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Title <b>Form, Purchase Order Terms And Conditions</b>		

## **Purchase Order Terms And Conditions**

In these General Terms and Conditions of Purchase, "Buyer" shall mean: Systems on Silicon Manufacturing Co. Pte. Ltd., a Singapore Corporation, incorporated under the laws of Singapore and "Supplier" shall mean: the person or legal entity supplying goods or services to Buyer.

### **1 AGREEMENT**

- 1.1 Buyer's purchase order, including these general terms and conditions of purchase ("Terms and Conditions"), is Buyer's offer to Supplier. Upon acceptance by Supplier, either by acknowledgement, commencement of services or shipment of goods, by delivery of any items ordered or otherwise, Buyer's purchase order, including these Terms and Conditions, shall be a binding contract ("Agreement").
- 1.2 These Terms and Conditions shall constitute all of the terms and conditions and any attachments which form an integral part thereof between Buyer and Supplier unless specifically agreed otherwise in writing by Buyer. Buyer does not agree to and expressly rejects any proposed addition, alteration or deletion by Supplier (whether in a quotation, order acknowledgment, invoice or any other document or communication) to the Terms and Conditions. Any terms and conditions set forth on any document or documents issued by Supplier either before or after issuance of any document by Buyer setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Buyer, and any such terms and conditions shall be wholly inapplicable to any purchase made by Buyer and shall not be binding in any way on Buyer. No agreement constitutes an acceptance by Buyer of any other terms and conditions and Buyer does not intend to enter into an agreement other than under these Terms and Conditions. Any changes in these terms and/or the Agreement must be specifically agreed to by Buyer in writing.
- 1.3 As used herein, the term "goods" shall include both tangible and intangible goods, including software, service requirements, spare parts and any related software and/or documentation that may accompany the goods. Reference to "goods" shall where appropriate be deemed to include services. The term "Affiliate" shall mean any entity, which, directly or indirectly, controls, is controlled by or is under common control with Supplier or Buyer.

### **2 TIMING, CHARGES, REPORTING, AND RIGHT TO AUDIT**

- 2.1 Time is of the essence for the purposes of Supplier's obligations under this Agreement.
- 2.2 In the event Supplier for any reason anticipates any difficulty in complying with any agreed delivery date or otherwise in accordance with any requirement of the Agreement, Supplier shall promptly notify Buyer in writing and Buyer may at its sole and absolute discretion agree whether or not to vary the agreed delivery date or any other requirement. Supplier shall use its best efforts to accommodate any reasonable request by Buyer to reschedule confirmed delivery dates, or to change other parts of any Agreement.
- 2.3 Supplier shall satisfy and comply with SSMC's onsite audit request within one month of audit notification.
- 2.4 Upon Buyer's request, Supplier shall without delay provide information in writing concerning the status of any order, shipments due and payments and such other items relating to the business flow between Supplier and Buyer as Buyer may request. Supplier undertakes to inform Buyer immediately when it anticipates constraints on its capacity to supply goods as ordered by Buyer, in which case Supplier will provide suitable assurances to Buyer that its requirements will be adequately serviced.



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- 2.5 Supplier and its subcontractors shall keep accurate records and books of accounting showing all charges and related expenses incurred in the services hereunder. Said records shall be maintained in conformance with generally accepted accounting principles and procedures. Buyer shall have the right to inspect such records and perform audits for three (3) years from the date of delivery, on Supplier's or its subcontractors' premises during business hours, or to assign said audits to outside parties.

