

## 1 APPLICABILITY AND DEFINITIONS

1.1 The following General Conditions shall apply to all orders issued by DEBAJ Industrial Services W.L.L. ("Buyer") wherein in these general terms and conditions are referred to.

1.2 These General Terms and Conditions ("GT& C") apply to purchase orders issued by BUYER, whether under a frame agreement or on a stand- alone basis, for the supply of Services as contemplated herein. When used herein, "Appendices" shall refer to the appendices to the frame agreement if any, and in its absence to the appendices to the purchase order.

1.3 "BUYER and/ or DEBAJ" shall mean the entity ordering Services under a PO.

"Contract", "Purchase Order" and "PO" are interchangeable and shall mean the purchase order document to which these GT& C apply and all contract documents belonging to and/ or applying to such purchase order (including any relevant design codes).

"PO Price" shall mean the total sum set forth in the PO payable by BUYER for the Seller's due and timely delivery of the Services.

"Services" shall mean the goods and services to be supplied by the Seller to BUYER under the Contract.

"Seller" shall mean the person or entity supplying goods, Work and Services to BUYER pursuant to the Contract.

"Work" shall mean any and all works that may be reasonably inferred from the terms of the contract such as (but not limited to) supplies and/ or services required of the Seller in order to design, manufacture and/ or deliver the goods.

1.4 All Contract documents shall be taken as mutually explanatory to one another. In case of conflict, the documents shall be interpreted and prevail in the following order of precedence:

a) the PO, including any particular terms and conditions incorporated into the PO ;

b) if applicable, the frame agreement or any other document such as the Results of Negotiation ("RON") under which the PO is issued;

c) the Appendices (including these GT& C).

1.5 Seller shall accept an order or suggest changes to it in writing within one week from receipt thereof. Lack of response shall be

construed as acceptance of the order in its entirety.

1.6 In no event shall the Seller's general terms and conditions or other terms of whatever kind apply, unless BUYER has expressly agreed thereto in writing.

1.7 The use of orders for reference and/ or advertising purposes requires the prior written approval of BUYER.

## 2. WORK

2.1 The Seller warrants that it has acquainted itself with all facts and circumstances relevant to the performance of its obligations under The Contract and that the Work will be performed in a timely, safe and workmanlike manner by qualified and efficient personnel and be of the highest professional quality, and that the Seller possesses all the necessary expertise, facilities and equipment required to perform the Work. Whenever the Services are destined under the Contract for integration into a specific workplace/ plant of BUYER or its customer, the Seller shall ensure necessary interfaces and interoperability with the said plant. Where the Work includes design, the Seller shall design the Product to have a design life of not less than twenty- five (25) years, unless specified otherwise in the Contract.

2.2 The Work shall not be subcontracted in whole or part without BUYER's prior written approval. The Seller shall remain liable at all times for any acts or omissions of any subcontractors.

2.3 In order to avoid the Seller's subcontractors exercising rights of retention BUYER is entitled to make direct payments to subcontractors which, provided they relate to legitimate claims of the subcontractor, shall be deemed to be payment in lieu of performance in relation to the Seller.

2.4 The Seller shall be responsible for its own interpretation of any documentation and information obtained. Any participation by BUYER in selecting any subcontractor, planning or designing of the Services, processing of any document, information, data, material and/ or software, or any review or approval of the same by BUYER, shall not release the Seller from its obligation to perform the Work and deliver the Services in full compliance with the terms of the Contract.

2.5 The Seller shall keep all Work- related data and documents for at least ten (10) years or any such longer Time required by applicable law.

### 3. CHANGES

BUYER shall have the right at any time to make changes in the specifications of any goods, delivery terms, scope or other provisions of the Contract, by means of a written notice to the Seller. If and to the extent that the changes requested by BUYER reasonably justify an adjustment of the price, delivery schedule and/ or other provision of the Contract, and if the Seller has notified the BUYER (together with substantiation) within ten (10) days that an adjustment is to be made, then an equitable adjustment may be made by BUYER. BUYER may request the Seller to commence the changes prior to having finalized the adjustment to the PO.

