

Purchase Order with Service Element

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1. DEFINITION

- 1.1 "AFFILIATES" (in respect of BUYER) means
 - 1.1.1 Royal Dutch Shell plc and any company (other than BUYER) which is from time to time directly or indirectly controlled by Royal Dutch Shell plc. For this purpose:-
 - 1.1.1.1 a company is directly controlled by another company or companies if that latter company owns or those latter companies together own fifty per cent or more of the voting rights attached to the issued share capital of the first mentioned company; and
 - 1.1.1.2 a company is indirectly controlled by another company or companies if a series of companies can be specified, beginning with that latter company or companies and ending with the first mentioned company, so related that each company of the series (except the latter company or companies) is directly controlled by one or more of the companies earlier in the series
 - 1.1.2 any company which is managed or operated by a company as defined above and/or has a service agreement with BUYER and/or another company as defined above pursuant to which it pays on a cost sharing or recovery basis a proportion of certain of the costs of BUYER or such other company.
 - 1.1.3 in respect of any company other than the BUYER means
 - 1.1.3.1 any corporation, partnership, trust or other entity which beneficially holds fifty percent (50%) or more of the shares carrying the right to vote at a general meeting (or its equivalent) of such company, and
 - 1.1.3.2 any corporation, partnership, trust or other entity which such company controls, or any company which is controlled by a company which also controls such company, where "control" means to own, directly or indirectly, more than fifty percent (50%) of the shares carrying the right to vote at a general meeting (or its equivalent) of said company.
- 1.2 "BUYER" means the party stated in the FORM OF AGREEMENT or any assignee thereof.
- 1.3 "BUYER GROUP" means the BUYER and its AFFILIATES, its CO-VENTURERS and its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the SELLER GROUP.
- 1.4 "BUYER REPRESENTATIVE" means the person as designated by the BUYER in ADMINISTRATION PROCEDURES.
- 1.5 "CHANGE ORDER" means an agreement between the BUYER and the SELLER to a change in the WORK.
- 1.6 "CO-VENTURERS" means any party to the relevant Production Sharing Contract to which the CONTRACT or any part thereof relates, other than PETRONAS or the COMPANYY.
- 1.7 "COMPLETION DATE" means the date on which the WORK is required to have been completed in accordance to the PURCHASE ORDER, and in relation to a term contract means the expiry of the term of that contract, all notwithstanding any continuing obligations or liabilities of the SELLER under the provisions of the PURCHASE ORDER.
- 1.8 "DELIVERY TERMS" in the PURCHASE ORDER are as defined in "Incoterms 2000" or the latest revision, published by the International Chamber of Commerce Services S.A.R.L in Paris, France.
- 1.9 "DELIVERY TIME" means the date(s) for delivery of the GOODS at the specified destination in accordance with the PURCHASE ORDER.
- 1.10 "EFFECTIVE DATE" shall have the meaning ascribed to it in the FORM OF AGREEMENT.
- 1.11 "EQUIPMENT" means any equipment, facilities, implements, plant, sanitary facilities, materials, spare parts, expendables and other supplies, temporary buildings or structures, tools, transport, utilities, watercraft or other things (whether owned, hired, chartered or leased) of the SELLER, its SUBCONTRACTOR or their respective employees, servants and agents required or necessary for the satisfactory performance of the PURCHASE ORDER but excludes GOODS.
- 1.12 "GOODS" means both the material to be purchased as specified in the PURCHASE ORDER and any part thereof to be incorporated therein, and all other deliverables as specified in the PURCHASE ORDER.
- 1.13 "INSPECTOR" means the BUYER'S Inspection Division or its nominee.

- 1.14 "MANUFACTURER" means the manufacturer for the production of the GOODS or any part thereof.
- 1.15 "MATERIALS" means any equipment, goods, machinery, materials, consumables and other items to be incorporated or intended to be incorporated into the WORK.
- 1.16 "PARENT COMPANY" means the ultimate holding company as defined in section 5A of the Companies Act 1965.
- 1.17 "PETRONAS" means Petroliaam Nasional Berhad.
- 1.18 "PURCHASE ORDER" means the following documents contained herein and shall be read and interpreted as a whole.

SECTION C
PART I TERMS AND CONDITIONS
PART II SCHEDULES OF PRICES AND RATES
PART III SCOPE OF SUPPLY
PART IV ADMINISTRATION PROCEDURES
PART V TECHNICAL SPECIFICATION

- 1.19 "PURCHASE ORDER PRICE" means the sum or sums to be ascertained and paid in accordance with SCHEDULES OF PRICES AND RATES, or any CHANGE ORDER to the PURCHASE ORDER.
- 1.20 "RECORDS" shall include, without limitation, all information pertaining to the PURCHASE ORDER including books, records, correspondence, instructions, plans, drawings, receipts, voucher, gifts and entertainment records, data stored in computers, other documentation, and interview notes with SELLER'S, its SUBSELLER'S, MANUFACTURER'S, agent's, supplier's and consultant's personnel.
- 1.21 "SELLER" means the party stated in the FORM OF AGREEMENT or any assignee thereof.
- 1.22 "SELLER GROUP" means the SELLER, its SUBCONTRACTORS, SUBSELLERS, MANUFACTURERS, its and their AFFILIATES, its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the BUYER GROUP. SELLER GROUP shall also mean subcontractors (of any tier) of SUBCONTRACTORS who are performing WORK at any WORKSITE, their AFFILIATES, their directors, officers and employees (including agency personnel).
- 1.23 "SELLER REPRESENTATIVE" means the person as designated by the SELLER in ADMINISTRATION PROCEDURES.
- 1.24 "SUBCONTRACT" means any contract, other than this PURCHASE ORDER, between the SELLER and any other party for the performance of any part of the PURCHASE ORDER.
- 1.25 "SUBCONTRACTOR" means any party, other than the BUYER and the SELLER, to a SUBCONTRACT, and shall include without limitation subcontractors of any tier, vendors of SELLER'S GOODS and suppliers of SELLER'S EQUIPMENT.
- 1.26 "SUBSELLER" means any party to a sub-purchase order issued by the SELLER or the MANUFACTURER, but not the MANUFACTURER.
- 1.27 "SUPPLY" means all supplies under the PURCHASE ORDER to be undertaken and/or performed by the SELLER, its SUBSELLER or MANUFACTURER either directly or under its supervision which shall include but shall not be limited to the supply, inspection and delivery of GOODS.
- 1.28 "TAX" or "TAXES" shall include:-
 - 1.28.1 Taxes due on income, profits, excess profits of the SELLER as a result of the SELLER operating within Malaysia.
 - 1.28.2 Taxes due and payable by the SELLER in countries outside of Malaysia.
 - 1.28.3 Taxes and duties due on any offices or property whether owned, occupied or operated by the SELLER including vehicles, plants, franchise, licenses, permits, registration fees.
 - 1.28.4 All employment taxes and contributions imposed by law, or trade union contracts, or regulations with respect to or measured by the compensation (wages, salaries, bonuses and benefits) paid to employees of the SELLER including, without limitation, taxes and contributions for unemployment and compensation insurance, old age benefits, welfare funds, pensions and annuities and disability insurance and similar items.
 - 1.28.5 Taxes as a result of non-compliance with the PURCHASE ORDER by the SELLER.
 - 1.28.6 Import and export, sales, excise, storage, consumption and use and service taxes.
 - 1.28.7 Taxes and duties due on importation of tools, vessels, GOODS and EQUIPMENT necessary for the performance of PURCHASE ORDER except for such Customs Duties expressly

provided to be payable by the BUYER in this PURCHASE ORDER.

- 1.28.8 All withholding taxes due and payable.
- 1.28.9 Levies of any kind.
- 1.29 "WORK" means all things to be created and/or all work and services to be performed by the SELLER in accordance with the PURCHASE ORDER.
- 1.30 "WORKSITE" means all places whatsoever on, under, in or through which the PURCHASE ORDER is to be performed in accordance with the PURCHASE ORDER or which are provided to facilitate the performance of the PURCHASE ORDER.

2. INTERPRETATION OF PURCHASE ORDER

- 2.1 Unless the context otherwise requires, the words appearing in the PURCHASE ORDER in full capitals means the following:-
 - 2.1.1 Where such words are defined, the meaning prescribed to it in the relevant clause;
 - 2.1.2 Where such words are not defined, it means the clause, appendix, or section in this PURCHASE ORDER bearing the same words in its title, heading, sub-title or sub-heading.
- 2.2 No heading, index, title, sub-title or sub-heading of the PURCHASE ORDER shall limit, alter or affect the meaning or operation of the PURCHASE ORDER.
- 2.3 In the event of ambiguity or conflict between any of the documents in the PURCHASE ORDER, they shall be given precedence in the following order:- Section C: Part I, Part II, Part III, Part V and Part IV.
- 2.4 All correspondence, documentation and discussion with respect to the PURCHASE ORDER shall be in the English language.
- 2.5 All instructions, notifications, agreements, authorisations, approvals and acknowledgements shall be in writing and may be by facsimile unless specified otherwise.
- 2.6 No review, approval, acknowledgment or certificate given by the BUYER shall relieve the SELLER from any liability or obligation under the PURCHASE ORDER unless the same is expressly set out by the BUYER.
- 2.7 Words importing the singular only shall also include the plural and vice versa where the context so requires.
- 2.8 Unless otherwise specified, a reference to another Clause or sub-clause shall be deemed to be within the same Part of the PURCHASE ORDER.
- 2.9 All reference to provisions of Acts, Regulations or By-Laws include such provision as amended, modified or re-enacted.
- 2.10 For the purpose of calculating any period of time stipulated or when an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
- 2.11 This PURCHASE ORDER constitutes the entire agreement between the parties hereto and supersedes all prior agreements or understandings, clarifications or conditions, express or implied, oral or written.
- 2.12 The Parts, Schedules, Appendices and any other documents referred to in this PURCHASE ORDER shall be taken, read and construed as an essential and integral part of the PURCHASE ORDER.
- 2.13 Time wherever mentioned in this PURCHASE ORDER shall be of the essence.

3. BUYER AND SELLER REPRESENTATIVES

- 3.1 **General**
 - 3.1.1 The SELLER and the BUYER shall each nominate a representative to represent it in all matters connected with this PURCHASE ORDER in accordance with the ADMINISTRATION PROCEDURES
 - 3.1.2 All instructions, decisions and information made under the provisions of the PURCHASE

ORDER by either party shall be notified and received only by the BUYER REPRESENTATIVE or SELLER REPRESENTATIVE or their nominated deputy.

3.2 BUYER Representative

- 3.2.1 By written notice to the SELLER, the BUYER REPRESENTATIVE may at any time delegate any of his authority to any nominated deputy. Such notice shall specify the precise authority of any such deputy and shall be sent to the SELLER REPRESENTATIVE.
- 3.2.2 The BUYER may change the BUYER REPRESENTATIVE at any time and shall give written notification to SELLER of the change.
- 3.2.3 Except as expressly stated in the PURCHASE ORDER, the BUYER REPRESENTATIVE has no power to amend, extend or terminate the PURCHASE ORDER nor to waive any rights of the BUYER in respect of any antecedent breaches of the PURCHASE ORDER.
- 3.2.4 The BUYER REPRESENTATIVE and any person authorised by the BUYER REPRESENTATIVE shall have access at all reasonable times to the WORKSITE. The SELLER shall use its best endeavours to secure such access to any WORKSITE under the control of third parties.

3.3 SELLER Representative

- 3.3.1 The SELLER REPRESENTATIVE shall be an employee of the SELLER. The appointment, change, or any delegation of the authority of, the SELLER REPRESENTATIVE and any terms thereof shall be subject to prior approval by the BUYER, which shall not be unreasonably withheld or delayed.
- 3.3.2 The SELLER REPRESENTATIVE has the authority to commit the SELLER in all matters under the PURCHASE ORDER and, subject to any permitted delegation of such authority, shall be responsible for issuing to and receiving from BUYER all notices, information, instructions and decisions.
- 3.3.3 All communication made to the SELLER REPRESENTATIVE shall be deemed to be made to the SELLER and the BUYER shall be entitled to rely on all decisions made or communicated by SELLER REPRESENTATIVE as being those of SELLER.
- 3.3.4 Except as expressly stated in the PURCHASE ORDER, the SELLER REPRESENTATIVE has no power to amend, extend or terminate the PURCHASE ORDER.

4. MANUFACTURER / SUBSELLER

- 4.1 The SELLER shall not replace the SUBSELLER or MANUFACTURER as stated in SCOPE OF SUPPLY unless:-
 - 4.1.1 the SELLER proves extenuating circumstances; and
 - 4.1.2 prior approval is given by the BUYER.

5. THE RESPONSIBILITY OF THE SELLER TO INFORM ITSELF

- 5.1 Save where otherwise provided for in this PURCHASE ORDER, prior to entering into the PURCHASE ORDER with the BUYER, the SELLER shall be deemed to have:
 - 5.1.1 carefully read the invitation to bid documents to determine all necessary services, labour, EQUIPMENT and MATERIALS required for the performance of the WORK;
 - 5.1.2 familiarised itself with the WORKSITE, any restrictions applicable to or associated with the site whether imposed by any authority or third party and all ingress and egress from it;
 - 5.1.3 obtained for itself in advance a full understanding and knowledge of the nature and scope of the WORK and of the conditions under which the WORK will be carried out;
- 5.2 Any information that the BUYER decides to give to the SELLER shall be information which is reasonably available to the BUYER at the material time.
- 5.3 The SELLER assumes total responsibility for all WORK including WORK which is based upon data and information not contained in the PURCHASE ORDER or any conclusions, interpretations or WORK by the SELLER in applying the data, information and requirements contained in the PURCHASE ORDER.
- 5.4 No additional payment beyond what has been agreed in the PURCHASE ORDER will be paid to the SELLER due to the SELLER'S lack of understanding of the nature and scope of the WORK which a

reasonably prudent SELLER should have determined and understood in advance, or due to the SELLER'S conclusions or interpretations of any data or information.