### **3 GOODS**

- 3.1 The goods shall comply with and fulfil all warranties extended, express or implied, whether under this Agreement and/or by law. As a minimum requirement, all goods shall comply with all applicable quality and certification standards. Where the Agreement provides for installation, commissioning or any other work to be carried out by Supplier, such work shall be executed with good workmanship and using proper materials.
- 3.2 Where goods include software. For all software, including without limitation device drivers, firmware and any necessary software for the proper operation and support of the goods (collectively "Software"), Buyer and its Affiliates are granted a perpetual, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide right and license to use, reproduce, prepare derivative works of and distribute the Software in connection with Buyer's distribution and support of the goods including without limitation distribution in electronic form (e.g. via Buyer's website). Supplier agrees to provide all updates and modifications to the Software to Buyer during the term of the Agreement without additional charges. Any license fees for Software shall be included in the purchase price or any other amounts payable under the Agreement.
- 3.3 Where goods include services.
- (a) The description of work, including any deliverables, as delineated in the Agreement, describes the services that Supplier will perform and the fees which Buyer will pay in return. No work is to be performed hereunder until Supplier receives a purchase order from Buyer. Supplier will begin work on the date referenced in the Agreement and, unless terminated sooner, the Agreement will end when the services are completed.
  - (b) Buyer will notify Supplier in writing within thirty (30) days of receiving a deliverable whether it accepts or rejects that deliverable. Buyer may reject any deliverable which does not comply with the description of work and/or with Buyer's standards. If Buyer fails to notify Supplier within the specified time, Buyer will be deemed to have accepted the deliverable. If Buyer rejects it, Buyer may either terminate the Agreement pursuant to **Clause 29** or allow Supplier an opportunity to revise the deliverable to render it acceptable to Buyer.
  - (c) At least once a month, Supplier will report to Buyer on the status of the work, including any deliverables. On reasonable notice, Buyer may inspect Supplier's work in progress and receive copies of it.
  - (d) To the extent Supplier, in performing this Agreement, produces new work product, including without limitation designs, documentation, Software, customer lists, inventions, creations, works, devices, masks, models, work-in-process, and deliverables ("Work Product"), all such Work Product shall be the property of Buyer. Supplier agrees to assign and hereby expressly assigns to Buyer all rights, title, and interest in and to the Work Product and related intellectual property rights, including but not limited to any and all moral rights Supplier may have in any Software which is a part of the Work Product. Supplier also hereby forever waives and agrees never to assert any and all moral rights Supplier may have in any Work Product, even after termination of Supplier's work for Buyer. During and after this Agreement,



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Supplier will assist Buyer in every way, at Buyer's expense, to secure, maintain and defend for Buyer's benefit all copyrights, patent rights, mask work rights, trade secret rights and other proprietary rights in and to the Work Product.

- (e) Buyer acknowledges that from time to time Supplier may have pre-existing intellectual property rights which Supplier wishes to incorporate into the Work Product under this Agreement or which may be necessary for the utilization by Buyer of such Work Product ("Supplier's Related Rights"). Unless otherwise agreed in advance, Supplier hereby grants Buyer, and its Affiliates, a perpetual, royalty free, irrevocable, worldwide, non-exclusive, transferrable license to use, disclose, reproduce, modify, license and distribute Supplier's Related Rights. Supplier's Related Rights, if applicable, will be specifically outlined in this Agreement.
- 3.4 Where goods include drawings, tools and/or materials. Any specifications, drawings, information, tools, moulds, masks, jigs, dies and other materials furnished to Supplier or funded or paid for by Buyer (whether separate or as a part of the unit price), in whole or in part, shall: (i) remain or become as of the moment of completion thereof, Buyer's property, provided the risk therefor (including risks of loss or damage) remains with Supplier until delivery to Buyer, (ii) if use thereof by Supplier is allowed by Buyer, be used exclusively for the purposes of the Agreement, be properly used, maintained and kept in good working condition at Supplier's expense, (iii) be clearly marked as Buyer's property and be kept in separate storage when not in use, and (iv) be delivered to Buyer promptly on Buyer's demand. Supplier shall inform any third parties who might seek recourse thereon of Buyer's proprietary right; Supplier shall immediately inform Buyer of any such event. Supplier shall take out adequate insurance, mentioning Buyer as beneficiary, for all property of Buyer in the possession of Supplier.
- 3.5 Where goods are dangerous or hazardous. In the event of dangerous or hazardous goods, Supplier shall provide to Buyer written and detailed specifications of the composition of such goods and of all laws, regulations and other requirements relating to such goods in order to enable Buyer to properly transport, store, process and use such goods. Supplier shall upload the key parts critical parameters as defined with SSMC's user and ensure that they are within specification.

#### **4 DELIVERY**

- 4.1 All goods shall be delivered Delivery Duty Paid ("DDP", latest version of Incoterms as issued by ICC, Paris, France) and risk and title to the goods (free and clear of any encumbrances) shall pass to Buyer on delivery, unless expressly otherwise agreed in writing by Buyer.
- 4.2 Supplier shall make no deliveries before the agreed delivery date(s) and Buyer shall not be liable for any costs caused by or related to production, installation, assembly, commissioning or any other work related to such goods prior to delivery, except as explicitly agreed to by Buyer.
- 4.3 Supplier shall pack, mark and ship the goods in such manner as to prevent damage during transport and which facilitates unloading, handling and storage.
- 4.4 Supplier shall mark all containers with necessary lifting, handling and shipping information and also purchase order numbers, release numbers, dates of shipment, and the names of the consignee and consignor.
- 4.5 An itemized packaging sheet must accompany each shipment.