### 4. INSPECTION AND QUALITY ASSURANCE

- 4.1 The Seller shall implement an appropriate and recognized quality assurance programme to ensure that the Work and Services comply with the requirements of the Contract and provide BUYER with all test certificates and other documentation as required under the Contract or as BUYER may reasonably require. The Seller shall provide BUYER timely notification of any testing and BUYER and/ or any Third party authorized by BUYER shall be entitled to attend the tests.
- 4.2 BUYER and/ or any third party authorized by BUYER shall be entitled to inspect and test the Work at any reasonable time and shall be afforded full and free access to the relevant facilities of the Seller and/or subcontractors. Upon receipt of the Services, BUYER may, at its sole discretion, inspect the same or any part thereof at that time or at any time thereafter. If the Contract includes the carrying out of tests after its receipt by BUYER, then the Work shall not be deemed complete until such tests have been passed to the satisfaction of BUYER.
- 4.3 Any approval of a test by BUYER, or failure of BUYER to provide approval shall in no event relieve the Seller from any liability nor imply BUYER's acceptance of the Work or Services.

### 5. DOCUMENTATION/ DRAWINGS and MODELS

- 5.1 The Seller shall furnish as part of the Services, any operation and maintenance manuals, drawings, calculations, technical data, logic diagram, progress reports, quality confirmation certificates, bills of lading, certificates of origin, export authorizations and licenses, and any

such other documents as required under the Contract and/ or any applicable laws. If so required by BUYER, the Seller shall submit any such documents to BUYER for review and approval, no later than the date of the Purchase Order confirmation. Delivery of the Services shall not be deemed complete until delivery of all required documentation in accordance with the Contract has occurred.

- 5.2 The BUYER's agreement to drawings, calculations and other documents does not affect the sole responsibility of the Seller for its Services and/or for risks emanating from them. This also applies to proposals, recommendations and other involvement by the BUYER.

### 6. PACKING, TRANSPORTATION, DELIVERY AND EXPORT LICENSE

- 6.1 Irrespective of whether the transportation is provided by the Seller or BUYER, the Seller shall adhere to any relevant national or International applicable regulations in each case of shipping, packing and marking and material handling instructions provided by BUYER. The Seller shall in a timely manner provide detailed and accurate transport documentation to BUYER as BUYER may reasonably require. The Seller shall be responsible for all damage which occurs as a consequence of incorrect data in the binding declarations or through non adherence of existing regulations when handling dangerous goods (packaging, forwarding, storage etc.). The BUYER's obligations arising from the regulations on dangerous substances remain unaffected by this.
- 6.2 The Product shall be delivered in accordance with the delivery terms set out in the PO. Delivery terms shall be interpreted in accordance with Incoterms.
- 6.3 Delivery of the Services shall not be deemed to have occurred if the Services are not fully compliant with all the terms and conditions of the Contract, unless BUYER expressly agrees otherwise in writing.
- 6.4 **Export License** - The Seller is obligated to inform the BUYER in writing before the order confirmation, whether and to what extent national export licenses are necessary for the order as a whole or in part or similar legal or official requirements are to be fulfilled or the services are subject to export restrictions.

## 7. TRANSFER OF RISK AND TITLE

- 7.1 The risk of loss of or damage to the Services shall pass to BUYER upon delivery of the Services at the named destination.
- 7.2 Title to the Work and Product shall pass to BUYER on delivery or, if earlier, upon payment to the Seller of not less than fifty one per cent (51%) of the price of such Work or Services.
- 7.3 Any materials, components, tools, dies, equipment, consumables and other items belonging to or provided by BUYER, which are in the Seller's custody for any purposes, shall be clearly marked and recorded by the Seller as belonging to BUYER and during such custody shall be at the Seller's risk.