- 5.5 Any failure by the SELLER to take account of matters which may affect the WORK will not relieve the SELLER from its obligations under the PURCHASE ORDER.

6. THE RESPONSIBILITY OF THE SELLER TO INFORM THE BUYER

- 6.1 The SELLER shall notify the BUYER without undue delay of all things which are or may appear to be:
- 6.1.1 in conflict with applicable law; or
 - 6.1.2 deficiencies, omissions, contradictions or ambiguities in the PURCHASE ORDER.
 - 6.1.3 unfit for their intended purpose, of poor quality and workmanship; or
 - 6.1.4 falling short of accepted and specified safety standards or are not in accordance with SCOPE OF SUPPLY and TECHNICAL SPECIFICATION; or
 - 6.1.5 erroneous, defective, suffering from shrinkages and failures for the relevant guarantee period.
- 6.2 Failure to so notify shall be deemed to be the SELLER'S confirmation that there are no conflicts, deficiencies, omissions, contradictions or ambiguities in the PURCHASE ORDER. However, if the BUYER does receive such notice, the BUYER will review these items and issue the necessary instructions before the SELLER proceeds with any part of the WORK affected. The SELLER shall not proceed with the WORK prior to the receipt of such instructions.
- 6.3 The SELLER shall notify the BUYER immediately of any impending or actual stoppages of work, industrial disputes, accidents or other matters affecting or likely to affect the performance of the WORK.
- 6.4 The SELLER shall keep the BUYER fully informed of the progress of the WORK and shall comply with the reporting requirements as set out by the BUYER.
- 6.5 The SELLER shall give adequate written notice to the BUYER of any requests for information or detailed drawings.

7. DELIVERY TIME

- 7.1 The SELLER will deliver or make the GOODS available to the BUYER at the time and place specified in the PURCHASE ORDER.
- 7.2 In the event that the SELLER is unable to deliver the GOODS on the DELIVERY TIME, the SELLER shall notify the BUYER at the earliest opportunity.
- 7.2.1 The BUYER and SELLER shall endeavour to agree a mutually acceptable revised DELIVERY TIME and method. However, in the event that the BUYER and SELLER cannot agree, the BUYER shall have the right to treat such non-delivery as a DEFAULT OF THE SELLER.
 - 7.2.2 Any agreement by the BUYER to a revised DELIVERY TIME shall not, unless otherwise expressly stated, affect any of the BUYER'S other rights under this PURCHASE ORDER including but not limited to right to LIQUIDATED DAMAGES FOR LATE DELIVERY which shall operate from the original delivery date.

8. DELIVERY TERMS

- 8.1 Unless otherwise specified, the SELLER'S PURCHASE ORDER price shall be based upon the following delivery terms in accordance with ICC Incoterms 2000:-
- 8.1.1 FOB named port of shipment;
 - 8.1.2 CFR (landed) Malaysian port;
 - 8.1.2.1 All references to the delivery term CFR shall mean CFR (landed) inclusive of unloading costs, lighterage, wharfage and demurrage charges.
 - 8.1.3 CPT named place of destination;

- 8.1.4 DDU named place of destination; or
- 8.1.5 DDP named place of destination.
- 8.2 The SELLER shall be responsible for the provision of on/off-loading of materials specified.
- 8.3 The SELLER shall strictly observe its obligations and responsibilities with respect to the delivery of the GOODS as contained in the SHIPPING, PACKING AND INVOICING INSTRUCTIONS (SPII).

9. LIQUIDATED DAMAGES FOR LATE DELIVERY

- 9.1 In case of late delivery of the GOODS or any part thereof after the agreed contractual DELIVERY TIME, the SELLER shall pay one (1) percent of the value of the portion of the GOODS which is late per week of delay, pro-rated on a daily basis, up to a maximum aggregate of 10 percent of the total PURCHASE ORDER value.
- 9.2 The provisions provided for in this clause shall not prejudice the BUYER'S right of TERMINATION.

10. LIQUIDATED DAMAGES FOR LATE PERFORMANCE

- 10.1 In case of late performance of the WORK or any part thereof after the agreed COMPLETION DATE, the SELLER shall pay one (1) percent of the value of the portion of the WORK which is late per week of delay, pro-rated on a daily basis, up to a maximum aggregate of 10 percent of the total PURCHASE ORDER PRICE.
- 10.2 The provisions provided for in this clause shall not prejudice the BUYER'S right of TERMINATION.

11. PERFORMANCE OF THE WORK

- 11.1 The SELLER shall provide all MATERIALS, EQUIPMENT, personnel, supervision, engineering and all other services and things (whether or not they are specified in the PURCHASE ORDER) required or necessary for the satisfactory performance and completion of the WORK in accordance with the SCOPE OF SUPPLY except those items specified to be provided by the BUYER.
- 11.2 The SELLER shall comply with all instructions with regard to the WORK that are issued by the BUYER. The SELLER shall perform the WORK in accordance with the requirements of the PURCHASE ORDER and in accordance with accepted standards of the industry and in compliance with all relevant laws and regulations and in such a manner as will always safeguard and protect the BUYER'S interests.
- 11.3 The SELLER warrants that it has the experience and capability including sufficient and competent supervisory and other personnel and all necessary facilities to efficiently and expeditiously perform and complete the WORK. The SELLER further warrants that it shall provide such personnel and facilities for the duration of the PURCHASE ORDER.
- 11.4 The BUYER reserves the right to engage other contractors to perform other work associated with, or in the vicinity of, the WORK.
- 11.5 If the BUYER is of the opinion that any emergency remedial or other work or repair is urgently necessary for security, safety or any other purpose which justifies immediate action:
 - 11.5.1 where it is practicable to do so, the BUYER shall notify the SELLER of the urgency and require the SELLER to perform such work as may be necessary;
 - 11.5.1.1 If the work or repair so performed by the SELLER is not part of the WORK, the BUYER shall issue a CHANGE ORDER making any adjustment to the PURCHASE ORDER PRICE and/or the COMPLETION DATE.
 - 11.5.2 where the SELLER is unable or unwilling to perform that work, then the BUYER may do whatever work or repair that the BUYER considers necessary.
 - 11.5.2.1 If the work or repair so performed by the BUYER is part of the WORK, the BUYER shall be entitled to recover from the SELLER all costs incurred by the BUYER in so doing and shall issue a CHANGE ORDER making any adjustment to the PURCHASE ORDER PRICE and/or the COMPLETION DATE.
- 11.6 If, in the opinion of the BUYER:
 - 11.6.1 any item of EQUIPMENT is not or is no longer suitable for the purpose intended, then the

SELLER shall at no additional cost to the BUYER and at the option of the BUYER, either make adequate repairs or arrange for immediate replacement;

- 11.6.2 the number of items of EQUIPMENT is inadequate, then the SELLER shall provide the necessary additional EQUIPMENT at no additional cost to the BUYER.
- 11.7 If, for any reason which does not entitle the SELLER to claim a CHANGE ORDER, progress is too slow to ensure completion by the required date, then the BUYER may require the SELLER to work overtime or supply additional personnel or additional or better EQUIPMENT to ensure completion by the required date. The SELLER shall do so at its own cost.

12. CHANGES IN THE PURCHASE ORDER

12.1 Right Of BUYER To Make Changes

- 12.1.1 The BUYER shall have the right at any time within the duration of the PURCHASE ORDER to make any changes in the PURCHASE ORDER and/or PURCHASE ORDER period by additions, deletions, substitutions, modifications or revisions thereto. The BUYER shall advise the SELLER of such changes by issuing written instructions in accordance with the ADMINISTRATION PROCEDURES.

12.2 Change Order

- 12.2.1 The SELLER shall not perform any changes in the PURCHASE ORDER until the BUYER has approved the pricing for the change in accordance with SCHEDULES OF PRICES AND RATES and any adjustment in the time for the performance of the PURCHASE ORDER by issuing a Change Order or the BUYER has expressly authorised the SELLER to perform the change.

12.3 Cumulative Effect of Changes

- 12.3.1 Any adjustment to the DELIVERY TIME, or the PURCHASE ORDER price as agreed by a Change Order are not subject to renegotiation and shall be deemed to include any cumulative effect of the Change Order and the determined effect on any other previously authorised Change Orders.

12.4 Effect of Change Order

- 12.4.1 A Change Order shall in no way affect any other rights or obligations of the parties except as expressly provided for in that Change Order.

13. INSPECTION

13.1 General

- 13.1.1 The SELLER shall be responsible for the inspection, testing and quality of the GOODS including those of the subcontractor, SUBSELLER and MANUFACTURER.

13.2 Buyer's Right To Inspect in-situ

- 13.2.1 The SELLER shall ensure that the BUYER has the opportunity to inspect the GOODS at any time, either at the SELLER'S, SUBSELLER'S or MANUFACTURER'S worksite or wherever else the GOODS may be at that time.
 - 13.2.1.1 For the purpose of inspection, the BUYER may appoint an inspector who may either be independent or employed by the BUYER.
 - 13.2.1.2 The BUYER shall inform the SELLER of the details of the inspector so appointed.
 - 13.2.1.3 Inspection shall include witnessing and checking of production, inspection and testing.
 - 13.2.1.4 The BUYER shall specify in TECHNICAL SPECIFICATION the scope and details of the inspection required of the SELLER.
- 13.2.2 Neither any inspection as provided herein nor failure of the BUYER to carry out such inspection shall relieve the SELLER of any of its obligations, responsibilities and liability under the PURCHASE ORDER.

13.3 Release Note for Shipment

13.3.1 Where the BUYER so specifies in TECHNICAL SPECIFICATION, the GOODS shall not be dispatched from the SELLER'S, SUBSELLER'S or MANUFACTURER'S worksite until the "Release Note for Shipment" has been received from the BUYER'S inspector

13.4 Note of Non-Acceptance

13.4.1 A "Note Of Non-Acceptance" signed by the inspector shall be issued to the SELLER for GOODS not in compliance with the PURCHASE ORDER and rejected by the inspector.

13.5 Format of Notes

13.5.1 The Release Note for Shipment and/or Note Of Non-Acceptance issued by the independent inspector shall be in a format as specified by the BUYER.

13.6 Buyer's Right to Return Goods Without Release Note

13.6.1 Should the GOODS be dispatched prior to receipt of the "Release Note For Shipment" the BUYER reserves the right to return the GOODS to the SELLER'S, SUBSELLER'S or MANUFACTURER'S worksite, for the SELLER'S risk and account.

13.6.2 Irrespective of whether the GOODS are returned to the SELLER'S, SUBSELLER'S or MANUFACTURER'S worksite or not, payment will be deferred until the BUYER releases the GOODS for their intended use. Such release will be subject to the satisfactory fulfillment of the BUYER'S requirements.

13.6.3 The BUYER may require alternative or additional inspection, additional guarantees and/or other compensations, which shall be for the SELLER'S account.

13.7 Cost For Inspection and Reworking

13.7.1 The SELLER shall provide and bear the expenses for all facilities necessary for the inspector to inspect the GOODS.

13.7.2 In the event the BUYER issues a "Notice of Non-Acceptance" pursuant to such inspection, the SELLER shall bear all expenses necessary for remedying or re-working the GOODS and for expediting the delivery of the same whether by air-freight or otherwise.

13.8 Seller's Duty to Give Notices

13.8.1 The SELLER shall give the inspector and the BUYER at least fourteen (14) days notice prior to the commencement of the manufacture of the GOODS specifying:-

13.8.1.1 the location and date of commencement of manufacture;

13.8.1.2 the date(s) of key production, inspection or testing activities;

13.8.1.3 the date for final inspection.

13.9 Test Reports, etc

13.9.1 The SELLER shall, within fourteen (14) days after the inspection of the GOODS submit all test results, reports and any certificates issued by the inspector to the BUYER.

13.10 Buyer's Right to Re-Inspect

13.10.1 The BUYER reserves the right to re-inspect the GOODS upon arrival at the final destination.

13.10.2 Upon such re-inspection the BUYER may issue a "Notice of Non-Acceptance" and be entitled to all the remedies described in this clause.

13.10.3 The BUYER may require additional guarantees which shall be for the SELLER'S account and the BUYER shall be entitled to all the remedies set out in GUARANTEES.

14. PURCHASE ORDER PRICE

14.1 For the satisfactory performance and completion of the WORK, the BUYER shall pay or cause to be paid to the SELLER the PURCHASE ORDER PRICE, at the times and in the manner specified in PAYMENT TERMS.

14.2 Unless expressly otherwise provided for in the SCHEDULES OF PRICES AND RATES, or in any CHANGE ORDER, all rates, sums and prices stated are fixed and not subject to any revision,

escalation, or adjustment whether due to currency fluctuations or otherwise.

- 14.3 Except where it is expressly provided that the BUYER shall carry out an obligation under the PURCHASE ORDER at its own cost, all things required to be supplied or performed by the SELLER under the PURCHASE ORDER shall be at the SELLER'S cost and deemed to be included in the PURCHASE ORDER PRICE.

15. PROCUREMENT OF GOODS AND SERVICES

15.1 Petronas' Vendor Development Programme

- 15.1.1 Notwithstanding any other provision and where applicable, the SELLER shall procure materials, supplies and services for the performance of the PURCHASE ORDER from PETRONAS appointed companies under its Vendor Development Programme (VDP).
- 15.1.2 The SELLER'S cost of procurement of materials, supplies and services from such VDP vendors shall be deemed inclusive in the SCHEDULES OF PRICES AND RATES and no additional payment shall be made to the SELLER by reason of procurement from VDP vendors.