#### **5 INSPECTION**

- 5.1 Buyer shall have the right to inspect or test the goods at all times and places.



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- 5.2 If Buyer receives goods or services with defects or nonconformities, whether or not apparent on inspection, Buyer reserves the right to require, at its option, re-performance or a refund or replacement, as well as transportation costs and payment of damages. Goods rejected and/or goods supplied in excess of those ordered or delivered in advance of the delivery schedule may, in addition to Buyer's other rights, be returned to Supplier at Supplier's expense, including all expenses of unpacking, examining, repacking and reshipping. Irrespective of any prior inspections or the point of delivery pursuant to the applicable Incoterm, Supplier shall bear all risks of loss, damage, or destruction for nonconforming goods. Supplier shall also bear the same risks with respect to goods rejected by Buyer. Buyer shall only be responsible for loss to the extent attributable to the gross negligence of its employees.
- 5.3 For the avoidance of doubt, nothing contained in this Agreement and no payment, inspection, testing and/or acceptance of any goods by Buyer shall relieve Supplier of any of its obligations under the Agreement (including without limitation obligations of testing, inspection and quality control), nor shall it constitute acceptance or approval of any goods or constitute or operate as a waiver of any defect, nonconformity or any rights or remedies available under the Agreement or at law.

## **6 PRICES**

- 6.1 All prices are inclusive of all taxes and duties except to the extent the same are to be borne by Buyer pursuant to the applicable Incoterms. All such taxes and duties deemed included in the price shall be borne by Supplier, and Supplier shall pay such taxes and duties itself or, where these have been paid by Buyer, reimburse Buyer for such taxes and duties.
- 6.2 Supplier warrants that the prices for goods will not be less favorable than prices applicable to sales by Supplier to any other customer purchasing like quantities of substantially comparable products.
- 6.3 Unless otherwise specified, when the price under this Agreement is based on the weight of ordered goods, such price covers net weight of material ordered only. Any charges for boxing, crating, handling, storage or other packing requirements shall be stated separately on Supplier's invoice.

## **7 INVOICES AND PAYMENT**

- 7.1 Supplier shall submit invoice for payment (a) in accordance with the payment schedule agreed between the parties (if any); or (b) if no payment schedule is agreed between the parties, after the goods are delivered and (if applicable) installed and commissioned.
- 7.2 Invoices shall be submitted electronically and shall contain the following information: purchase order number, item number, description of items, sizes, quantities, unit prices, Supplier's VAT / GST code, information legally required in Buyer's country and extended totals in addition to any other information specified elsewhere herein.
- 7.3 Unless Buyer decides to raise a dispute relating to the goods, Buyer shall pay such properly submitted invoice within (a) the time period specified in the applicable purchase order or (b) if no time period is specified on the purchase order, then the lesser of seventy-five (75) days from the end of month of the invoice date or the maximum payment period permitted by law. Notwithstanding the foregoing, payment of invoice shall not constitute acceptance of goods or services and shall be subject to adjustment for errors, shortage, defects in goods or other failure of Supplier to meet the requirements of the Agreement.
- 7.4 Supplier shall accept payment for the goods regardless whether payment is made by Buyer or any of its Affiliates.



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7.5 Buyer shall, at all times, have the right to set off any amounts owed by Supplier or any of its Affiliates to Buyer or any of its Affiliates against amounts owed by Buyer or any of its Affiliates to Supplier or any of its Affiliates whether under this Agreement, any other agreement, open invoices or otherwise. Supplier acknowledges and agrees that any debt of Buyer to Supplier may be paid on behalf of Buyer by any of its Affiliates and/or any third party designated by Buyer. Supplier will treat such payment as if it were made by Buyer itself and Buyer's debt to Supplier will automatically be satisfied and discharged for the amount paid by such Affiliate or third party.