## 8. DELAYS

- 8.1 Time is of the essence and the Seller warrants that the Work will be performed in a timely manner and the Services will be delivered in accordance with the Contract on the specified delivery date. The Seller must notify BUYER immediately in writing if any delivery or performance is delayed or likely to be delayed beyond its specified date. . The notification shall list measures for expediting progress such as but not limited to the use of additional manpower and material, multiple shift and weekend work, premium means of transport (such as airfreight). Seller must bear the acceleration costs for its delay.
- 8.2 The Parties agree that it would be extremely difficult to ascertain and fix the actual damages BUYER would incur if Seller does not perform in accordance with the applicable guaranteed Delivery Dates. Except where BUYER has requested, by means of a written notice to the Seller, to postpone delivery and where the Seller is excused from the punctual performance pursuant to Clause 11 (Force Majeure), if the delivery of the Product (including full documentation) at the named destination is delayed beyond the delivery date, the Seller must pay liquidated damages, not as a penalty but as reasonable compensation for damages, without prejudice to the BUYER'S right to claim compensation from the Seller for any additional damage, arising out of or in connection with the delay. Unless stated otherwise, the liquidated damages due by the Seller for a delay will be, (.2%) of the purchase order price for each business day of delay and/ or pro rata temporis for any part of a week, but no more than 10%

(ten percent) of the total Contract Price. Liquidated damages are due from the Seller even without evidence of actual damage. The BUYER has the right to recover liquidated damages from the amount due to Seller.

## 9. PRICE AND PAYMENTS

- 9.1 The PO Price shall be firm and fixed and includes delivery of the Product in accordance with the Contract and performance of any and all other obligations set forth in the Contract. The PO Price is binding and Seller shall promptly pay, all levies, taxes, VAT at the statutory rate, fees, or duties applicable to the performance of the Work and the delivery of the Services at the named destination. Unless otherwise expressly agreed in writing, the prices are given FOB (designated place) in accordance with INCOTERMS.
- 9.2 Any payments shall be made in accordance with the terms specified in the PO and/ or relevant Appendix. Unless specified otherwise in the PO or relevant Appendix, the Seller shall be entitled to invoice for payment for the Services only when delivery in accordance with the Contract has occurred. Payments due by BUYER shall then be made within sixty (60) days after receipt of the Seller's proper invoice accompanied by the relevant documentation. BUYER shall be under no obligation to make any payment to the Seller if the Seller is in breach of contract and for so long as such breach continues. Payment by BUYER shall not be deemed to constitute an acceptance of the Services or Work.
- 9.3 Default shall occur following the due date only once an explicit written reminder has been sent allowing BUYER to cure the nonpayment within thirty (30) days. BUYER will not be in default of payment if it has in good faith been mistaken about its rights to object to the Seller's claims for compensation or to assert a right of retention.
- 9.4 **Set-off, Right of Retention** - The Seller is not entitled to set off any claim that it might have with BUYER against sums owing to BUYER unless such Seller claim is undisputed by BUYER or has been decided in the Seller's favor finally and conclusively pursuant to Clause 22 (Jurisdiction, Governing Law and Contract Language). BUYER is entitled to withhold payment from Seller until Seller has delivered to BUYER, or BUYER's designee, all of the Work, Services and or other documentation specified by the Contract and Seller has performed all obligations hereunder, including keeping BUYER's project and the

Services free from liens and encumbrances. All amounts, otherwise payable under the Contract, may be withheld pending

(i) acceptance of the Work and or Services from BUYER, and

(ii) resolution of any defaults, breaches, claims (indemnity, nonconformity, warranty or otherwise) or back charges under the Contract with Seller.

Disputes regarding the amount of the remuneration to be paid to the Seller do not entitle the Seller to suspend its services wholly or in part, not even temporarily.

9.5 **Bank Guarantee-** If requested by BUYER, Seller must furnish an irrevocable and unconditional bank guarantee, payable on first demand, to serve as a performance guarantee, as follows:

- The amount must be hundred per cent (100%) of the PO Price, unless stated otherwise;

- the text must be substantially in the form set forth by BUYER, therefore the Seller is encouraged at all times to enquire as to the appropriate format and language of the guarantee before its issuance so as to avoid further delay;

- the unconditional bank guarantee must be issued to BUYER within twenty (20) days after the date when the Letter of Intent ("LOI")/ Limited Notice to Proceed ("LNTP")/ Contract becomes effective; BUYER is entitled to call and make multiple draws under this unconditional bank guarantee for Seller's breach of the Contract and The unconditional bank guarantee must remain valid until the date which is Thirty (30) days after the expiry of the latest warranty period, which may be extended from time to time, in respect of all Services delivered under this Contract. The costs of issuing and maintaining the unconditional bank guarantee are to be borne by the Seller. The delivery of the unconditional bank guarantee, in accordance with the Contract, is a strict condition precedent to any payment required from BUYER under the Contract.