15.2 Source of Procurement

- 15.2.1 To the extent that the BUYER and the SELLER agree that it is technically and economically practical to do so, materials, supplies and services to be incorporated into the PURCHASE ORDER shall be procured by the SELLER from (in order of preference and where available):-
- 15.2.1.1 Contractors and suppliers registered and/or licensed by PETRONAS;
- 15.2.1.2 Suppliers, manufacturers, service providers and research facilities, professional or otherwise, which are provided by Malaysians or firms set up or companies incorporated in Malaysia.
- 15.2.2 In determining what is "technically and economically practical" the following shall be considered:-
- 15.2.2.1 conformance of the services, materials and supplies to technical specifications and safety standards acceptable to BUYER; and
- 15.2.2.2 availability of the services, materials and supplies in required quantities and within the required period; and
- 15.2.2.3 acceptability of the terms and conditions of supply, including maintenance, servicing and availability of spare parts; and
- 15.2.2.4 acceptability of prices and costs to both BUYER and SELLER.
- 15.2.3 Upon request by BUYER, SELLER shall within fourteen (14) days of such request provide BUYER with a list of materials, supplies and services purchased outside Malaysia and utilized for the PURCHASE ORDER.

15.3 Forwarding and Transportation

- 15.3.1 The SELLER shall procure services for all forwarding activities and for transportation of materials required for the PURCHASE ORDER from Companies which are approved and listed by the Ministry of Finance (MOF) as a Multimodal Transport Operator (MTO). It is the responsibility of the SELLER to obtain for itself the latest updated MTO list.

15.4 Fuel and Lubricants

- 15.4.1 The SELLER shall use or cause to be used only "Shell" fuels and lubricants and other "Shell" products in connection with the performance of the PURCHASE ORDER to the extent that these are readily available and at prices and conditions generally competitive with other brands. The SELLER may substitute other lubricants where these are specified by particular equipment and machinery manufacturers.

16. PERSONNEL OF THE SELLER AND SUBCONTRACTORS

16.1 Competency

- 16.1.1 The SELLER confirms that it has the experience and capability including sufficient and

competent supervisors and other personnel to efficiently and expeditiously perform and complete the WORK.

- 16.1.2 If in the reasonable opinion of the BUYER, there is any inadequacy in the number, or competence, of persons performing the WORK, the SELLER shall upon request by the BUYER provide additional or alternative competent persons at its own cost.
- 16.1.3 The SELLER shall ensure that the supervisory personnel of the SELLER and its SUBCONTRACTOR read, write and speak fluent English.
- 16.1.4 The SELLER shall immediately and at its own cost, replace any of the SELLER'S or the SUBCONTRACTOR'S personnel, whom the BUYER in its sole discretion considers:
 - 16.1.4.1 to be incompetent;
 - 16.1.4.2 to have acted in a manner prejudicial to the BUYER'S best interests;
 - 16.1.4.3 to have produced substandard WORK;
 - 16.1.4.4 to have failed to comply with the BUYER'S safety or other policies, standards, procedures, rules or regulations; or
 - 16.1.4.5 necessary to be replaced for any other reason.
- 16.2 **Change of Key Personnel**
 - 16.2.1 The SELLER shall not replace any persons designated as "Key Personnel" in the PURCHASE ORDER without the prior written approval of the BUYER.
 - 16.2.2 In order to ensure that continuity of the WORK is maintained, any replacement of any such Key Personnel shall work alongside the person who is to be replaced for a reasonable handover period at no cost to the BUYER.
- 16.3 **Employment Matters Relating to SELLER'S PERSONNEL**
 - 16.3.1 Unless otherwise provided in the PURCHASE ORDER, the SELLER shall at its own cost, be responsible for all matters relating to the employment of its personnel, whether local or foreign, including without limitation:
 - 16.3.1.1 work permit, employment visa, immigration requirements;
 - 16.3.1.2 remuneration, EPF, SOCSO, taxes, levy, commission;
 - 16.3.1.3 lodging or accommodation, transportation, meal allowance;
 - 16.3.1.4 medical welfare, examination, treatment, hospitalisation, health insurance, including that of their immediate families; and
 - 16.3.1.5 all other statutory requirements.
 - 16.3.2 Only in the case of a medical emergency affecting the personnel of the SELLER or SUBCONTRACTOR while such personnel are engaged in the WORK on a BUYER onshore or offshore WORKSITE will the BUYER provide medical assistance. Such assistance will in all cases be given at the discretion of the BUYER which in no way incur any liability through having provided such assistance.
 - 16.3.2.1 The SELLER will make immediate arrangements to take over such cases as soon as possible.
 - 16.3.2.2 The SELLER shall reimburse the BUYER for all costs incurred or expended in providing such assistance.
- 16.4 **Discipline and Good Order**
 - 16.4.1 The SELLER shall maintain strict discipline and good order among the SELLER'S and SUBCONTRACTOR'S personnel, and shall not permit any engagement in activities which the BUYER deems to be contrary or detrimental to its interests.
- 16.5 **Restriction on Major New Work**
 - 16.5.1 The SELLER shall not accept any major new work, which in the BUYER'S reasonable opinion, will adversely affect the SELLER'S allocation of its staff, experienced personnel and other resources in sufficient quantities to accomplish the WORK by the COMPLETION DATE.

- 16.5.2 The BUYER may allow the SELLER to accept major new work provided that:
- 16.5.2.1 the SELLER shall, before it takes on any major new work, whether or not the said new work is related to a new or existing contract, demonstrate to the BUYER'S satisfaction that acceptance of such new work will not adversely affect the SELLER'S ability to properly perform its obligations under the PURCHASE ORDER; and
 - 16.5.2.2 the allocation of the SELLER'S personnel to the WORK shall be given priority over any major new work including the cumulative effect of such new work.

16.6 Development of Malaysian Nationals

- 16.6.1 The SELLER acknowledges and agrees to adopt as its own, the policy of the BUYER for developing the expertise of Malaysian nationals and shall endeavour to employ and train Malaysian nationals for all job positions contemplated for the performance of the WORK to the extent that prevailing circumstances and availability of suitably qualified and experienced Malaysian nationals so permit.

17. CO-OPERATION WITH OTHERS

- 17.1 The SELLER shall afford other contractors undertaking work for the BUYER opportunity for the performance of their work or contracts and shall co-operate fully with the other contractors associated with, or in the vicinity of, the WORK.
- 17.2 The SELLER shall make due allowance for such co-operation in SELLER'S programme and shall inform the BUYER immediately of matters affecting or likely to affect the performance of the WORK.

18. GUARANTEE

18.1 General

- 18.1.1 The SELLER guarantees that all GOODS supplied under the terms of the PURCHASE ORDER are fit for their intended purpose, of good quality and workmanship, meet accepted and specified safety standards and are in accordance with SCOPE OF SUPPLY and TECHNICAL SPECIFICATION.
- 18.1.1.1 The SELLER shall advise the BUYER if such requirements are in SELLER'S opinion, based on the information given by the BUYER, inadequate for the intended purpose of the GOODS.
 - 18.1.1.2 For GOODS manufactured under license, the SELLER shall submit a certificate from the licensor that the equipment has been manufactured to the licensor's design and specification.

18.2 Goods Shall Be New

- 18.2.1 Unless otherwise specified by the BUYER, all GOODS supplied under the PURCHASE ORDER shall be new.

18.3 Passing of Benefits of Guarantee

- 18.3.1 The SELLER grants to BUYER the benefits of all guarantees or warranties that are given to the SELLER by its SUBSELLER, MANUFACTURER, agents or representatives for GOODS supplied under the PURCHASE ORDER.

18.4 Guarantee Period

- 18.4.1 The guarantee provided under this clause shall apply to GOODS up to 24 months from the receipt of the GOODS by the BUYER in accordance with the DELIVERY TERM, or 12 months from the date of commissioning, whichever is earlier.
- 18.4.1.1 The guarantee period of the GOODS shall be extended by the same amount of time during which the GOODS have been out of operation or their putting into operation has been delayed as a result of a defect to which this guarantee applies.

18.5 Notification Upon Defect

- 18.5.1 The BUYER shall notify the SELLER as soon as possible of any defects that have appeared in the GOODS and shall give the SELLER the opportunity of inspecting and/or remedying

the defects in so far as it is reasonable and practical to do so.

18.6 Additional Inspection

18.6.1 In the event of a defect in the GOODS arising before the expiration of the guarantee period, the BUYER may after consultation with the SELLER and in accordance with accepted industry practices, carry out itself, or have a third party carry out on its behalf, or require that the SELLER carries out additional appropriate inspection(s) of the GOODS.

18.6.1.1 The above-mentioned consultation shall include the methods, criteria and extent of the tests to be carried out.

18.6.1.2 The test criteria shall be specified in the PURCHASE ORDER.

18.7 Rectification, etc

18.7.1 Subject to any inspection as set out above, the SELLER shall at its own expense, upon being notified by the BUYER that GOODS are defective or do not meet specifications:-

18.7.1.1 collect the GOODS from BUYER'S supply depot or any other designated collection area and deliver replacement GOODS to the same point; and

18.7.1.2 rectify the performance of the PURCHASE ORDER, if any.

18.8 Consequences of Non-compliance

18.8.1 Any reasonable costs incurred by the BUYER as a consequence of the SELLER'S non-compliance with this PURCHASE ORDER shall be for the SELLER'S account. These shall include:-

18.8.1.1 the cost of detection of the defect, removal, transportation, repair, replacement, reinstallation, inspection, re-testing of the GOODS in question;

18.8.1.2 cost of the BUYER'S own personnel together with the proven cost of delay to work of other contractors caused, subject to a maximum of ten (10) %, of the aggregate amount of such other cost or the PURCHASE ORDER value, whichever is less;

18.9 Buyer's Right to Repair or Rectify

18.9.1 Notwithstanding the foregoing, subject to the BUYER having given prior notice to the effect, repairs or rectification may be carried out or replacements may be made by the BUYER or by a third party on its behalf for the SELLER'S account in the event that:-

18.9.1.1 it would be unreasonable or impractical to give the SELLER an opportunity of inspection and/or remedying defects; or

18.9.1.2 there is a threat of further damage or loss, including those as a consequence of delay in installation work or operations.

18.10 Effect of Rectification or Repair by Buyer

18.10.1 Any repairs or replacements carried out as described above shall be deemed to be effected and made by the SELLER, and the guarantee concerned shall remain in effect provided that:-

18.10.1.1 The same does not result in any detriment to the GOODS; and

18.10.1.2 The GOODS shall be held available for inspection by or on behalf of the SELLER for 45 days thereafter.

19. BANK GUARANTEE

19.1 The SELLER shall provide the BUYER with a Bank Guarantee from a bank

- (a) incorporated under the Companies Act 1965 of Malaysia; and
- (b) designated as a commercial bank by Bank Negara Malaysia,

in the form contained in the appendix to the TERMS AND CONDITIONS, not later than fourteen (14) days after award of the PURCHASE ORDER, for a sum of five (5) percent of the total lump sum prices quoted in SCHEDULES OF PRICES AND RATES. Any failure to provide the Bank Guarantee as stated above shall be deemed to be a DEFAULT OF THE SELLER.

- 19.2 This Bank Guarantee shall apply to the PURCHASE ORDER including all indulgences, changes, alterations, incorrect payment or extensions as may be made, given, conceded or agreed under the PURCHASE ORDER whether or not the guarantor received notice of the same and the guarantor shall waive all need for notice of the same.
- 19.3 The giving of time or the neglect or forbearance of the BUYER in requiring or enforcing the obligations of the guarantor under this Bank Guarantee or the obligations of the SELLER under the PURCHASE ORDER or other indulgence shall not in any way prejudice such obligations.
- 19.4 The Bank Guarantee shall be valid until the end of the guarantee period and in the event of there being more than one guarantee period, the Bank Guarantee shall be valid until the end of the last guarantee period under the PURCHASE ORDER. Should there be no guarantee period under the PURCHASE ORDER, then the Bank Guarantee shall be valid for the entire term of the PURCHASE ORDER.
- 19.5 The BUYER shall not be obliged to make any payments to the SELLER under the PURCHASE ORDER until it has received a Bank Guarantee in compliance with this Clause.
- 19.6 In the event that the term of the PURCHASE ORDER and/or any guarantee period under the PURCHASE ORDER is extended for any reason whatsoever such that the validity of the Bank Guarantee is not in compliance with this Clause, the SELLER shall at its own cost and expense, procure that the validity of the Bank Guarantee shall from time to time be extended to a date on which it is anticipated that the entire term of the PURCHASE ORDER will end or the guarantee period(s) will end, as the case may be. The SELLER shall forward to the BUYER original written confirmation from the guarantor of the extension of the validity of the Bank Guarantee not less than seven (7) days prior to the expiry of the Bank Guarantee failing which the BUYER shall be entitled to call on the Bank Guarantee without any prior notice to the SELLER for the full value of the Bank Guarantee which said sum shall be held in trust for the SELLER free from interest subject to the BUYER's right to make such deductions therefrom as are due to the BUYER under the PURCHASE ORDER.
- 19.7 The Bank Guarantee shall be governed and construed in all respects in accordance with the laws of Malaysia and the BUYER and the guarantor shall submit to the exclusive jurisdiction of the courts of Malaysia.