## **8 INSURANCE**

8.1 Supplier will maintain the following forms of insurance with insurers acceptable to Buyer, having a minimum A.M. Best rating of A-,VII:

- (a) worker's compensation insurance, covering occupational disease within statutory limits, and employer's liability insurance with limits of not less than US\$1,000,000;
- (b) comprehensive general liability insurance, under the Insurance Services Office (ISO) Commercial General Liability occurrence form, including coverage for premises and operations, contractual liability, broad form property damage, and products and completed operations with limits of liability of no less than US\$1,000,000 each occurrence, US\$2,000,000 general aggregate, and US\$2,000,000 products/completed operations aggregate and contractual liability coverage for the indemnity obligations of this Agreement;
- (c) if Supplier is providing professional services under this Agreement, Supplier will maintain Professional Liability Insurance covering liability arising out of negligent acts, errors, or omissions, including, but not limited to, copyright and trademark infringement, with policy limits of not less than US\$2,000,000 each occurrence and US\$2,000,000 aggregate, whether this coverage is on a separate policy or is endorsed on to the vendor's general liability policy; and
- (d) if a licensed vehicle will be used in connection with the performance of this Agreement, Supplier will maintain automobile liability insurance covering all owned, hired, rented, and non-owned vehicles with minimum limits of liability as follows: bodily injury and property damage combined single limit of not less than US\$1,000,000 per occurrence, or if limits are obtained on a per person and per accident basis, then not less than US\$1,000,000 per person and per accident for bodily injury, and US\$1,000,000 per accident for property damage.

8.2 The use of umbrella or excess liability insurance to achieve the above required liability limits will be acceptable, provided that such umbrella or excess liability insurance coverage meets the individual policy requirements identified above.

8.3 Supplier will provide a waiver of subrogation against Buyer regarding the insurance specified in **Clause 8.1(a)**, and will name Buyer and its officers, directors, employees, and Affiliates, as additional insureds under all other specified insurance.

8.4 Supplier's insurance will be designated as primary. Any deductibles or self-insured retentions are the sole responsibility of Supplier and do not reduce or replace the obligations or indemnity requirements provided in this Agreement.

8.5 Supplier will not accept a purchase order or perform any services until such time as it may have in force insurance in the forms and of the types specified in this **Clause 8**. Promptly upon commencement of this Agreement, and upon Buyer's reasonable request thereafter, Supplier will provide appropriate certificates or other evidence of the above insurance coverages to Buyer.



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- 8.6 Supplier will provide Buyer with at least thirty (30) days of advance written notice of the expiration, cancellation, material adverse alteration, or termination of any insurance policy providing any of the above coverages.
- 8.7 The procurement and maintenance of insurance specified in this **Clause 8** will not limit or affect any liability which Supplier might have by virtue of this Agreement or otherwise.

## **9 CHANGES**

- 9.1 Buyer may at any time, by a written and/or verbal order and without notice to sureties or assignees, suspend performance hereunder, increase or decrease the ordered quantities or make changes within the general scope of this Agreement in any one or more of the following ways: (a) applicable drawings, designs or specifications; (b) method of shipment or packing, and/or, (c) place of delivery and/or delivery schedule.
- 9.2 If any such change causes an increase or decrease in the cost of, or the time required for performance of this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly, subject to Buyer's agreement in writing. No claim by Supplier for adjustment shall be valid unless asserted within twenty (20) days from the date of receipt by Supplier of the notification of change provided, however, that such period may be extended upon the written approval of Buyer.
- 9.3 Nothing in this **Clause 9** shall excuse Supplier from proceeding with the Agreement as changed or amended.

## **10 CONTINUITY OF SUPPLY**

- 10.1 In the event that Supplier is in default under the Agreement or Buyer is of the reasonable opinion that Supplier will or will likely be in default of the Agreement, Buyer may notify Supplier of its intent to have the goods manufactured (or services performed) directly by Supplier's designated manufacturer or subcontractor (hereafter "**Subcontractor**") or by any third party designated by Buyer as stipulated below if such default is not remedied within fourteen (14) days or if within same period no precautions are taken by Supplier to Buyer's reasonable satisfaction to prevent future defaults.
- 10.2 If Supplier does not remedy such default within such fourteen (14) day period, Buyer will have the right to have the affected goods manufactured or services performed directly for Buyer by the Subcontractor. At the same time Buyer provides notice to Supplier, Buyer will have the right to contact the Subcontractor and work with the Subcontractor to ensure that the Subcontractor will be ready to ship goods to or perform services for Buyer immediately if Supplier does not cure the default or does not take precautions to Buyer's reasonable satisfaction to prevent future defaults within the aforesaid period of fourteen (14) days.
- 10.3 In the event that Supplier does not use a Subcontractor for production of the goods or performance of services or the Subcontractor is unable or unwilling to manufacture and sell the goods directly to or perform services directly for Buyer, Supplier will immediately provide to Buyer all materials, specifications and other items necessary to enable Buyer, or a third party designated by Buyer, to manufacture, support, distribute, license and sell the goods or perform the services ("Materials"). In addition, Supplier grants to Buyer a worldwide, royalty free, irrevocable, non-exclusive right, under all necessary intellectual property rights, to: (a) use, execute, reproduce and prepare derivative works of the Materials for the purposes of making, manufacturing and supporting the goods and performing the services, (b) distribute and sell such goods, and (c) authorize third parties to do any of the foregoing on Buyer's behalf. The Materials will be provided to Buyer's third party manufacturer or service provider under a non-disclosure