## 10. DEFECTS LIABILITY

10.1 In addition and without prejudice to all other warranties provided by the Seller under the Contract, the Seller warrants that (a) the Work and Services will be new, of good and satisfactory quality and fit for the purposes for which it is intended, free from any defect or

lack of conformity in design, workmanship and material and otherwise in strict compliance with all requirements of the Contract and (b) BUYER shall enjoy good and unencumbered title to the Work and Services and any related materials.

10.2 Unless otherwise agreed in writing by the Parties, the defects liability period shall be twenty- four (24) months from the date of delivery of the Services or twenty- four (24) months from the date when the Services were put into commercial use whichever period expires first. Repaired and replaced parts shall be subject to a new defects liability period of twelve (12) months as from the date when the remedied part is returned to service.

10.3 If during the defects liability period any part of the Work or Services are found to be defective or otherwise does not conform to the terms of the Contract, BUYER may, at its option, demand that the Seller remedy the defect by either repair or replacement at the Seller's expense, or opt to accept the defective Services subject to an equitable reduction of the PO Price. If the Seller fails to remedy the defect with due diligence and within the time specified by BUYER (or failing that within a reasonable time after BUYER's request), BUYER may remedy the defect itself or through a third party, at the Seller's expense and risk, without prejudice to any other rights and remedies of BUYER, including the right to terminate the Contract pursuant to Clause 17.1.1. Any costs incurred in the course of remedying defects, including the cost of dismantling, assembly, travel, freight, packaging, insurances, customs duties and other public taxes, tests and technical inspections shall be borne by the Seller. If the defect is so significant that the Services cannot be used for its intended purpose or such use is significantly impaired, or in the event of a recurring defect, BUYER may reject the Services and return it to the Seller at the Seller's expense and risk, and reclaim any sums paid, with interest.

10.4 BUYER may notify defects discovered during the defects liability period at any time provided only that it does so prior to the expiry of a period of thirty (30) days after the end of the applicable defects liability period. Any claims and remedies relating to defects notified in accordance with the foregoing may be enforced by BUYER at any time during a period of five years after BUYER's notification of the defect.

10.5 If the Services include any structures or civil works the limitation period with regards to the



integrity or stability of such structures and civil works and/ or safety thereof shall be 1 year or any longer statutory limitation period which is provided by the laws of the country of final destination of the services. Provided and as long as Services cannot be used for their contractual purpose due to subsequent performance of work by the Seller, the limitation period for defects shall be extended by the length of time required for the said rectification work. For Services repaired and/ or replaced under liability for defects the limitation period shall recommence upon acceptance of the repair or the replacement, but shall not exceed five years, or in the case of structures or civil works not more than 15 years from the transfer of risk.

10.6 **Spare Parts-** The Seller warrants that for every order spare and wear parts are available for a period of at least (ten) 10 years following expiry of the limitation period for the liability for defects.

## 11. FORCE MAJEURE

11.1 "Force Majeure" means an event or circumstance which satisfies all of the following requirements:

(i) is beyond the reasonable control of the Party relying thereon;

(ii) could not reasonably have been foreseen at the date of the Contract;

(iii) could not have been prevented, mitigated or overcome by the affected Party (and/ or any third party within the control of such Party, including any Subcontractor), acting and having acted with all due diligence and

( iv) is not an act, event or condition, the risks or consequences of which the affected Party has expressly agreed to assume under the Contract; including, subject to the conditions set out herein, acts of God, war, earthquake, terrorist acts and national strikes or labour disputes. For the avoidance of doubt, factory unrest and employee strikes of any kind (except as expressly stated above), as well as production bottlenecks, or the lack of the required import licenses or import authorizations of the authorities, lack of qualified personnel, lack of material, or financial problems on the part of the affected Party are specifically excluded as Force Majeure events.