20. PERFORMANCE GUARANTEE

- 20.1 The SELLER shall cause its PARENT COMPANY, the MANUFACTURER and/or SUBSELLER to provide the BUYER with a Performance Guarantee in the form contained in the appendix within fourteen (14) days of the award of the Purchase Order.
- 20.2 The BUYER shall not be obliged to make any payments to the SELLER under the PURCHASE ORDER until it has received a Performance Guarantee in compliance with this Clause.
- 20.3 Any failure to provide the Performance Guarantee as stated above shall be deemed to be a DEFAULT OF THE SELLER.

21. HEALTH SAFETY AND ENVIRONMENT (HSE)

- 21.1 CONTRACTOR shall comply with all provisions relating to health, safety and environment as set out in Part 11 - HEALTH, SAFETY AND ENVIRONMENT.
- 21.2 Rights of COMPANY in event of breach
- 21.2.1 Any breach of the provisions of this clause or the provisions of Part 11 - HEALTH, SAFETY AND ENVIRONMENT shall be deemed to be a DEFAULT OF THE CONTRACTOR and the COMPANY shall be entitled to exercise any of the remedies available to it including suspension or discontinuance of all or part of the CONTRACT, or termination of the CONTRACT.

22. INSURANCE

22.1 SELLER'S Duty to Insure

- 22.1.1 Without prejudice to the LIABILITY and INDIRECT AND OTHER LOSSES of the SELLER, the SELLER shall, at its own cost, obtain and maintain or cause to be obtained and maintained policies of insurance satisfactory and acceptable to the BUYER the following insurance, with limits not less than, and coverage not inferior to, those specified below in connection

with the performance of the WORK:

- 22.1.1.1 Workmen's Compensation and/or Employer's Liability Insurance covering adequately the employees, servants and agents of the SELLER and any SUBCONTRACTOR, as required by the Workmen's Compensation Act or similar statutory social insurance laws and/or the common laws of any nation or political sub-division thereof to which the SELLER'S or any SUBCONTRACTOR'S operations under the PURCHASE ORDER are subject.
 - 22.1.1.2 Comprehensive General Liability Insurance covering the SELLER'S legal and contractual liabilities for loss or damage to property, bodily injury or death, for a minimum indemnity limit of Ringgit Malaysia Five Million (RM5,000,000.00) for any one incident or series of incidents arising from any one event and unlimited in the aggregate. Such insurance shall include but not be limited to, where applicable, Protection and Indemnity risks, Automobile Public Liability, and Non-owned Aircraft Liability.
 - 22.1.1.3 Pollution Liability Insurance covering adequately the LIABILITY of the SELLER.
 - 22.1.1.4 Insurance against all risks of physical loss or damage covering all property of the SELLER, including construction EQUIPMENT, marine vessels, hull and machinery, where applicable, whether owned, hired or leased in the amount of the full replacement value thereof including but not limited to the risks of riots, strikes and civil commotions.
 - 22.1.1.5 Any other Insurance(s) which may be relevant and/or necessary and/or as may be required by any law(s) to which the SELLER and/or SUBCONTRACTOR are subject.
- 22.1.2 Such insurance shall be obtained and maintained in full force and effect throughout the term of this PURCHASE ORDER and any extensions and changes thereof.
- 22.2 **SELLER and SUBCONTRACTOR'S responsibility for deductibles, etc**
- 22.2.1 All deductibles, exceptions and exclusions applicable to any insurance arranged by the SELLER or any SUBCONTRACTOR of any tier shall be for the account of, and be paid by the SELLER or SUBCONTRACTOR.
- 22.3 **Non-Compliance with Insurance Terms**
- 22.3.1 In the event of breach or non-compliance by the SELLER or SUBCONTRACTOR with any term, condition or warranty contained in any insurance arranged by the BUYER previously advised to the SELLER, in consequence of which the insurers do not indemnify for loss, damage or liability, then the SELLER shall be responsible for the unindemnified loss, damage or liability.
- 22.4 **Compliance by SUBCONTRACTOR**
- 22.4.1 The SELLER shall be liable and responsible vis-a-vis the BUYER, to ensure that its SUBCONTRACTOR where applicable shall obtain and maintain similar insurance as referred to above in connection with the performance of any part of the WORK.
- 22.5 **Co-insured, Waiver of Subrogation and Cross Liability**
- 22.5.1 The SELLER shall cause the BUYER GROUP and PETRONAS to be co-insured and to benefit from the foregoing insurance to the extent of this PURCHASE ORDER and shall cause the insurers thereof to waive any and all liens and rights of subrogation against the BUYER GROUP and PETRONAS. The SELLER shall further cause the insurers to include a cross-liability provision in the foregoing insurance.
- 22.6 **Claims Handling**
- 22.6.1 Notice, followed by full details, of any incident or occurrence whether or not giving rise to a valid claim under the insurance above shall be given by the SELLER to the BUYER in accordance with the HSE Incident Procedure of the BUYER. Thereafter, the SELLER shall handle the claim directly with the insurers and shall always act in the best interests of the BUYER GROUP and PETRONAS.
- 22.7 **Certificate of Insurance**
- 22.7.1 Prior to commencement of WORK and at any other time upon request, the SELLER shall furnish to the BUYER original Certificates of Insurance evidencing:
 - 22.7.1.1 types, coverage, effective and expiration dates of insurance policy;

- 22.7.1.2 territorial limits include all locations where WORK is to be carried out;
 - 22.7.1.3 compliance with CO-INSURED, WAIVER OF SUBROGATION AND CROSS LIABILITY;
 - 22.7.1.4 full payment of premium;
 - 22.7.1.5 that the Insurer shall give a thirty (30) day prior written notice to the BUYER before any material amendment to, or cancellation of, the insurance policy.
- 22.7.2 The furnishing of Certificate of Insurance or other documents of insurance shall not be interpreted as implying that the BUYER assumes responsibility for the correctness of such policies or documents or that the SELLER has complied with its other obligations contained in this PURCHASE ORDER or relieve the SELLER of any obligation or liability under the PURCHASE ORDER.

22.8 **Failure to Insure**

- 22.8.1 Refusal to take out or failure to maintain the necessary insurance by the SELLER shall be deemed a DEFAULT OF THE SELLER.
 - 22.8.1.1 Under such circumstances, without prejudice to the rights and remedies of the BUYER under this PURCHASE ORDER, the BUYER shall have the right, but not any obligation, to procure such insurance policies as set out above.
 - 22.8.1.2 The BUYER shall be entitled to recover from the SELLER all costs incurred plus an additional 2.5% as handling charges.

23. INSURANCE

23.1 **SELLER'S Duty to Insure**

- 23.1.1 Without prejudice to the LIABILITY and INDIRECT AND OTHER LOSSES of the SELLER, the SELLER shall, at its own cost, obtain and maintain or cause to be obtained and maintained policies of insurance satisfactory and acceptable to the BUYER the following insurance, with limits not less than, and coverage not inferior to, those specified below in connection with the performance of the WORK:
 - 23.1.1.1 Workmen's Compensation and/or Employer's Liability Insurance covering adequately the employees, servants and agents of the SELLER and any SUBCONTRACTOR, as required by the Workmen's Compensation Act or similar statutory social insurance laws and/or the common laws of any nation or political sub-division thereof to which the SELLER'S or any SUBCONTRACTOR'S operations under the PURCHASE ORDER are subject.
 - 23.1.1.2 Comprehensive General Liability Insurance covering the SELLER'S legal and contractual liabilities for loss or damage to property, bodily injury or death, for a minimum indemnity limit of Ringgit Malaysia Five Million (RM5,000,000.00) for any one incident or series of incidents arising from any one event and unlimited in the aggregate. Such insurance shall include but not be limited to, where applicable, Protection and Indemnity risks, Automobile Public Liability, and Non-owned Aircraft Liability.
 - 23.1.1.3 Pollution Liability Insurance covering adequately the LIABILITY of the SELLER.
 - 23.1.1.4 Insurance against all risks of physical loss or damage covering all property of the SELLER, including construction EQUIPMENT, marine vessels, hull and machinery, where applicable, whether owned, hired or leased in the amount of the full replacement value thereof including but not limited to the risks of riots, strikes and civil commotions.
 - 23.1.1.5 Any other Insurance(s) which may be relevant and/or necessary and/or as may be required by any law(s) to which the SELLER and/or SUBCONTRACTOR are subject.
- 23.1.2 Such insurance shall be obtained and maintained in full force and effect throughout the term of this PURCHASE ORDER and any extensions and changes thereof.

23.2 **SELLER and SUBCONTRACTOR'S responsibility for deductibles, etc**

- 23.2.1 All deductibles, exceptions and exclusions applicable to any insurance arranged by the SELLER or any SUBCONTRACTOR of any tier shall be for the account of, and be paid by the SELLER or SUBCONTRACTOR.

23.3 Non-Compliance with Insurance Terms

23.3.1 In the event of breach or non-compliance by the SELLER or SUBCONTRACTOR with any term, condition or warranty contained in any insurance arranged by the BUYER previously advised to the SELLER, in consequence of which the insurers do not indemnify for loss, damage or liability, then the SELLER shall be responsible for the unindemnified loss, damage or liability.

23.4 Compliance by SUBCONTRACTOR

23.4.1 The SELLER shall be liable and responsible vis-a-vis the BUYER, to ensure that its SUBCONTRACTOR where applicable shall obtain and maintain similar insurance as referred to above in connection with the performance of any part of the WORK.

23.5 Co-insured, Waiver of Subrogation and Cross Liability

23.5.1 The SELLER shall cause the BUYER GROUP and PETRONAS to be co-insured and to benefit from the foregoing insurance to the extent of this PURCHASE ORDER and shall cause the insurers thereof to waive any and all liens and rights of subrogation against the BUYER GROUP and PETRONAS. The SELLER shall further cause the insurers to include a cross-liability provision in the foregoing insurance.

23.6 Claims Handling

23.6.1 Notice, followed by full details, of any incident or occurrence whether or not giving rise to a valid claim under the insurance above shall be given by the SELLER to the BUYER in accordance with the HSE Incident Procedure of the BUYER. Thereafter, the SELLER shall handle the claim directly with the insurers and shall always act in the best interests of the BUYER GROUP and PETRONAS.

23.7 Certificate of Insurance

23.7.1 Prior to commencement of WORK and at any other time upon request, the SELLER shall furnish to the BUYER original Certificates of Insurance evidencing:

23.7.1.1 types, coverage, effective and expiration dates of insurance policy;

23.7.1.2 territorial limits include all locations where WORK is to be carried out;

23.7.1.3 compliance with CO-INSURED, WAIVER OF SUBROGATION AND CROSS LIABILITY;

23.7.1.4 full payment of premium;

23.7.1.5 that the Insurer shall give a thirty (30) day prior written notice to the BUYER before any material amendment to, or cancellation of, the insurance policy.

23.7.2 The furnishing of Certificate of Insurance or other documents of insurance shall not be interpreted as implying that the BUYER assumes responsibility for the correctness of such policies or documents or that the SELLER has complied with its other obligations contained in this PURCHASE ORDER or relieve the SELLER of any obligation or liability under the PURCHASE ORDER.

23.8 Failure to Insure

23.8.1 Refusal to take out or failure to maintain the necessary insurance by the SELLER shall be deemed a DEFAULT OF THE SELLER.

23.8.1.1 Under such circumstances, without prejudice to the rights and remedies of the BUYER under this PURCHASE ORDER, the BUYER shall have the right, but not any obligation, to procure such insurance policies as set out above.

23.8.1.2 The BUYER shall be entitled to recover from the SELLER all costs incurred plus an additional 2.5% as handling charges.

23.9 Construction All Risks (C.A.R.) Insurance arranged by the BUYER

23.9.1 Without prejudice to the LIABILITY and INDIRECT AND OTHER LOSSES of the SELLER, the BUYER will at its own costs obtain and maintain in full force and effect from the EFFECTIVE DATE throughout the term of this PURCHASE ORDER, and any extensions or changes thereof, a C.A.R. Insurance.

23.9.1.1 The SELLER shall not include a cost for C.A.R. Insurance in the PURCHASE ORDER PRICE.

- 23.9.1.2 The C.A.R. Insurance shall be arranged in the name of the BUYER and shall include as "other assureds" the SELLER and any SUBCONTRACTORS and others who have entered into agreements for the performance of this PURCHASE ORDER.
- 23.9.1.3 The C.A.R. Insurance shall apply in excess of any other insurance required of the SELLER under this Clause.
- 23.9.1.4 All deductibles, exceptions and exclusions applicable to the C.A.R Insurance policy arranged by BUYER resulting from any claims made against such policy shall be for the account of, and be paid by the SELLER.
- 23.9.2 If the SELLER is of opinion that the C.A.R. Insurance is inadequate and/or contains uninsured risks then the SELLER shall, at its own costs, obtain and maintain in full force and effect from the EFFECTIVE DATE throughout the term of this PURCHASE ORDER and any extensions or CHANGE ORDER thereof, insurance for the inadequacies and/or uninsured risks. Such insurance shall also comply with clause relating to CO-INSURED, WAIVER OF SUBROGATION AND CROSS LIABILITY.
- 23.9.3 In the event of any claim under the C.A.R. Insurance, the SELLER shall follow the Claim Procedures set forth in ADMINISTRATION PROCEDURES and shall always act in the best interests of the BUYER GROUP and PETRONAS.
- 23.9.4 All communication in respect of the C.A.R. Insurance shall be addressed to the BUYER in the first instance.
- 23.9.5 The arrangement of the C.A.R. Insurance by the BUYER shall not be construed as limiting the SELLER'S liabilities in the PURCHASE ORDER or guaranteeing payment of claims by the C.A.R. insurers.

