduct and gross negligence;
  - (iii) infringement of intellectual property rights;
  - (iv) violation of confidential obligations; and
  - (v) any claims for loss and damage that cannot otherwise be excluded or limited by applicable law.

## 23. COMPLIANCE WITH LAWS

The Supplier shall comply with all applicable laws in its performance of the Agreement, failing which any such non-compliance shall be deemed a material breach of the Agreement.

## 24. EXPORT CONTROLS AND COMPLIANCE

- (a) The Supplier acknowledges that it is fully aware and knowledgeable of the export and reexport controls regulations, ordinances and laws in the jurisdiction from which the Products, Works and/or Services are manufactured, exported, reexported or supplied, and agrees to obtain all necessary export and reexport permits or licenses at the Supplier's expense to ensure that TESE enjoys the full benefit under the Agreement.
- (b) Further, the Supplier shall supply TESE with any information regarding any applicable export controls rules and required permits or licenses for the Products, Works and/or Services to be supplied, or where the context applies, shipped, in writing within three (3) days from the receipt of the Purchase Order. The Supplier shall also notify TESE in writing of any changes to such export and reexport controls regulations and/or permit or licensing requirements which may affect TESE's benefits under the Agreement. The Supplier undertakes to comply with all export and reexport controls regulations or rules in relation to the delivery and/or supply of the Products, Works and/or Services, and shall indemnify TESE against any and all liability, loss, damage, cost and expense (including reasonable attorney's fees) resulting from the Supplier's non-compliance or violations of such export and reexport controls regulations.
- (c) For Harmonized System Tariff Codes of the Products ("HS Tariff Codes"), the Supplier shall provide TESE with a written declaration confirming the HS Tariff Codes of the Products under customs laws before the delivery of such Products to TESE in accordance with the Agreement, and shall notify TESE in writing immediately if there is any change in the HS Tariff Codes of the Products.
- (d) For the origin of the Products, the Supplier shall provide TESE before delivery with a written declaration confirming the origin of the Products under customs laws, and shall notify TESE in writing immediately if there is any change in the origin of the Products.
- (e) Data and information referred to in this Clause 24 shall be directly made by the Supplier to TESE.
- (f) If the Supplier fails to comply and fulfil any of its obligations under this Clause 24, TESE may terminate all Purchase Orders by operation of law without any other formality or recourse to the Supplier fourteen (14) days after TESE's written notice to the Supplier to comply.

## 25. PRIVACY / DATA PROTECTION LAWS

- (a) The Parties agree to abide by and comply with any and all Privacy Laws.
- (b) Each Party will process professional contact details and concerned information from employees or other representatives of the other Party in the framework of a customer-supplier relationship and for the exclusive purpose of performing related Purchase Order or Agreement. In doing so each Party, as a data controller, shall comply with Privacy Laws.
- (c) The Parties acknowledge and agree that TESE shall be the controller of TESE Content for purposes of Privacy Laws, with rights to determine the purposes for which TESE Content is processed and the means of processing, and nothing in the Agreement shall be construed to restrict or limit in any way any or all of TESE's rights as owner and/or controller of TESE Content.
- (d) As controller of TESE Content, TESE shall have the right to direct the Supplier, and the Supplier agrees, to process TESE Content exclusively in accordance with TESE's Privacy and Data Protection Policy available on TESE website





and/or as anticipated by the Agreement and as may be subsequently instructed by TESE, from time to time.

- (e) Supplier Safeguards:
  - (i) The Supplier represents and warrants that it has adopted all reasonable physical, technical, organizational and infrastructural safeguards against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure, access, use processing of TESE Content.
  - (ii) Supplier will immediately notify TESE in the event of any known or suspected unauthorized access to or use of TESE Content, and shall take all measures on best efforts basis, to rectify such unauthorized access to or use of TESE Content.
  - (iii) Without prejudice to the foregoing, Supplier shall (i) comply with all Privacy Laws; and (ii) not place TESE in breach of any requirements of Privacy Laws or other valid legal or regulatory process, failing which the Supplier shall be deemed to have committed a material breach of the Agreement, and as such the Agreement shall be immediately terminated and the Supplier shall be liable for any and all losses and damages that TESE would incur or suffer as a result of such breach and termination of Agreement.