11.2 **Consequences of Force Majeure-** If the performance by either Party of its obligations under the Contract is, in whole or in part, prevented or delayed by reason of Force

Majeure, then such Party will not be considered in default and will be excused from the performance or punctual performance, as the case may be, of such obligations, as long as and to the extent that performance of those obligations is affected by the Force Majeure. Any affected obligations, including the corresponding obligations of the Party not affected by Force Majeure, as the case may be, will be equitably adjusted; provided however that, unless otherwise expressly provided herein, the Seller will not be entitled to compensation for additional costs incurred by virtue of such Force Majeure.

11.3 **Party Relief Conditions-** A Party intending to seek Force Majeure relief under the Contract will not be entitled to such relief unless such Party: a) within three (3) days after becoming aware of the occurrence of Force Majeure, gives notice to the other Party of its intent to claim Force Majeure; b) within ten (10) days after becoming aware of the occurrence of Force Majeure, submit to the other Party sufficient detail regarding the event or circumstance, including its causes and consequences on the performance of the Contract, and all reasonable evidence serving to establish the Force Majeure; if the Seller seeks an extension of time due to Force Majeure, it must in particular provide appropriate evidence that the Force Majeure has in fact impacted the timely delivery of the Services and/ or Goods; c) without undue delay, undertakes all reasonable steps to mitigate the effect of the Force Majeure on the performance of the Contract.

## 12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

12.1 Each Party shall maintain in strict confidence any proprietary or confidential information disclosed by the other Party in connection with this Contract.

12.2 All information and know- how including drawings, specifications and other data provided by BUYER in connection with the Contract as well as any documents or data derived from such information and know- how shall remain at all times the property of BUYER or its affiliate(s) (as the case may be) and may be used by the Seller only for the purpose of performing the Contract. Any intellectual property arising from the performance of the Contract shall become the property of BUYER.

12.3 The Seller represents and warrants that the Services, and any material, design or any other works or information provided by or on behalf

of the Seller, including the use thereof, does not infringe any intellectual property right of a third party, and the Seller will defend, indemnify and hold harmless BUYER and BUYER's customers from and against all claims and liabilities based on alleged or actual infringement thereof. In case of infringement, BUYER, at its option, may require the Seller

(a) to procure at the Seller's expense the necessary rights,

(b) to modify or replace the Services or part thereof such that it no longer infringes, or

(c) to refund the PO Price, with interest, upon the BUYER's return of the infringing Services.

### 13. COMPLIANCE

13.1 The Seller warrants that:

(a) the Work and Services are in strict compliance with all applicable laws and regulations, including environment, health and safety (EHS);

(b) the Work is performed in accordance with good international power engineering practice and the Work and Services conform to the applicable codes and standards and to all other requirements of the Contract;

(c) Services that are (including any packaging) supplied to BUYER do not include arsenic, asbestos, lead or any other hazardous substances restricted by international or nation law or by good international power engineering practice; and

(d) Services shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation.

13.3 Any Services or Work which does not comply with the requirements of this Clause shall be considered to be defective and any breach of this clause shall be considered to be a material breach of which the BUYER reserves the right to request a cure period not to exceed 30 (thirty) days from the date of notification. If Seller fails to cure within this prescribed period then BUYER reserves the right to terminate the contract under Section 17 of this Agreement. The Seller shall indemnify and hold harmless BUYER from and against all claims, loss or damage arising in connection with the Seller's breach of its obligations under this Clause.

### 14. THIRD PARTY CLAIMS

The Seller shall indemnify, hold harmless and defend BUYER, its agents, employees, officers

and directors, from and against any and all claims, liabilities and expenses ( including legal fees) arising out of or in relation to the performance or nonperformance of the Contract and resulting in bodily injury or death or damage to or destruction of third party property.

### 15. PRODUCT LIABILITY AND INSURANCE

15.1 **Product Liability-** To the extent that the Seller is responsible for a product defect or the violation of statutory/ official safety regulations it must hold the BUYER harmless from any damages claims by third parties upon first written demand. In addition, the BUYER is entitled to be reimbursed for any expenses which it has, in particular, in connection with any product recalls arranged by it as a result of the defect or the violation of existing safety regulations; the BUYER shall first inform the Seller, as far as is possible and reasonable, concerning the nature and extent of recalls. Any further statutory claims remain unaffected.