24. TAXES AND DUTIES

24.1 Minimisation of Incidence of Tax

- 24.1.1 The SELLER shall use its best endeavours to ensure that the PURCHASE ORDER is performed in such manner that minimises TAX liabilities.

24.2 SELLER'S Liability for Tax

- 24.2.1 The SELLER shall be responsible for and pay at its own expense when due and payable all TAXES payable by the SELLER arising out of the performance of the PURCHASE ORDER.

24.3 Reimbursement of Custom Duties

- 24.3.1 The BUYER shall reimburse SELLER for any payment of Customs Duties that may be levied on the BUYER'S furnished GOODS and EQUIPMENT by the relevant authorities at WORKSITE or other location outside Malaysia provided that the SELLER has used its best efforts to minimise any such duties by applying for and obtaining any exemption applicable or has used reasonable diligence in resisting such duties.

24.4 Withholding Tax

- 24.4.1 The BUYER shall have the right to withhold and remit TAXES from payment due to SELLER under this PURCHASE ORDER, to the extent that such withholding may be required by the Government of Malaysia or any relevant authorities thereof, or by the government of any other country, and payment by the BUYER to the respective governmental office of the amount of money so withheld will relieve the BUYER from any further obligation to SELLER with respect to the amount so withheld.
- 24.4.2 Where the SELLER is of opinion that it is not subject to withholding tax, it is the sole responsibility of the SELLER to secure the written direction of the relevant authorities and submit the original copy to the BUYER. Upon receipt of such written direction, the BUYER may make the said payments without deduction of such taxes.

24.5 Change in Indirect Tax Rate

- 24.5.1 In the event that a change in indirect taxation laws imposed by Malaysia or any state thereof, occurring after the effective date of the PURCHASE ORDER, causes a decrease or increase in the rate of taxation by more than 10%, then the BUYER and the SELLER shall review the effects upon the SELLER and shall by mutual agreement thereto, revise the relevant provisions of the PURCHASE ORDER to reflect such changes in the SELLER'S costs.

24.6 Tax Indemnity

- 24.6.1 The SELLER, its SUBSELLER and MANUFACTURER shall indemnify and hold the BUYER and its AFFILIATES safe and harmless from any and all demands, claims, actions, awards, judgments, costs, liabilities, fines, penalties, loss or damage, including any and all expenses, disbursements, costs, legal fees, interests, sums and amounts which the BUYER suffers, incurs or is put to, resulting from, or in any way connected with:-
- 24.6.1.1 any assessment or imposition of TAX based on any actual or alleged failure by the SELLER, its SUBSELLER or MANUFACTURER to make timely payment of any TAXES for which they are liable; or
- 24.6.1.2 any actual or alleged failure by SELLER, its SUBSELLER or MANUFACTURER to comply with applicable reporting, return or other procedural requirements with respect to such TAXES.
- 24.6.2 The SELLER shall give prompt notice to the BUYER on all matters relating to any demand, claim or action pertaining to TAXES which may affect the performance of the SELLER'S obligation under this PURCHASE ORDER.
- 24.6.3 In the event the BUYER has paid or incurred any liability for any TAX on behalf of the SELLER, which is subsequently determined to be not payable, the SELLER shall promptly account for and refund to the BUYER all such TAX paid.

25. SHIPPING, PACKING AND INVOICING (SPII)

- 25.1 The SELLER shall adhere strictly to the BUYER'S SHIPPING, PACKING AND INVOICING INSTRUCTIONS (SPII), as contained in the appendix herein, for the conduct of all packing and shipping required under the PURCHASE ORDER. It is the SELLER'S responsibility to obtain the current SHIPPING, PACKING AND INVOICING INSTRUCTIONS (SPII) and ensure its full compliance.
- 25.2 The SELLER shall provide the BUYER with such procedures and methods to open and unpack the GOODS safely and to avoid damage.

26. PAYMENT TERMS

26.1 Amount of Payment

- 26.1.1 For the performance of the PURCHASE ORDER, the BUYER shall pay or caused to be paid to the SELLER the amounts provided in the SCHEDULES OF PRICES AND RATES.

26.2 Submission of Invoice

- 26.2.1 The SELLER shall submit an invoice for payment only when all provisions in the SCHEDULES OF PRICES AND RATES have been complied with and a "Release Note for Shipment" as described in INSPECTION, where applicable, has been issued by the BUYER.
- 26.2.2 Each invoice must be supported by the necessary information as set out in the SCHEDULES OF PRICES AND RATES or otherwise as required by the BUYER, failing which the invoice shall be deemed invalid.

26.3 Dispute of Invoice

- 26.3.1 In the event the BUYER desires to dispute any invoice submitted by the SELLER, the BUYER shall within thirty (30) days of receipt of the invoice, notify the SELLER of the item in dispute and shall specify its reasons for doing so.
- 26.3.2 Payment in respect of such item in dispute shall be withheld until settlement of the dispute but all undisputed items of such invoice shall be paid in the manner set out in this Clause.
- 26.3.2.1 Separate invoices shall be required in each instance. Disputed items from different invoices shall not be grouped together.
- 26.3.2.2 A separate invoice shall be given for the undisputed portion of any invoice that is under dispute.
- 26.3.2.3 The SELLER will be required to submit a new invoice for any disputed items when settled. Such invoice shall quote the original invoice number under which the disputed items were first billed notwithstanding that the amounts claimed might be different.

26.4 **Time of Payment**

- 26.4.1 Within forty-five (45) days of receipt by the BUYER of a correctly prepared and adequately supported invoice, the BUYER shall cause the invoiced amount to be paid into a bank account nominated by the SELLER.

26.5 **Currency For Payment**

- 26.5.1 All payments to SELLER by the BUYER under the terms of this PURCHASE ORDER shall be in Ringgit Malaysia.

- 26.5.2 If the PURCHASE ORDER price is expressed in a foreign currency and SELLER makes written request to the BUYER to be paid in such foreign currency and produces documentary evidence to the BUYER that SELLER is duly authorised by Bank Negara Malaysia to accept payment in that other currency or Bank Negara regulations so permit, the BUYER may if it deems practicable, pay SELLER in that other currency.

26.5.2.1 All costs relating to payment in foreign currency shall be borne by the SELLER.

- 26.5.3 Where PURCHASE ORDER price is stated in currency other than in Ringgit Malaysia and SELLER is not authorised to accept payment other than in Ringgit Malaysia then for the purpose of converting a foreign currency to enable payment to be made in Ringgit Malaysia, the rate of exchange to be used shall be the average of the selling and buying rates on the day of such payments of Telegraphic Transfer quoted in the opening of business rate sheet published by a Malaysian bank nominated by the BUYER and failing such nomination, Malayan Banking Berhad .

26.5.3.1 If such day falls on a day where the rate is not available, the rate quoted immediately before such day shall be used.

26.6 **Nomination of Bank Account**

- 26.6.1 The SELLER shall nominate a bank account into which payments may be made. The SELLER shall inform the BUYER of this nomination in writing. The SELLER shall maintain only one account at any one time for the purpose of all payments to be made into it by the BUYER under this PURCHASE ORDER.

26.7 **Cost Reimbursable Items**

- 26.7.1 In so far as the PURCHASE ORDER or any part thereof is cost reimbursable, the BUYER shall be entitled to all discounts, trade commissions, refunds, deductions, etc. (including all discounts due to payment of bills within a specified time or on a "cash" basis) which the SELLER did obtain, or ought to have reasonably obtained on a reimbursable item.

26.8 **Set-Off**

- 26.8.1 If at any time during the duration of the PURCHASE ORDER, the BUYER provides any materials, equipment or services of any nature, which form part of the obligation of the SELLER under the PURCHASE ORDER, then the BUYER shall be entitled to recover from the SELLER by way of set-off in the manner described in this clause.

- 26.8.2 The BUYER shall be entitled to exercise the right of set-off against any amount due to the SELLER under this PURCHASE ORDER or otherwise:-

26.8.2.1 any sum which it in good faith regards as being owed by the SELLER to the BUYER; and

26.8.2.2 such amount sufficient to indemnify the BUYER completely against any LIENS against the SELLER.

26.9 **Non-Waiver**

- 26.9.1 Neither the presentation nor payment of an individual invoice shall constitute a settlement of dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties under this PURCHASE ORDER.

27. **LIABILITY**

27.1 **Liability for GOODS and EQUIPMENT**

- 27.1.1 The SELLER shall be absolutely liable to and indemnify the BUYER from and against all loss and damage to GOODS and/or EQUIPMENT or any part thereof, including BUYER supplied GOODS and EQUIPMENT after delivery to the SELLER in accordance with the PURCHASE

ORDER and including those provided by the SELLER and in transit to and from the WORKSITE.

27.2 Liability for BUYER'S Properties

27.2.1 The SELLER shall, up to a limit of Ringgit Malaysia Five Million (RM5,000,000.00) for any one incident or series of incidents arising from any one event, caused by or contributed to by or partly attributable to any act or omission, whether caused by negligence or otherwise, of the SELLER GROUP and/or their equipment, be liable for and shall indemnify the BUYER from and against all loss or damage to:-

27.2.1.1 any and all other properties (including any existing facilities or other work in the course of construction) of the BUYER GROUP and PETRONAS in connection with or arising from the BUYER'S operations.

27.2.2 The BUYER shall indemnify the SELLER GROUP for any liability in excess of such limit.

27.3 Liability for SELLER'S Properties

27.3.1 The SELLER shall be absolutely liable at all times and in all circumstances for all loss or damage to property of the SELLER GROUP and the SELLER shall hold the BUYER GROUP and PETRONAS indemnified against all costs, claims and demands arising out of such loss or damage.

27.4 Liability for Pollution From SELLER'S EQUIPMENT or Property and Removal of Obstacles etc

27.4.1 The SELLER shall be liable for and indemnify the BUYER GROUP and PETRONAS from and against all loss or damage to any person or property which arises out of pollution or contamination caused by the discharge or escape of oil, other pollutants or contaminants from the SELLER'S EQUIPMENT or property.

27.4.2 The SELLER shall be liable for, at its own cost, the removal of the GOODS or part thereof or removal any other SELLER'S EQUIPMENT in the event that the GOODS or SELLER'S EQUIPMENT are lost or damaged beyond repair if so required by law or governmental authority or if interfering with the operations of the BUYER.

27.5 Liability for Pollution From BUYER Reservoir, Property or EQUIPMENT

27.5.1 Except as provided by the Articles headed

LIABILITY FOR BUYER'S PROPERTIES
LIABILITY FOR BUYER'S PERSONNEL
LIABILITY FOR SELLER'S PROPERTIES, and
LIABILITY FOR SELLER'S PERSONNEL

in the event of pollution or contamination emanating from the reservoir or from the property or EQUIPMENT of the BUYER GROUP, including the discharge or escape of oil, other pollutant, contaminants, wreckage or debris, the SELLER shall up to a limit of Ringgit Malaysia Five Million (RM5,000,000.00) for any one incident or series of incidents arising from any one event, caused by or contributed to by or partly attributable to any act or omission, whether caused by negligence or otherwise, of the SELLER GROUP and/or its EQUIPMENT, be liable for and indemnify the BUYER GROUP and PETRONAS from and against all loss or damage to any person or property, all cost of containment, clean up and removal of the pollutants and contaminants.

27.5.1.1 The BUYER shall indemnify the SELLER GROUP for any liability in excess of such limit.

27.5.2 The SELLER'S liability shall apply even though the loss or damage was attributable to any act or omission of the BUYER GROUP or PETRONAS and the SELLER shall not seek contribution from such person or persons for such reason.

27.6 Liability for Third Parties

27.6.1 The SELLER shall up to a limit of Ringgit Malaysia Five Million (RM5,000,000.00) for any one incident or series of incidents arising from any one event be liable for and indemnify the BUYER GROUP and PETRONAS from and against all injuries, disease, death to, and/or loss or damage to property of third parties caused by or contributed to by or partly attributable to any act or omission, whether caused by negligence or otherwise, of the SELLER GROUP and/or its equipment. This liability shall apply in all instances except where such injury, death, disease, loss or damage was caused by the sole negligence of the BUYER GROUP.

27.6.2 Liability in excess of such limit shall be determined by applicable law.

27.6.3 In the event of any claim or action brought against the SELLER arising out of the matters referred to in this clause, the SELLER shall consult the BUYER in all such matters and shall not make any settlement, admission or compromise without the prior approval of the BUYER, which approval shall not be unreasonably withheld.

27.7 Liability for SELLER'S Personnel

27.7.1 The SELLER shall be absolutely liable at all times and in all circumstances for all injuries, disease and/or death to the personnel of the SELLER GROUP and the SELLER shall hold the BUYER GROUP and PETRONAS, indemnified against all costs, claims and demands arising out of such injuries, disease and/or death.

27.7.2 The liability and indemnity shall apply in full even though the injuries, disease and/or death was caused by, or contributed to by or was partly attributable to any act or omission, whether caused by negligence or otherwise, of the BUYER GROUP or PETRONAS and the SELLER shall not seek contribution from such person or persons for such reason.

27.8 Liability for BUYER'S Personnel

27.8.1 The BUYER shall be absolutely liable at all times and in all circumstances for all injuries, disease and/or death to the employees of the BUYER GROUP and the BUYER shall hold the SELLER GROUP indemnified against all costs, claims and demands arising out of such injuries, disease and/or death.

27.8.2 The liability and indemnity shall apply in full even though the injuries, disease and/or death was caused by or contributed to by, or was partly attributable to any act or omission, whether caused by negligence or otherwise, of the SELLER GROUP and the BUYER shall not seek contribution from such person or persons for such reason.

27.9 Extent of liability

27.9.1 The indemnities extended by the parties under the PURCHASE ORDER shall cover not only sums paid by and on behalf of one party in satisfaction of the judgement or award, but also all reasonable sums including costs, legal fees and expenses paid by the other party.