## 26. TESE DATA & CYBERSECURITY MINIMUM REQUIREMENTS

- (a) Where the Supplier has access to, collects, stores or otherwise processes data from or on behalf of TESE (e.g. including, as the case may, data from Clients, resellers or users) in connection with its provision of the Products, Works and/or Services (“Data”), including any data that may be generated by the Products, Works and/or Services itself, the Supplier shall at a minimum:
  - (i) Only access, collect, store or otherwise process Data for the sole purpose of fulfilling the Supplier’s obligations under the Agreement, or as otherwise expressly permitted by TESE in writing;
  - (ii) Maintain reasonable and appropriate administrative, technical and organizational measures and safeguards to preserve and protect the security, integrity and confidentiality of the Data, aligned with applicable industry standards such as ISO/IEC 27001 or IEC 62443;
  - (iii) Should the Products, Works and/or Services contain any software, firmware or chipsets; the development and productions of such shall demonstrably aligned with good industry practices and standards such as ISO/IEC 27001 or IEC 62443;
  - (iv) Comply with any other privacy or security policies or procedures that TESE may provide or make available from time to time to the Supplier as the context requires; especially when the Supplier has access to TESE IT systems or network, either at a TESE location or remotely; and
  - (v) Any infrastructure, systems, services, products or platforms used by the Supplier to access, collect, store, or otherwise process Data, including data gathered from third-parties on behalf of TESE, shall be developed, maintained, and operated in accordance with industry-recognized security requirements and Secure Development Lifecycle practices, including but not limited to, secure application development, vulnerability management, and compliance with applicable regulations and requirements.
- (b) The Supplier shall maintain a reasonable and industry appropriate business continuity plan to ensure its provision of the Products, Works and/or Services, taking into account data and cybersecurity risks included in its comprehensive risk analyses, contingency plan and solutions for its continuous delivery and operations.
- (c) In the event the Supplier detects a confirmed or reasonably suspected misuse, compromise, or unauthorized access, destruction, loss, alteration, acquisition or disclosure of any Data, security breach or suspected vulnerability, whether in the Supplier’s IT systems or network, or in relation to the Supplier (“Security Incident”):
  - (i) the Supplier shall notify TESE in writing within twenty-four (24) hours;
  - (ii) Such notification shall contain at a minimum:
    - (1) a brief description of the Security Incident;
    - (2) any TESE IT systems or network, or Data affected by the Security Incident;
    - (3) any persons involved with the Security Incident, including any persons who made any unauthorized use or received an unauthorized disclosure, if known;
    - (4) what the Supplier has done or shall do to investigate the Security Incident, to mitigate any deleterious effects, and to protect against any further harm or other similar Security Incidents; and
    - (5) any other information requested by TESE relating to the Security Incident; and
  - (iii) Take prompt steps to investigate, contain, and remediate any Security Incident and cooperate with TESE in any subsequent investigation and response in connection with the Supplier’s IT systems or networks, or in relation to the Products, Works and/or Services, and evidence demonstrating the completion of those activities. Unless otherwise specified hereto, each Party will bear its own cost in relation to its performance and action contemplated as determined herein.
- (d) In addition to the foregoing and in case the performance of the Purchase Order necessitates specific or enhanced protection measures for Data, the Parties shall enter into a specific and appropriate addendum to this Agreement considering the level of data protection and cybersecurity required by the circumstances as reasonably determined by TESE.