15.2 **Insurance-** As from the date when the Contract becomes effective, until thirty (30) days after the expiry of the latest Defect Liability Period, (as such may be extended from time to time pursuant to Clause 1), the Seller must procure and maintain, and cause its Subcontractors to procure and maintain, appropriate insurance coverage, with a reputable insurer, acceptable to BUYER, with respect to the subject matter of the Contract. Upon BUYER's request, the Seller must promptly furnish BUYER with insurance certificates evidencing such insurance coverage (including those per statutory requirement). Any such insurance must name BUYER as an additional insured, loss payee and contain a waiver of rights of subrogation against BUYER, its subsidiaries, affiliates and their respective employees. The Seller will be liable for all deductibles and/ or excesses except where BUYER is solely responsible for the occurrence giving rise to any insurance claim involving the Work, Services or Contract. Unless otherwise agreed, Seller shall obtain Comprehensive general liability and product liability insurances.

### 16. SUSPENSION

BUYER may at any time instruct the Seller to suspend the performance of the Work or portion thereof by giving notice to the Seller. The Seller shall take all reasonable steps to minimize costs associated with the suspension. If and to the extent that the suspension exceeds three (3) months, BUYER

shall reimburse the Seller for the direct costs (Excluding any profit element) attributable to the suspension, provided that the same are reasonable and properly evidenced by the Seller. The Seller shall not suspend performance, except with the express written consent of BUYER.

## 17. TERMINATION

### 17.1 Grounds for Termination

**17.1.1 Termination for Default-** Without prejudice to any other rights and remedies of BUYER, BUYER may terminate forthwith the whole or part of the Contract by written notice to the Seller, without liability to the Seller, if (i) the Seller is in material breach of its obligations, including any breach of the Contract which the Seller has failed to remedy within thirty (30) days of being notified of the same by BUYER; (ii) the Seller is in delay and fails to provide adequate assurances that delivery of the Services in accordance with the Contract will occur within four (4) weeks after the delivery date stated in the Contract, or, in case BUYER cannot reasonably be expected to wait for such period, within such shorter time as may be reasonable in the circumstances; (iii) the Seller becomes bankrupt or insolvent, or makes an arrangement with its creditors, has a receiver or administrator appointed, commences winding up or similar proceedings or ceases or threatens to cease to carry on business or becomes unable to pay its debts as they fall due.

**17.1.2 Termination for Convenience-** BUYER may at any time terminate the Contract, in whole or in part, for convenience, by means of written notice to the Seller.

### 17.2 Consequences of Termination

**17.2.1 Termination for Default-** BUYER may, at its option, reject all or part of the Work, and/ or complete the Work or any part thereof itself or through any third party at the costs and risks of the Seller. The Seller shall compensate BUYER for all costs and expenses incurred to complete the Work and for any damage or loss suffered by the BUYER in the event that the Work or Services fails to comply with the terms of the Contract, including late completion. BUYER is entitled to withhold payment of any amounts due to the Seller until the amounts due by the Seller have been established.

**17.2.2 Termination for Convenience -** BUYER may opt to complete the Work or any part thereof itself or employ any third party to do so. With respect to items of Work not compensated

pursuant to Clause 17.2.3 below, the Seller shall be entitled to an equitable amount to cover its direct, unavoidable costs incurred or committed by it prior to termination, provided however that such amounts be properly established and do not exceed, in the aggregate, the total Purchase Order. The Seller shall make every reasonable effort to mitigate the termination costs.

**17.2.3 General.** Upon BUYER's request, the Seller shall deliver to BUYER any parts of the Work, whether or not completed, and do and procure all things necessary to enable BUYER to complete the Work, or have it completed by a third party and to vest and secure BUYER's good title in the Work and Services. For any items of Work delivered in accordance with the Contract, the Seller shall be entitled to an amount equal to the value of such items, less the amount of BUYER's prepayments, if any.

## 18. SELLER CLAIMS

The Seller shall only be entitled to make a claim in the circumstances set forth expressly in the Contract. As a condition precedent to any claim, the Seller shall give written notice to the BUYER of any circumstance which in the Seller's view might give rise to a claim within three (3) days of the occurrence. Thereafter, Seller shall submit without undue delay (within 28 days of such notice) any claim in writing to BUYER, including all such substantiation and evidence as reasonably practicable.