28. INDIRECT AND OTHER LOSSES

28.1 Limitation of SELLER'S Liability for Indirect and Other Losses

28.1.1 BUYER shall save, indemnify, defend and hold harmless the SELLER GROUP for indirect losses, consequential losses, any loss of use of property or loss of production, revenue, profit or anticipated profit or contracts suffered by the BUYER GROUP howsoever caused arising in connection with the performance of the CONTRACT except to the extent of any liquidated damages provided for in the CONTRACT.

28.2 Limitation of BUYER'S Liability for Indirect and Other Losses

28.2.1 SELLER shall save, indemnify, defend and hold harmless the BUYER GROUP and PETRONAS for indirect losses, consequential losses, any loss of use of property or loss of profit or anticipated profit or revenue or contracts suffered by the SELLER GROUP howsoever caused arising in connection with the CONTRACT.

28.3 Applicability of Limitation

28.3.1 Any exclusion or limitation specified in the PURCHASE ORDER shall apply to claims in contract, tort or otherwise at law in respect of matters covered by such exclusion or limitation.

29. DEFAULT OF THE SELLER

29.1 The SELLER shall be in default of the PURCHASE ORDER upon the occurrence of any of the following events:-

29.1.1 non-delivery of GOODS within the DELIVERY TIME.

29.1.2 the refusal or the inability or other failure of the SELLER to:-

29.1.2.1 Where applicable, perform any part of the PURCHASE ORDER in a safe, efficient, workmanlike, skilful and careful manner or with the required promptness or diligence, or

- 29.1.2.2 comply with any one of the requirements of the PURCHASE ORDER.
- 29.1.3 The SELLER or the provider of any guarantee pursuant to this PURCHASE ORDER becoming bankrupt or making a composition arrangement with its creditors or having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed or having a provisional Liquidator, Special Administrator, Receiver or Manager of its business or undertaking appointed, or having possession taken by or on behalf of the holders of any debenture, whether secured by a Floating Charge or otherwise

30. SUSPENSION

30.1 BUYER'S Right to Suspend

- 30.1.1 The BUYER shall have the right at any time to suspend without cause all or any part of the PURCHASE ORDER by giving SELLER a written notice specifying the part of the PURCHASE ORDER to be suspended.

30.2 Suspension for Default

- 30.2.1 In the event the BUYER issues a suspension notice for reason of DEFAULT OF THE SELLER, the suspension notice shall include reasons for such issuance and shall also outline the steps to be taken by the SELLER to rectify the situation within a specified period.
- 30.2.2 The SELLER shall be considered in default of its obligations until the situation has been remedied to the satisfaction of the BUYER and the BUYER may, in addition to and without any prejudice to any other rights it may have, exercise its right of TERMINATION.
- 30.2.3 Upon receipt of such notice, the SELLER shall, unless the notice otherwise requires:-
- 30.2.3.1 immediately discontinue performance of the PURCHASE ORDER on the date and to the extent specified in the notice;
 - 30.2.3.2 place no orders and make no further subcontracts with respect to the suspended portion of the PURCHASE ORDER other than to the extent required in the notice;
 - 30.2.3.3 promptly make every reasonable effort to obtain suspension upon terms satisfactory to the BUYER of all outstanding orders and subcontracts to the extent they relate to the execution of the portion of the PURCHASE ORDER suspended;
 - 30.2.3.4 continue to maintain such portion of the PURCHASE ORDER that has been carried out;
 - 30.2.3.5 use its best efforts to minimise the cost associated with the suspension.
 - 30.2.3.6 continue to perform all unsuspended parts of the PURCHASE ORDER.
- 30.2.4 No payment shall be made to the SELLER in the event that the BUYER suspends the performance of the PURCHASE ORDER for reasons of DEFAULT OF THE SELLER.
- 30.2.4.1 In such event, the SELLER shall be liable for all costs and expenses incurred by the BUYER as a result of the suspension.

30.3 Suspension for Non-Default

- 30.3.1 In the event that the BUYER suspends the performance of the PURCHASE ORDER for reasons other than DEFAULT OF THE SELLER, or FORCE MAJEURE, the BUYER shall authorise a Change Order to cover the following:-
- 30.3.1.1 the cost of keeping all facilities, EQUIPMENT and personnel dedicated to the part of the PURCHASE ORDER suspended to the extent that the SELLER is unable to redeploy such resources during the period of suspension;
 - 30.3.1.2 standby fees, where applicable, for all facilities, EQUIPMENT and personnel of the SELLER authorised in advance by the BUYER to be on standby;
 - 30.3.1.3 other items directly related to the suspended part of the PURCHASE ORDER, if authorised in advance by the BUYER; and
 - 30.3.1.4 any changes to the DELIVERY TIME.

30.4 **Continuing Obligations and Rights**

30.4.1 In the event of suspension of the whole or part of the PURCHASE ORDER, the SELLER shall not be relieved of any continuing obligations or liabilities under the provisions of the PURCHASE ORDER, nor does it affect any statutory or other legal rights of the BUYER or the SELLER.

30.5 **Resumption**

30.5.1 The BUYER may at any time, by giving written notice to the SELLER specifying the part of the PURCHASE ORDER to be resumed and the effective date of such resumption, authorise the SELLER to resume all or any part of the PURCHASE ORDER suspended.

30.5.2 The SELLER shall resume the performance of the PURCHASE ORDER on the date fixed in such written notice from the BUYER to the extent required in the notice.

30.5.3 Provided that the suspension period exceeds thirty (30) consecutive days, the BUYER shall give notice of not less than twenty five (25%) per-centum of the suspension period prior to the effective date of resumption.

30.6 **Suspension Over 90 Days**

30.6.1 If any period of suspension exceeds ninety (90) consecutive days, the SELLER may require the BUYER to:-

30.6.1.1 terminate the PURCHASE ORDER, or

30.6.1.2 discontinue the suspended part of the PURCHASE ORDER, or

30.6.1.3 notify the SELLER of the date the suspension shall be lifted.

31. DISCONTINUANCE AND TERMINATION

31.1 **Termination**

31.1.1 The BUYER shall, subject to SELLER'S right to payments described below, have the right at any time and at its absolute discretion to summarily terminate the PURCHASE ORDER by giving the SELLER written notice to such effect.

31.1.2 Without prejudice to the right of summary termination described above, the BUYER may, in the event of any DEFAULT OF THE SELLER, if it is of the reasonable opinion that the DEFAULT OF THE SELLER is capable of being remedied, give written notice stating the details of such default and require the SELLER to remedy the default within seven (7) days.

31.1.2.1 If the SELLER does not within the seven (7) days commence, and having commenced, continuously proceed with action satisfactory to the BUYER to remedy such default, the BUYER may, at its option and regardless of the stage of completion of the PURCHASE ORDER, notify the SELLER of any claim which the BUYER may have hereunder, and the BUYER shall have the right to issue a notice of discontinuance of part of the PURCHASE ORDER, or terminate the PURCHASE ORDER, or issue a notice of suspension, at the sole discretion of the BUYER .

31.1.3 In the event the DEFAULT OF THE SELLER is a result of non-delivery of GOODS, the BUYER shall have the right to terminate this PURCHASE ORDER after the expiry of a grace period of 4 weeks after the DELIVERY TIME.

31.1.3.1 Notwithstanding the foregoing, the BUYER shall have the right to terminate the PURCHASE ORDER before the DELIVERY TIME or the expiry of the grace period if the BUYER proves that the SELLER shall not be able to deliver the GOODS within the grace period specified above.

31.2 **Discontinuance**

31.2.1 Notwithstanding the foregoing, the BUYER shall have the right at any time and at its absolute discretion to discontinue part or the whole of the PURCHASE ORDER by giving the SELLER prior written notice to the effect.

31.3 **Consequences Of Notice**

31.3.1 Any written notice of discontinuance or termination described above shall become effective immediately upon delivery of the notice to the SELLER, or on such later date as may be

specified in the notice, whereupon the SELLER at such date shall immediately:-

- 31.3.1.1 discontinue the supply of GOODS pursuant to the PURCHASE ORDER as specified in the notice ;
- 31.3.1.2 allow the BUYER or its nominee full right of access to the WORKSITE so as to remove and/or take over the performance of the PURCHASE ORDER as may be applicable or the relevant part of the PURCHASE ORDER so far completed and to remove and/or take over possession of all GOODS in connection with all or part of the PURCHASE ORDER and to allow the BUYER to obtain completion by another contractor;
- 31.3.1.3 assign to the BUYER or its nominee, to the extent desired by the BUYER, all or any rights, titles and commitments relating to the PURCHASE ORDER which the SELLER has acquired vis-a-vis third parties;
- 31.3.1.4 remove all GOODS of the SELLER (where ownership has not passed to the BUYER) unless otherwise required by the BUYER;
- 31.3.1.5 deliver to the BUYER within thirty (30) days of said notice all plans, schedules, drawings, specifications and all other data prepared by the SELLER, SUBSELLER or MANUFACTURER in connection with the PURCHASE ORDER subject to the LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS;
- 31.3.1.6 take all such further steps as are necessary to enable the BUYER or its nominee to take over the SELLER'S position in the performance of the PURCHASE ORDER with the least possible disruption, all in accordance with the BUYER REPRESENTATIVE'S instructions.

31.4 **Payments In The Event Of Discontinuance Or Termination For Default**

- 31.4.1 In the event of the BUYER giving the SELLER notice of discontinuance or termination pursuant to DEFAULT OF THE SELLER, the BUYER shall pay to the SELLER the amount calculated in accordance with SCHEDULES OF PRICES AND RATES for the part of the PURCHASE ORDER satisfactorily completed and accepted at the date of the discontinuance or termination, which payment shall be reduced by:-
 - 31.4.1.1 any additional costs incurred by the BUYER as a result of the default of the SELLER,
 - 31.4.1.2 any costs incurred by the BUYER in having the PURCHASE ORDER completed by another contractor in excess of the amount provided in the PURCHASE ORDER .

31.5 **Payments In The Event Of Discontinuance Or Termination For Non-Default**

- 31.5.1 In the event that the BUYER discontinues part of, or terminates, the PURCHASE ORDER for reasons other than DEFAULT OF THE SELLER, the BUYER shall authorise a Change Order to cover the following:-
 - 31.5.1.1 the amount calculated in accordance with SCHEDULES OF PRICES AND RATES, for the part of the GOODS supplied and/or PURCHASE ORDER completed to the satisfaction of the BUYER up to the time of discontinuance or termination;
 - 31.5.1.2 the cost of cancellation of any commitments necessarily entered into in the execution of the PURCHASE ORDER and for which the BUYER has given its approval and which cannot be used or employed on any other task or assigned to the BUYER in the manner set out above;
 - 31.5.1.3 the actual cost necessarily incurred by the SELLER to hand over any work in progress and completed PURCHASE ORDER in accordance with the BUYER'S instructions;
 - 31.5.1.4 the amount the BUYER would have had to pay, pursuant to the PURCHASE ORDER if any, for the services of each individual assigned to the PURCHASE ORDER or part thereof as applicable, for up to four (4) calendar weeks following the effective date of discontinuance of part of the PURCHASE ORDER or of termination of the PURCHASE ORDER. This sum shall only be payable if, or to the extent that, such personnel cannot be allocated to other work by the SELLER .
 - 31.5.1.5 the demobilisation fee, if any, on termination of the PURCHASE ORDER, or a pro-rated portion relating to the discontinued part on discontinuance of part of the PURCHASE ORDER, all in accordance with SCHEDULES OF PRICES AND RATES .

31.6 **Seller's Continuing Obligations**

- 31.6.1 In the event of discontinuance of part of, or termination of, the PURCHASE ORDER the SELLER shall not be relieved of any continuing obligations or liabilities under the provisions of the PURCHASE ORDER, nor does it affect any statutory or other legal rights of the BUYER or the SELLER.

32. **FORCE MAJEURE**

32.1 **Non-Liability, Payment and Price**

- 32.1.1 Neither the BUYER nor the SELLER shall be liable one to the other for any delay or failure to perform its obligations under the PURCHASE ORDER where and to the extent such delay or failure is caused by Force Majeure.
- 32.1.2 Force Majeure occurrences shall not be just cause for non payment of monies due under the PURCHASE ORDER for work performed and/or completed in accordance with the PURCHASE ORDER, not affected by the Force Majeure occurrence.
- 32.1.3 Under no circumstances shall the PURCHASE ORDER price be increased to include for the financial impact on either party of any Force Majeure occurrence.

32.2 **Definition of Force Majeure**

- 32.2.1 Force Majeure events shall be events beyond the control of the parties or either of them and shall include, but not be limited to:

Acts of God or force of nature, landslide, lightning, earthquake, flood, fire, explosion, unusually severe weather during the period in question, act of war (declared or undeclared) of public enemy, strikes, boycotts, lockouts or other labour disturbance (excluding those solely amongst employees of the SELLER, its SUBSELLER or MANUFACTURER), act or omission of sovereign or those purporting to represent sovereign states, blockade, embargo, quarantine, public disorder, sabotage and acts of terrorists.