## 27. FORCE MAJEURE

- (a) Neither Party shall be considered to have defaulted in the performance of any obligation under the Agreement due to



a Force Majeure Event provided that the Party affected by Force Majeure Event shall:

- (i) notify the other Party in writing within three (3) days from becoming aware of the Force Majeure Event;
  - (ii) use reasonable efforts to reduce the impact on the affected Party's performance of the Agreement;
  - (iii) present reasonably sufficient evidence of such Force Majeure Event to the other Party; and
  - (iv) unless the Agreement is terminated according to this Clause 27, inform the other Party of the cessation of such Force Majeure Event in writing and resume its contractual obligations immediately after the cessation of such Force Majeure Event.
- (b) If a Force Majeure Event delays the performance of any obligation under the Agreement, the Party affected by such Force Majeure Event shall have an extended period up to the mutually agreed period of extension of time or the length of the Force Majeure Event, but no longer than is reasonably necessary to perform any such affected obligation.
- (c) If a Force Majeure Event which affects the performance of the Agreement lasts for thirty (30) days, TESE shall have the right to terminate the Agreement without liability whatsoever by serving a written notice to the Supplier, in which case, TESE shall pay and only pay for the Products, Works and/or Services that TESE has received and accepted.

## 28. COMMUNICATIONS/NOTICES

All communications between the Supplier and TESE shall be in English or as per Country language and in the form of e-mails, faxes, or letters and shall be sent to the address or e-mail accounts, or contact numbers (as the case may be) as shown on the Purchase Order, unless one Party otherwise notifies the other Party in writing.

## 29. CONFIDENTIALITY

- (a) The Supplier shall keep all Confidential Information secret and shall not use any of it for any purpose other than the performance of the Agreement, except that, for the purpose of performance of the Agreement, the Supplier is allowed to disclose any Confidential Information, on a strict need-to-know basis, to its employees, subcontractors or suppliers who are not TESE's competitors ("Recipients"), provided the Supplier:
- (i) has obtained the written consent from TESE to disclose Confidential Information to such Recipients; and
  - (ii) has procured from each of such Recipient his/her undertaking in writing not to disclose or otherwise misuse the Confidential Information.
- (b) Upon the request by TESE, the Supplier shall execute a separate non-disclosure or confidentiality agreement with TESE in the form reasonably satisfactory to TESE not to disclose or misuse the Confidential Information.
- (c) If any Purchase Order is completed or otherwise terminated, upon receipt of TESE's written notice, the Supplier shall at its own cost immediately return or destroy all documents and/or media that contain any Confidential Information.
- (d) The obligation set out in this Clause 29 or in any such non-disclosure or confidentiality agreement shall survive the termination and completion of the Agreement until concerned information fall into public domain except through a breach of the confidentiality obligation herein.

## 30. SUSTAINABLE DEVELOPMENT, ENVIRONMENT, ETHICS AND COMPLIANCE

- (a) The Supplier acknowledges familiarity with the Code of Conduct.
- (b) The Supplier agrees that it shall at all times comply with the Code of Conduct, as may be updated from time to time and with the ethics and anti-bribery/corruption policies implemented and monitored by TESE, as referred to or deriving from the Code of Conduct. The Supplier shall, as and when requested, provide written certification in the form required by TESE to confirm that it has complied with all laws and with the Code of Conduct.
- (c) The Supplier undertakes to inform TESE of any Conflict Mineral substances found in the Products and their country of origin, in accordance with the requirements of the US Dodd-Frank Act of 2010 and/or any other legislation with the same purpose.
- (d) The Supplier undertakes to adhere to and comply with the principles and guidance of the ISO 26000 "*Guidance on Social Responsibility*" international standard. The basic principles of ISO 26000 are available at [http://www.iso.org/iso/fr/discovering\\_iso\\_26000.pdf](http://www.iso.org/iso/fr/discovering_iso_26000.pdf).
- (e) Should the Supplier, its employees or any of its suppliers and/or subcontractors, including their employees, shall have any concern about ethics, compliance or Code of Conduct and related policies, it may raise alert through their point of contact or through the dedicated email address available on the TESE website.

## 31. AUDIT

- (a) The Supplier shall keep and maintain all documents and systems information in relation to the Products, Works and/or Services the Supplier supplies to TESE under the relevant Purchase Order or Agreement for a duration of 6 years from the date of such supply.
- (b) TESE and any of its authorised representatives shall have the right to:
- (i) enter into the Supplier's premises, or of its main suppliers or subcontractors' premises, and inspect and audit any and all documents and systems in relation to the Products, Works and/or Services the Supplier supplies to TESE under the relevant Purchase Order or Agreement; and
  - (ii) pursuant to any such audit or inspection conducted by TESE and any of its authorised representatives, make copies and take away such copies of documents that TESE and any of its authorised representatives deem fit for documentary and evidentiary purposes.