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agreement and such third party manufacturer or service provider will only be permitted to use the Materials to manufacture the goods or perform the services for Buyer. Supplier agrees to extend its warranty and indemnity obligations as set forth under **Clauses 21** and **22**, to any goods manufactured or services performed by Subcontractor or a third party pursuant to the provisions of this **Clause 10**. Supplier further warrants that in the event Supplier is in default under the Agreement, that the Subcontractor shall be wholly compliant with SSMC's Code on Sustainability.

## **11 SUPPLY CHAIN SECURITY**

Supplier is committed to safe and secure supply chains by participating in governmental programs on supply chain security like the US Customs and Border Protection program C-TPAT, the respective Authorized Economic Operator programs (AEO) and other supply chain security programs. In order to meet the conditions as laid down in these programs, Supplier does have an internal Supply Chain Security Framework in place. Supplier and Personnel shall comply with all SSMC's procedures and policies in relation to Supply Chain Security (<https://www.ssmc.com/Sustainability>), when performing services for SSMC and at SSMC's facilities.

## **12 CONFIDENTIAL INFORMATION**

- 12.1 Supplier agrees to treat as confidential and to use only for the purposes of the Agreement all information, including but not limited to technical and commercial information, which is provided "as is" in whatever form or medium by or on behalf of Buyer and of its Affiliates and to give access to such information only on a need to know basis to its employees and not to transfer, publish, disclose or otherwise make available such information or any portion thereof to any third party without Buyer's prior written consent.
- 12.2 All information shall remain Buyer's property and no licenses or rights are granted in any such information and Supplier shall, upon Buyer's demand, promptly return to Buyer or destroy all such materials and information, not retaining any copies thereof, upon Buyer's demand. Supplier shall not use the name, logo, trademark, or any other reference to Buyer, either direct or indirect, in press releases, advertisements, sales literature or other publications and shall not disclose the existence or the terms and conditions of the Agreement, without the prior written consent of Buyer.

## **13 INTELLECTUAL PROPERTY RIGHTS**

Supplier agrees that any information, drawings, know-how, specifications, designs, concepts, techniques, developments, inventions, technologies and other work products generated or developed in the course of work performed under the Agreement by Supplier and any intellectual property and other proprietary rights therein or thereto shall vest in Buyer. Supplier assigns or shall cause to be assigned to Buyer all right, title and interest to any and all such items and rights and to do everything necessary to perfect such rights and to protect Buyer's interest therein. Supplier shall inform any third parties who might seek recourse thereon of Buyer's proprietary rights; Supplier shall immediately inform Buyer of such an event.

## **14 USE OF TRADEMARKS, TRADENAMES**

Supplier shall use any trademark, tradename or other indication in relation to the goods, whether owned by Buyer and/or its Affiliates, Supplier or any third party, only in accordance with Buyer's instructions or prior written approval and solely for the purposes expressly specified by Buyer in writing. Supplier shall not have nor obtain any right, title or interest in or to any Buyer's or its Affiliates' owned

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trademarks, tradenames or other indications. All rights related to or resulting from the use by Supplier shall inure to the benefit of Buyer and its Affiliates. Supplier herewith acknowledges all rights, title and interest of Buyer and/or its Affiliates in respect of and to the Buyer's and/or its Affiliates' owned trademarks, tradenames and other indications.