## 19. CONSEQUENTIAL DAMAGE AND LIMITATION OF LIABILITY

BUYER will not be liable to the Seller, whether in contract, tort, strict liability or otherwise, for loss of production, loss of use, loss of goodwill or reputation, loss of savings or profit, loss of revenue, loss of contract, or for any indirect, incidental, or consequential loss or damage suffered by the Seller.

The limit of liability of the Seller to the BUYER under the Contract shall not exceed 100% of the order value in addition to the liability of liquidated damages. This shall not limit liability in case of Insurance clause, indemnities, intellectual and industrial property rights, warranty obligations, fraud, gross negligence, willful default or reckless misconduct or any breach of the Contract by the Seller or its representatives.

## 20. MISCELLANEOUS

- 20.1 **Amendments** -. Except where the Contract expressly states otherwise, any amendment to the Contract shall be binding only if in writing and signed by duly authorized representative(s) of the Parties.
- 20.2 **Assignments**- BUYER may assign the Contract or any part thereof to its customer or to any affiliate or subsidiary of BUYER upon written notice to the Seller. The Seller shall not assign this Contract or any part thereof without BUYER's prior written consent.
- 20.3 **Entire Agreement**- The Contract shall be and incorporate the entire agreement and understanding between the Parties in relation to all matters contained therein and supersedes any previous written or oral agreements, negotiations, commitments, communications and representations of any kind.
- 20.4 **No Waiver**- Neither Party's rights shall be prejudiced or restricted by any indulgence or forbearance extended by such Party or by any delay in exercising or failure to exercise any right and no waiver by either Party of any breach shall operate as a waiver of any other or further breach, whether of a like or different character.
- 20.5 **Survival of Obligations**- Without prejudice to any specific provision in this Contract, any obligations and duties which by their nature extend beyond the expiration or termination of the Contract, including the provisions of Clause 13 (Compliance), Clause 1 (Defects Liability Period), Clause 12 (Confidentiality and Intellectual Property Rights) and Clause 2 (Limitation of Liability) will survive the expiration or termination of this Contract.
- 20.6 **Partial Invalidity**- In the event of individual contractual provisions being or becoming invalid, the validity of the remaining contractual provisions shall remain unaffected. The contractual parties undertake to replace the invalid contractual provisions immediately by means of an amendment to the order by a provision which is closest to the economic outcome of the invalid contractual provision.
- 20.7 **Notices and Communications**- Any notice to be given to either Party under the Contract shall be in writing and delivered by hand or sent by courier, post or facsimile to the respective addresses stated in the PO. Any such notice shall be deemed to have been given (a) if delivered by hand, on the date of delivery or refusal to accept delivery, (b) if sent by facsimile, on the first business day in the receiving party's country after dispatch, (c) if sent by courier or post, on the date of delivery.
- Either Party may change its nominated address by written notice to the other Party. Communications dealing with day- to- day business may be made by electronic mail.
- 20.8 **Independent Seller**- The Seller hereby acknowledges that it is an independent seller. The Contract will not be interpreted or construed to create any relationship of agency, association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any contract or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party, unless expressly agreed otherwise in writing.
- 21. PLACE OF PERFORMANCE**
- If no specific place of performance is mentioned elsewhere in the Order, the place of performance shall be the agreed place of use of the Services.
- 22. JURISDICTION, GOVERNING LAW AND CONTRACT LANGUAGE**
- 22.1 BUYER and Seller shall acknowledge that the Purchase Order has been negotiated primarily in the Country from which the Buyer issues this Purchase Order. Therefore, this Purchase Order will be governed and construed according to the laws of that Country without regard to any conflict of laws principles or theories.
- 22.2 Place of jurisdiction for all types of proceedings shall be the registered office of BUYER. The BUYER may also bring an action against the Seller in the Seller's ordinary place of jurisdiction.
- 22.3 The language of this Contract shall be English and all communications in relation thereto shall be delivered in English unless otherwise agreed.
- 23. CONTINUED PERFORMANCE**
- Unless the Contract has already been suspended and/ or terminated pursuant to the appropriate provisions, the Seller will in every case proceed with the performance of all of its obligations under the Contract during and notwithstanding any dispute resolution and/ or arbitration proceedings or litigation.