### **32. ENTIRE AGREEMENT**

The Agreement is the entire agreement between the Parties with respect to its subject matter. Except as may be expressly stated in the Agreement, it supersedes all prior agreements, statements, representations, understandings, negotiations, proposals and discussions, whether oral or written, between the Parties.

### **33. AMENDMENT**

No amendment to the Agreement shall be valid unless it is made in writing and signed by the Parties' authorised representatives.

### **34. WAIVER**

Any non-enforcement of any term or condition of the Agreement or delay in enforcing or forbearance by TESE shall not be construed as a waiver of such term or condition by TESE. Further, any waiver in writing by TESE of any provision or term of the Agreement shall not be interpreted as a waiver for future breach of the same provision or term.

### **35. INDEPENDENT SUPPLIER**

The Supplier and its employees, agents, representatives, assigns, subcontractor and suppliers. etc. are independent suppliers and shall not be construed as agents, representatives, or employees of TESE and nothing in the Agreement shall constitute the creation, establishment or relationship of partnership or joint venture between the Parties.

### **36. ASSIGNMENT**

- (a) TESE shall have the right to assign its rights or obligations under the Agreement in part or in whole to any third party (including any entity within the TESE Group) without the need for consent from the Supplier.
- (b) The Supplier shall not assign, novate or subcontract any of its right, obligation and liability under the Agreement to any third party without the prior written consent of TESE. Notwithstanding the foregoing, TESE's consent to such an assignment, novation or subcontract shall not release the Supplier from the obligation and liability under the Agreement so assigned, novated or subcontracted.

### **37. SEVERABILITY**

If any provision of the Agreement is rendered void, illegal or unenforceable by any legislation to which it is subject and/or competent court of law, it shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement. In such an event the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so severed.

### **38. THIRD PARTY RIGHTS**

Notwithstanding anything stated to the contrary or even in law, the Parties agree that no person or party, whether or not a beneficiary, shall have any legal or equitable right or benefit under this Agreement or the right to enforce any legal or equitable right or benefit it may have, if such person or party is not privy to or is not a Party to this Agreement.

### **39. DISPUTES, GOVERNING LAW AND JURISDICTION**

- (a) The Purchase Order and Agreement shall be governed in all respects by the laws of the Country, regardless of where the Products and/or Works are delivered and/or the Services are performed under the Agreement, without regard to its conflict of law provisions.
- (b) Any dispute that may directly or indirectly arise from:
  - (i) the interpretation, validity, performance, expiry or termination for any reason whatsoever of Purchase Order or the Agreement or any matters or issues arising in connection therewith;
  - (ii) the current or past commercial relationship between the Parties; or
  - (iii) the Parties' failure to settle out of court within thirty (30) days of the initial notice of the dispute given by either Party, will be subject to the exclusive adjudication and jurisdiction of the courts of the Country, and the Parties waive any right to bring any action against the other Party in any other jurisdiction or court notwithstanding any third-party notice or impleaders, multiple defendants and summary proceedings.
- (c) The United Nations Convention on Contract for the International Sale of Goods shall not apply to the Agreement.

### **40. LANGUAGE**

The English version of this Agreement takes precedence over any other version translated into another language.

### **41. PUBLICITY**

- (a) The Supplier shall not publicly disclose, publicise or issue any publicity or announcement or make any disclosure in whatsoever manner in relation to this or any Purchase Order or Agreement, except as required by law or unless specifically agreed to by TESE in writing.



- (b) The Supplier shall not use the name of TESE or any TESE-owned brands, logos, trademarks, service marks or marks, whether or not copyrighted or trademark-registered by TESE, in connection with any advertising or publicity materials or activities without the prior written consent of TESE.

**42. NO JOINT AND SEVERAL LIABILITIES**

The Supplier expressly acknowledges and agrees that there shall be no joint and several liabilities between TESE and other entities within the TESE Group.

***END OF DOCUMENT***