## 15 ADVERTISING / PUBLICITY RELEASES

Supplier shall not in any manner, advertise, publish or release any information concerning this Agreement, or any portion thereof, without the prior written consent of Buyer. Supplier shall not use Buyer's name in any way, including without limitation, a general or sample listing of Supplier's customers, without Buyer's prior written consent. This Agreement does not grant or confer any right to use any trademark, trade name, logo, service mark or other mark of Buyer or its Affiliates, in any advertising, publications, promotional activities, or for any other purpose. Any violation of this **Clause 15** shall be deemed a material breach of this Agreement.

## 16 USE OF INFORMATION TECHNOLOGY

Supplier shall safeguard the information technology systems of the Buyer at all times. Should the Supplier require the usage of information technology hardware, including but not limited to laptops, personal computers, servers and/or tablets on the Buyer's premises, the Supplier shall ensure the following measures are in place, being: (a) that all information technology hardware is updated with the latest monthly Windows security patches; (b) that all information technology hardware have antivirus installed with up to date virus definition file; and (c) any other measures that are deemed necessary to uphold the integrity of the Buyer's information technology systems. For the avoidance of doubt, End of Support Windows operating systems are prohibited (please refer to Microsoft portal for list of End of Support operating system). Supplier shall be held responsible to compensate Buyer for any security breach caused as a result of Supplier's failure to comply with the abovementioned.

## 17 EXPORT RESTRICTION

Supplier agrees that it will not export or re-export, directly or indirectly, any of Buyer's items, (goods, software, incl. source codes, technology or technical services), without complying with all applicable international and national export control laws, including but not limited to the US Export Administration Regulation (including restrictions on certain military end uses and military end users as specified in Section 15 C.F.R. § 744.21), the US International Traffic in Arms Regulations, prohibited party lists, catch-all regulations and all national and international embargoes, for which at the time of export or reexport, an export license or other governmental approval is required, without first obtaining such license or approval. Supplier also agrees to inform Buyer whether or not the deliverable is US controlled and/or controlled under the export control laws of its own country, and if so, provide Buyer with the export control classification number (ECCN).

## 18 SAFETY DATA SHEETS

Supplier will electronically provide a Safety Data Sheet for those chemicals purchased under this Agreement which are regulated by regulations within the countries these chemicals are supplied to. Supplier certifies, by acceptance of this Agreement, that the chemicals purchased are legally allowable to be used within the country, or are subject to an exemption and that the exemption is specified in the Safety Data Sheet.



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## 19 OZONE DEPLETING SUBSTANCES

Supplier certifies that the goods will not be manufactured with any ozone-depleting substances in Supplier's manufacturing processes and the goods do not contain these substances. The specific types of ozone-depleting substances are those substances controlled by the Montreal Protocol including the substances in Annex A, B and E and Annex C group II and III of the Montreal Protocol, and substances from Annex C group I of the Montreal Protocol when use is prohibited or restricted according to national or regional regulations

## 20 GIFTS

Supplier shall not offer, promise or agree to give any financial or other advantage (including, but not limited to, any money, gifts or gratuities of any kind) to Buyer's employees, agents or members of their families or to any third party (including, but not limited to, any official or employee of any government, governmental or regulatory agency or other public body) to secure or influence any business transaction in relation to this agreement. Violations shall be a material breach of this Agreement.

## 21 WARRANTIES

21.1 Without prejudice to any warranty extended, express or implied, by law, Supplier expressly warrants and represents to Buyer that all goods to be supplied to Buyer shall be new, of good quality, design, materials, construction and workmanship, and that all goods conform strictly to the specifications, approved samples, industry standards and all other requirements of the Agreement, and are suitable for the intended purpose. In the case of non-compliance with this warranty, Buyer may, at its discretion and without prejudice to any other right or remedy available under the Agreement or at law, reject the goods which do not comply with the provisions of the first sentence of this **Clause Error! Reference source not found.** (hereinafter referred to as goods having a "defect" or "defective goods") by written notice to Supplier. In the event of such rejection or if Buyer detects any goods having a defect after acceptance thereof, Buyer, at its option, shall be entitled to a full refund of the purchase price of the defective goods, or may require Supplier to remedy promptly the non-conformance or to replace the defective goods. In such event Supplier shall be responsible for and indemnify Buyer against and shall hold Buyer harmless from any and all cost of repair, replacement and transportation of the defective goods, as well as for all costs and expenses (including, without limitation, recall, inspection, handling and storage costs) and damage incurred by Buyer in connection with such defective goods. Risk to the goods shall pass to Supplier as from the notice of rejection. Supplier will provide out of warranty service to Buyer and its Affiliates at commercially reasonable prices for a period of five (5) years after the date the goods are delivered to Buyer and/or its Affiliates.