- 32.2.2 However, Force Majeure shall not include the following:-

- 32.2.2.1 Late delivery of materials caused by congestion at a supplier's plant or elsewhere, or oversold condition of the market, inefficiencies, or similar occurrences;
- 32.2.2.2 Late performance by a SUBSELLER or MANUFACTURER caused by a shortage of supervisors or labour, inefficiencies, or similar occurrences; unless caused by circumstances that are themselves Force Majeure events which are beyond both the SELLER, SUBSELLER or MANUFACTURER'S control;
- 32.2.2.3 Mechanical breakdown of any item of the SELLER'S, SUBSELLER'S or MANUFACTURER'S equipment, plant or machinery;
- 32.2.2.4 Contractual commitment made by SELLER to third parties which limits SELLER'S ability to provide materials or equipment;
- 32.2.2.5 Financial distress of the SELLER, SUBSELLER or MANUFACTURER;
- 32.2.2.6 Cumulative effect of recurring weather over time, including but not limited to excessive cumulative rainfall and/or period of high relative humidity.

32.3 **Procedure on Force Majeure**

- 32.3.1 On the occurrence of event of Force Majeure the party claiming to be affected thereby shall:-
- 32.3.1.1 immediately notify the other party, giving full particulars thereof;
- 32.3.1.2 use its best endeavors to remedy such failure of fulfillment with all reasonable dispatch;
- 32.3.1.3 mitigate its losses arising from the effects of such Force Majeure;
- 32.3.1.4 keep the other party fully advised of the progress being made in such efforts;
- 32.3.1.5 upon the cessation of such Force Majeure, to give notice as soon as it is practicable to do so; and

- 32.3.1.6 upon the cessation of such Force Majeure, to resume its obligations under the PURCHASE ORDER.
- 32.3.2 Unless otherwise agreed by the parties, the party affected by Force Majeure shall give notice of a period not less than 10% of the period of the Force Majeure before requiring the other party to resume its obligation under the PURCHASE ORDER.
- 32.3.3 Unless otherwise agreed by the parties, if an event of Force Majeure continues for a continuous period of more than 2 years, this PURCHASE ORDER shall be deemed to have been mutually terminated and the provisions relating to PAYMENTS IN THE EVENT OF DISCONTINUANCE OR TERMINATION FOR NON-DEFAULT shall apply.

33. ARBITRATION

- 33.1 All disputes, controversies or claims arising out of or in connection with this PURCHASE ORDER or the breach, termination or invalidity thereof shall:-
 - 33.1.1 where the amount involved equals or exceeds Ringgit Malaysia Five Million (RM5,000,000.00) - be finally settled by arbitration in accordance with the rules of the Regional Center for Arbitration, Kuala Lumpur before a panel of three (3) arbitrators. The place of arbitration shall be Kuala Lumpur and the language of arbitration shall be English.
 - 33.1.2 where the amount involved is less than Ringgit Malaysia Five Million (RM5,000,000.00) - be finally settled by submission to the exclusive jurisdiction of the applicable Malaysian Courts.
- 33.2 Pending the resolution of any disputes, controversies or claims arising out or relating to this PURCHASE ORDER, the SELLER shall perform and/or continue performing all its obligations specified in the PURCHASE ORDER.

34. GOVERNING LAW

- 34.1 The validity, application, interpretation and implementation of the PURCHASE ORDER and any dispute, controversy and claim herein, shall be governed exclusively by Malaysian Law.

35. SHELL GENERAL BUSINESS PRINCIPLES AND SHELL CODE OF CONDUCT

- 35.1 **Shell General Business Principles and Shell Code of Conduct**
 - 35.1.1 CONTRACTOR confirms having received a copy of the Shell General Business Principles (or alternatively, taken notice of the Shell General Business Principles at this link "<http://www.shell.com/sgbp>") and the Shell Code of Conduct, (or alternatively, taken notice of The Code of Conduct at this link "<http://www.shell.com/codeofconduct>"). CONTRACTOR fully accepts that observance by CONTRACTOR of the Shell General Business Principles when doing business with COMPANY, is a condition for COMPANY, and commits therefore not to violate any of the Shell General Business Principles when performing work in connection with the CONTRACT. In the event that the CONTRACTOR supplies staff who work on behalf of COMPANY or represent COMPANY, CONTRACTOR also commits that such staff will behave in a manner that is consistent with the Shell Code of Conduct.
 - 35.1.2 Without prejudice to the foregoing, the direct or indirect offer, payment, soliciting and acceptance of bribes in any form are unacceptable practices, and shall be deemed to be a DEFAULT OF THE SELLER.

36. LICENCES, PERMITS, LAWS AND REGULATIONS

- 36.1 **Obtaining of Permits, Licenses and Authorisations**
 - 36.1.1 In the performance of this PURCHASE ORDER, the SELLER shall, and ensure that its SUBSELLER and MANUFACTURER shall obtain and maintain, all necessary permits, licenses and authorizations in the country or countries where any part of the PURCHASE ORDER is being performed including, without limitation:-
 - 36.1.1.1 all necessary or appropriate import and export licenses and customs clearances for GOODS and/or EQUIPMENT for the PURCHASE ORDER and

- providing all documentation in support of such licenses and clearances;
 - 36.1.1.2 all necessary immigration and/or work permits for personnel engaged in the performance of the PURCHASE ORDER;
 - 36.1.2 The BUYER shall not be responsible for any costs of obtaining or maintaining any of the foregoing permits, licenses and authorizations.
 - 36.1.3 The SELLER shall provide written evidence of compliance with all permits, laws and regulations or exemptions or waivers therefrom within 7 days of being so requested by the BUYER.
 - 36.1.4 The SELLER shall maintain a valid license and/or registration with PETRONAS throughout the duration of this PURCHASE ORDER .
- 36.2 **Compliance with Laws**
 - 36.2.1 The SELLER shall abide by and comply, and secure compliance by its SUBSELLER and MANUFACTURER, with all applicable laws, rules and regulations of any governmental or regulatory body having jurisdiction over the PURCHASE ORDER.
 - 36.2.2 If SELLER, its SUBSELLER or MANUFACTURER perform any part of the PURCHASE ORDER contrary to the law, the SELLER shall bear any additional costs of the PURCHASE ORDER and any other consequences resulting from said violation and correction thereof.
 - 36.2.3 For the purpose of this Clause, "law" includes any law, act, ordinance, regulation, rule, by-law, order, directive, policy and guideline of the government (whether federal, state, local, municipal or other) of any country in which any part of the PURCHASE ORDER is performed or of any such governmental or regulatory body, authority or agency.
 - 36.2.4 The SELLER shall defend, indemnify and hold the BUYER GROUP harmless (such indemnity shall also include the full amount of all costs and expenses associated therewith) from all forms of:-
 - 36.2.4.1 penalty which may be imposed on the BUYER GROUP by reason of any actual or alleged violation of law by the SELLER GROUP.
 - 36.2.4.2 claims, suits or proceedings that may be brought against the BUYER GROUP in any way related to, arising under, growing out of, or by reason of the PURCHASE ORDER with respect to such alleged violation of law whether brought by employees of SELLER GROUP or by third parties or by any relevant authority.
 - 36.2.4.3 loss or damage suffered by the BUYER GROUP in the event that the SELLER GROUP shall in relation to the PURCHASE ORDER, have committed any act, whether before, on or after the date of the PURCHASE ORDER, which is an offence under the Laws of Malaysia (or any other similar law or enactment in force at the place for the performance of any part of the PURCHASE ORDER outside Malaysia) or would have constituted such an offence.
- 36.3 All operations necessary for the performance of the PURCHASE ORDER shall be carried on in so far as compliance with the requirements of the PURCHASE ORDER permits so as not to interfere unnecessarily or improperly with the convenience of the public or the access to, use and occupation of the following whether in the possession of the BUYER, the SELLER, its SUBSELLER or MANUFACTURER or any other person:-
 - 36.3.1 navigable and other waters, waterways, channels, harbours or harbour works, fisheries, natural harbours and anchorages and other places of shelter, by sea or land;
 - 36.3.2 public or private roads and footpaths to or of properties.

37. CONFIDENTIALITY

- 37.1 "Confidential Information" is any information in whatsoever form disclosed by or on behalf of the BUYER or its AFFILIATES to the SELLER, or generated or acquired by the SELLER, its SUBSELLER or MANUFACTURER in the performance of the PURCHASE ORDER, which at the time of disclosure, generation or acquisition is not:-
 - 37.1.1 in the lawful, unrestricted possession of the SELLER; or
 - 37.1.2 part of public knowledge or literature.
- 37.2 The SELLER shall at all times, both within the duration of this PURCHASE ORDER and at any time

thereafter:-

- 37.2.1 keep all Confidential Information secret and shall not divulge any Confidential Information to third parties.
 - 37.2.2 use Confidential Information only for performance of the PURCHASE ORDER.
 - 37.2.3 preserve and cause its employees, servants and agents and all its SUBSELLER and MANUFACTURER and their employees, servants and agents to preserve the secrecy of all Confidential Information.
 - 37.2.4 notify the BUYER promptly upon discovery of any instance where the requirements of this Clause have not been complied with, and assist the BUYER in recovering, or preventing any further dissemination of, any Confidential Information.
- 37.3 The SELLER shall promptly return, destroy or erase, at BUYER'S option all documents, drawings, data or Confidential Information provided to SELLER by the BUYER, and provide written confirmation that such action has been taken, upon:-
- 37.3.1 completion of the PURCHASE ORDER; or
 - 37.3.2 receipt by SELLER of the BUYER'S notification of discontinuance or termination of the PURCHASE ORDER or any part thereof; or
 - 37.3.3 receipt by SELLER of the BUYER'S request for return or destruction of all such documents, drawings, data or Confidential Information.
- 37.4 The SELLER shall obtain prior written approval from the BUYER before the SELLER, its SUBSELLER or MANUFACTURER makes any public release, announcement, regarding the PURCHASE ORDER or the SELLER'S activities related to its participation in the PURCHASE ORDER.
- 37.5 All information provided by the SELLER which the SELLER wishes to remain confidential shall be clearly marked as being confidential. In respect of such confidential information, the BUYER shall be entitled to:-
- 37.5.1 disclose to and authorise use by AFFILIATES, CO-VENTURERS and PETRONAS; and
 - 37.5.2 disclose pursuant to any statutory or other legal requirement; and
 - 37.5.3 subject to the SELLER'S prior consent, which shall not be unreasonably withheld or delayed, disclose to and authorise use by third parties to the extent necessary for the performance of the PURCHASE ORDER.
- 37.6 PETRONAS may from time to time disclose to any governmental body, agency or department or any other fiscal, monetary, regulatory authority or agency (including but not limited to the Ministry of Finance), their legal counsels and/or other professional advisers information relating to the SELLER and/or the PURCHASE ORDER as such authority may require whether or not such requirement has the force of law.
- 37.7 This Clause shall continue in force notwithstanding the completion, or earlier termination of this PURCHASE ORDER.

38. SUBCONTRACTS

- 38.1 The SELLER shall ensure that the rights of the BUYER and the requirements in the PURCHASE ORDER regarding SUBCONTRACTORS are effectively provided for in each SUBCONTRACT. It shall be the duty of the SELLER to ensure that nothing in the SUBCONTRACT shall conflict with the PURCHASE ORDER.
- 38.2 The SELLER shall not subcontract the whole or the majority of the WORK. The SELLER may only subcontract a part of the WORK subject to the following:
- 38.2.1 The SELLER shall not enter into any SUBCONTRACT without the prior written consent of the BUYER. Any consent granted pursuant to this Clause shall not create any contractual relationship between any SUBCONTRACTOR and the BUYER nor shall it relieve the SELLER of its responsibilities in respect of the SUBCONTRACTOR.
 - 38.2.2 The SELLER shall furnish the following information to the BUYER and allow the BUYER an adequate opportunity to review the proposed SUBCONTRACT:
 - 38.2.2.1 the form of the SUBCONTRACT;
 - 38.2.2.2 the choice of the SUBCONTRACTOR;

- 38.2.2.3 the part of the WORK covered under the SUBCONTRACT;
 - 38.2.2.4 insofar as the BUYER is required to separately reimburse the SELLER the amounts paid to the SUBCONTRACTOR, the cost of such SUBCONTRACT; and
 - 38.2.2.5 any other information requested by the BUYER.
- 38.3 No SUBCONTRACT shall relieve the SELLER from any obligations or liabilities under the PURCHASE ORDER and the SELLER shall be responsible for all works, acts, defaults and breaches of duty of any SUBCONTRACTOR or its employees, servants or agents as fully as if they were the work, acts or defaults or breaches of duty of the SELLER.
- 38.4 Each SUBCONTRACT shall provide terms:
 - 38.4.1 for suspension and/or discontinuance of part or all of the related WORK and for termination of the SUBCONTRACT in terms consistent with similar provisions of this PURCHASE ORDER.
 - 38.4.2 that in the event of discontinuance of part or all of the WORK or termination of the PURCHASE ORDER, the SELLER shall, at BUYER'S option, assign any such SUBCONTRACT to the BUYER. Unless such an assignment takes place, the SUBCONTRACTOR shall be responsible only to the SELLER who shall in turn be responsible to the BUYER.
 - 38.4.3 to secure all rights and remedies of the BUYER provided under the PURCHASE ORDER and must impose upon the SUBCONTRACTOR all of the general duties and obligations required to fulfill the PURCHASE ORDER.
- 38.5 Upon request by the BUYER, the SELLER shall within fourteen (14) days of such request, or such other time as may be specified by the BUYER, furnish to the BUYER:
 - 38.5.1 a list of all SUBCONTRACTORS utilised by the SELLER in connection with the WORK
 - 38.5.2 satisfactory evidence that all SUBCONTRACTORS have been paid on time and in full for WORK done or goods supplied in connection with the WORK.
- 38.6 The SELLER shall not replace the SUBCONTRACTOR unless:
 - 38.6.1 the SELLER proves extenuating circumstances; and
 - 38.6.2 prior approval is given by the BUYER.

39. SUBCONTRACTS

- 39.1 The SELLER shall not subcontract all or any part of the WORK.

40. LIENS

- 40.1 The SELLER agrees that it will not claim any lien or charge on the GOODS or any property of the BUYER in the possession of the SELLER or at the WORKSITE.
- 40.2 If at any time there shall be evidence of any lien, attachment, charge or claim of which, if established, the BUYER or its property might be subject and which is made against the SELLER, the BUYER shall have the right to retain out of any payment to be made under the PURCHASE ORDER an amount sufficient to indemnify the BUYER completely against such lien, attachment, charge or claim and set-off the same against any amount due to the SELLER under this PURCHASE ORDER or otherwise.
- 40.3 In the event of any lien, attachment, charge or claim upon the property of the BUYER after all payments hereunder have been made, the SELLER shall:-
 - 40.3.1 hold harmless and indemnify the BUYER from and against any claims, expenses and liabilities arising in any way from such lien, attachment, charge or claim upon the BUYER; and
 - 40.3.2 where necessary, refund to the BUYER the costs incurred by the BUYER in discharging any such lien, attachment, charge or claim imposed on the property of the BUYER in consequence of the default of the SELLER.
- 40.4 The SELLER shall immediately notify the BUYER upon becoming aware of any possible lien, attachment, charge or claim which may affect the PURCHASE ORDER or any part thereof.

- 40.5 If such liens, attachments, charges or claims fall inside the scope of the insurances of the SELLER, it shall remain the responsibility of the SELLER to furnish the BUYER with satisfactory written certification from the insurer of the SELLER that any such lien, attachment, charge or claim is covered by the insurance of the SELLER before the BUYER shall release any money withheld hereunder.

41. AUDIT RIGHTS OF THE BUYER

41.1 Scope of Audit

- 41.1.1 Without prejudice to any other audit rights provided for elsewhere in this PURCHASE ORDER, the BUYER shall have the right to audit the following matters:-
- 41.1.1.1 Payments made to the SELLER
 - 41.1.1.2 GOODS delivered by the SELLER
 - 41.1.1.3 Performance of the PURCHASE ORDER by the SELLER
 - 41.1.1.4 Health, safety and environment requirements
 - 41.1.1.5 Information security and confidentiality
 - 41.1.1.6 Business ethics
 - 41.1.1.7 Conflict of interest
 - 41.1.1.8 Permits, laws and regulations
 - 41.1.1.9 Quality assurance system
 - 41.1.1.10 Technical capabilities of all parties supplying GOODS and/or performing the PURCHASE ORDER.

41.2 Retention of RECORDS

- 41.2.1 The SELLER shall maintain and shall cause its SUBSELLER, MANUFACTURER, agents, suppliers and consultants to maintain accurate and correct RECORDS of all charges and accounts including gifts and entertainment expenses in connection with the PURCHASE ORDER and all transactions related thereto and shall retain all such records and accounts for a period of not less than thirty-six (36) months after the final payment under the PURCHASE ORDER or expiry or termination of the PURCHASE ORDER whichever is later.

41.3 Inspection and Reproduction of RECORDS

- 41.3.1 From the date of the PURCHASE ORDER until the time period specified above, the BUYER shall have the right and access at all reasonable times, to inspect and audit the RECORDS, and interview any staff of the SELLER, its SUBSELLER, MANUFACTURER, agents, suppliers and consultants which are deemed by the BUYER to be directly pertinent to the correctness of any documents relating to the audit rights described above, and to verify compliance to the PURCHASE ORDER terms and conditions.
- 41.3.2 The BUYER shall have the right to reproduce and retain any such RECORDS.

41.4 Claims for Omissions, Corrections or Errors

- 41.4.1 A written response to the BUYER'S claims for omissions, corrections or errors in charges and credits for the BUYER'S account shall be made by SELLER as soon as practicable, and in no event, later than thirty (30) days from the date of such claims, failing which the BUYER'S claim shall be deemed to be correct and final.

41.5 Inclusion of BUYER'S Audit Rights in Subcontracts

- 41.5.1 The SELLER shall ensure that the provisions of this Clause are included in all SUBCONTRACTS under this PURCHASE ORDER and all contracts entered by the SELLER to facilitate its performance of this PURCHASE ORDER.

42. INTELLECTUAL PROPERTY RIGHTS

42.1 Use Of Intellectual Property

42.1.1 Neither the BUYER nor the SELLER shall have the right of use other than for the purposes of the PURCHASE ORDER, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know how, trademark or process ("Intellectual Property") provided by the other party and the rights in such Intellectual Property shall remain with the party providing the same.

42.2 **Seller's Intellectual Property Rights**

42.2.1 Rights to any potential or registrable Intellectual Property in any country in the world shall vest in the SELLER where such rights result from:-

42.2.1.1 developments by the SELLER which are based wholly on data, equipment, processes, substances and the like in the possession of the SELLER at the date of the PURCHASE ORDER or otherwise produced outside of the PURCHASE ORDER; or

42.2.1.2 enhancements of or in the existing Intellectual Property rights of the SELLER,

42.3 **Buyer's Intellectual Property Rights**

42.3.1 Rights to any potential or registrable Intellectual Property in any country in the world shall vest in the BUYER where such rights result from:-

42.3.1.1 developments by the BUYER which are based wholly on data, equipment, processes, substances and the like in the possession of the BUYER at the date of the PURCHASE ORDER or otherwise produced outside the PURCHASE ORDER; or

42.3.1.2 enhancements of or in the existing Intellectual Property rights of the BUYER.

42.4 **Intellectual Property Arising Out Of Purchase Order**

42.4.1 Except as provided above, where any potential or registrable Intellectual Property right in any country in the world arises out of the PURCHASE ORDER and is invented during the term of the PURCHASE ORDER, the parties shall negotiate in good faith to vest such rights in both parties in proportion to the effort contributed by each party.

42.4.2 Where under this Clause an Intellectual Property right vests in the parties jointly, then the parties shall, unless otherwise agreed in writing, jointly file a patent or other registration application in that joint right.

42.5 **License To Use Intellectual Property Rights**

42.5.1 Where under this Clause an Intellectual Property right vests in one of the parties absolutely, such party shall give the other party a royalty-free, irrevocable, non-exclusive, non-transferable, worldwide license to use such Intellectual Property right, which shall not be sub-licensed, in the following manner:-

42.5.1.1 Where the Intellectual Property right vests in the BUYER, such license shall be deemed to be given to the SELLER solely for the purpose of the performance of the PURCHASE ORDER.

42.5.1.2 Where the Intellectual Property right vests in the SELLER, such license shall be deemed to be given to the BUYER solely for the purpose of performance, completion, use and maintenance of the PURCHASE ORDER and any product derived therefrom.

42.6 **Indemnity**

42.6.1 The SELLER shall save, indemnify, defend and hold harmless the BUYER from all claims, losses, damages, costs (including legal costs on a solicitor and client basis), expenses, and liabilities of every kind and nature for, or arising out of, any alleged or actual infringement of Intellectual Property right, arising out of or in connection with the performance of the obligations of the SELLER under the PURCHASE ORDER.

42.6.2 Subject to the above, the BUYER shall save, indemnify, defend and hold harmless the SELLER from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged or actual infringement of any patent or proprietary or protected right arising out of information, instructions or materials or equipment supplied by the BUYER.

42.7 **Claim**

42.7.1 In the event of any claim or action brought against the BUYER arising out of the matters referred to in INDEMNITY under this Clause, the SELLER shall be promptly notified thereof,

and shall, at its own expense, conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom, provided always that the SELLER shall consult the BUYER in all such matters and shall not make any settlement, admission or compromise without the prior approval of the BUYER, which approval shall not be unreasonably withheld.

- 42.7.1.1 The BUYER will not, unless and until the SELLER shall have failed to take over the conduct of the negotiations or litigations, make any admission which might be prejudicial to the SELLER.
- 42.7.1.2 The conduct by the SELLER of such negotiations or litigation shall be conditional upon the SELLER having first giving to the BUYER such reasonable security as shall from time to time be required by the BUYER to cover the amount ascertained or agreed as estimates, as the case may be, of any compensation, damages, expenses or cost for which the BUYER may be held liable.
- 42.7.1.3 The BUYER shall, on the request of the SELLER, afford all available assistance for the purpose of contesting any such claims or actions and shall be repaid by the SELLER all reasonable expenses incurred in so doing.

43. INDUSTRIAL RELATIONS

- 43.1 The SELLER shall make all reasonable efforts to maintain goodwill among the various regulatory bodies and with the general public. The BUYER shall act as prime initiator in contacts with any Malaysian Government departments or agencies on any matters relating to the PURCHASE ORDER, except for those covered under LICENCES, PERMITS, LAWS AND REGULATIONS.
- 43.2 The SELLER shall maintain good industrial relations, and shall consult the BUYER when requested to do so on all matters relating to industrial relations, including but not limited to, minimum rates of payments, allowances, amenities and overtime so that the interests of the BUYER shall not be prejudiced.

44. OUTSIDE EXPEDITING SERVICES

- 44.1 The BUYER reserves the right to engage third parties at its own cost for the purpose of expediting delivery of GOODS, including improvement of any process undertaken by the SELLER.
- 44.2 The SELLER shall grant, and procure from the SUBSELLER and the MANUFACTURER, reasonable access to sites upon request by the BUYER or the said third parties.

45. MEETINGS

- 45.1 Any costs incurred by the SELLER for the following meetings, at a venue determined by the BUYER, shall be for the SELLER'S account:-
 - 45.1.1 Pre-award meetings
 - 45.1.2 Pre-manufacturing meetings at the MANUFACTURER'S premises.
 - 45.1.3 Any other meetings deemed necessary by the BUYER.

46. ENTIRE CONTRACT

- 46.1 This PURCHASE ORDER constitutes the entire agreement between the BUYER and the SELLER and supersedes all prior negotiations, representations or agreements related to this PURCHASE ORDER, either written or oral except to the extent they are expressly incorporated.

47. QUALITY ASSURANCE SYSTEM

- 47.1 The SELLER shall perform, and ensure that its SUBSELLER and MANUFACTURER performs, the PURCHASE ORDER in conformity with the quality assurance system as specified in TECHNICAL SPECIFICATION and/or SCOPE OF SUPPLY.
- 47.2 The BUYER shall have the right to reject any GOODS not conforming to specified quality standards

as contained in TECHNICAL SPECIFICATION or SCOPE OF SUPPLY.

47.3 Notwithstanding the above, such non-conformity shall be deemed a DEFAULT OF THE SELLER.

48. GENERAL LEGAL PROVISIONS

48.1 Waiver

48.1.1 No failure or delay on the part of the BUYER nor any omission to exercise any right, power, privilege or remedy accruing to the BUYER under this PURCHASE ORDER shall impair any such right, power, privilege or remedy or be construed as a waiver thereof or any acquiescence of any default of the SELLER

48.1.2 Any amendment, discharge or waiver of the provision of this PURCHASE ORDER by the BUYER must be expressly given in writing by the BUYER REPRESENTATIVE and shall be limited to the particular instance described therein.

48.2 Assignment

48.2.1 The SELLER shall not assign the whole or any part of PURCHASE ORDER nor any benefit or interest under it without the prior written approval of the BUYER.

48.2.2 Any purported assignment without the written approval of the BUYER shall be absolutely void against the BUYER. In such event, the BUYER shall have no obligation whatsoever to the purported assignee. Any such purported assignment shall not release or relieve the SELLER of any of its obligations under the PURCHASE ORDER.

48.2.3 The BUYER shall be entitled to assign the whole or any part of the PURCHASE ORDER or any benefit or interest under it at any time without the approval of the SELLER provided that the BUYER notifies the SELLER of such an assignment.

48.3 Independent Contractor

48.3.1 The BUYER shall have the right to instruct and direct the SELLER only as to the results to be obtained under the PURCHASE ORDER. The SELLER shall be, and for all purposes shall be deemed to be, an independent contractor and not the agent or servant of BUYER. The BUYER shall not have any authority to supervise the employees, representatives of the SELLER, its SUBSELLER or MANUFACTURER; and accomplishing the PURCHASE ORDER shall be under the sole supervision and control of the SELLER.

48.3.2 The SELLER shall have no authority to make any statements, representations, or commitments of any kind or to take any action which shall be binding upon BUYER except as expressly provided for herein or as may be authorized in writing by BUYER.

48.4 Notifications

48.4.1 All instructions, notifications, agreements, authorizations, approvals and acknowledgments shall be in writing and addressed to the other Party's designated representative at the address stated in ADMINISTRATION PROCEDURES. All communication so made shall be deemed to have been properly given or made.

48.4.2 Written notice or instruction shall be deemed to have been received:-

48.4.2.1 upon confirmed receipt of delivery if delivered by hand;

48.4.2.2 upon confirmed transmission if sent by fax;

48.4.2.3 upon acknowledgement of receipt if sent by registered mail or courier.

48.4.2.4 upon acknowledgement of receipt of contents of e-mail (other than auto-reply) if sent by e-mail.

48.4.3 If the time of such deemed receipt is not during customary hours of business, notice shall be deemed to have been received at 8:00 a.m. on the first day of business thereafter.

48.4.4 Either party may change their address to which notices shall be sent by giving the other party written notice of such change.

48.4.5 The SELLER shall notify the BUYER as soon as possible of all things which in the opinion of the SELLER appear to be deficiencies, omissions, contradictions or ambiguities or conflicts with applicable law in the PURCHASE ORDER. The BUYER will review these items and issue the necessary instructions before the SELLER proceeds with the performance of any part of the WORK affected.

48.4.6 The SELLER shall notify the BUYER immediately of any impending or actual stoppages of work, industrial disputes or other matters affecting or likely to affect the performance of the WORK.