21.2 Epidemic defects. Supplier further warrants that the goods will be free from epidemic defects. An "epidemic defect" is a defect which appears in more than half a percent (0.5%), or any lower percentage as specified in the specifications, of the goods of the same or substantially the same type delivered by Supplier to Buyer or its Affiliates within the epidemic defect period as stated in the relevant specifications, or if no such period is stated, within any consecutive period of three (3) months, and which defect is either similar or substantially similar or has similar or substantially similar cause. In the event of an epidemic defect, Supplier shall urgently and at its costs and expense repair or replace goods delivered to Buyer which show such epidemic defect within the reasonably expected life time of such goods and Supplier shall further indemnify Buyer for all losses and damages incurred by Buyer, including without limitation all costs and damages in relation to recall of any goods or products in which the goods are used from the market (whether defective or not) in relation to the epidemic defect. For the avoidance of doubt, this



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### 21.3 Non-inclusion of Open Source Software

- (a) Supplier represents and warrants that Software or other goods to be provided to Buyer for use or distribution by Buyer (including in Buyer's product packages or through a download from Buyer's website, or otherwise) does not include any portion of any Open Source Software. Supplier agrees that it will defend, indemnify and hold harmless Buyer and its customers against any and all losses, damages, costs and expenses arising from a breach by Supplier of any of its obligations or representations hereunder, including, without limitation, any third party claims in connection with any such breach.
- (b) "**Open Source Software**" means:
- (i) any software that requires as a condition of use, modification and/or distribution of such software, that such software: (A) be disclosed or distributed in source code form; (B) be licensed for the purpose of making derivative works; and/or (C) can be redistributed only free of enforceable intellectual property rights (e.g., patents); and/or
  - (ii) any software that contains, is derived in any manner (in whole or in part) from, or statically or dynamically links against any software specified under (i).
- (c) By means of example and without limitation, any software modules or packages licensed or distributed under any of the following licenses or distribution models shall qualify as Open Source Software: (i) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); (ii) the Artistic License; (iii) the Mozilla Public License; (iv) the Common Public License; (v) the Sun Community Source License (SCSL); and (vi) the Sun Industry Standards Source License (SISSL).

21.4 Compliance with law and SSMC's requirements. Supplier represents and warrants to Buyer that the goods will and have been designed, manufactured and delivered and/or the services will and have been performed in compliance with all applicable laws and regulations (including, without limitation, environmental, health and safety laws and regulations) and Buyer's policies as stated in the SSMC Code on Sustainability and also in SSMC's General Requirement to Suppliers at (<https://www.ssmc.com/img/ssmc/pdfs/GeneralRequirementsToSuppliers.pdf>) and SSMC's Supplier Quality Requirement to Suppliers (SOP 12124-0002).

21.5 Manpower supply. In the event that the goods or services to be supplied by Supplier includes manpower supply, Supplier represents and warrants to Buyer that it shall at all times throughout such supply:

- (a) comply with and ensure that all manpower supplied comply with all applicable laws and requirements including without limitation employment laws, guidelines issued by the Ministry of Manpower, Tripartite Alliance for Fair and Progressive Employment Practices and/or other governmental authorities or agencies and conditions imposed in relation to any work pass or permit;
- (b) ensure that all manpower supplied shall at all times have the necessary passes, permits, approvals and/or permissions as may be required for such manpower to work in Singapore;

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- (c) deal with the relevant manpower in accordance with its contract(s) with such manpower, and at all times Supplier shall be fully responsible for and shall duly perform all duties and obligations owed to such manpower as employer of such manpower or otherwise.

## 22 INDEMNIFICATION AND ATTORNEY'S FEES

- 22.1 Without prejudice to any other right or remedy available to Buyer under the Agreement or at law, Supplier shall indemnify and hold Buyer and its Affiliates and their successors and assigns, harmless from and against all liabilities, claims, suits, losses, damages, costs and expenses (including without limitation product liability and reasonable attorney's fees), whether direct or indirect (including without limitation loss of profits), arising from or relating to:
- (a) Supplier's (and/or its officers', employees', agents' or subcontractors') failure to comply with any of the obligations under this Agreement;
  - (b) without limitation or prejudice to **Clause 22.1(a)**, any breach of the warranties given by the Supplier or expressly or impliedly extended by law; and
  - (c) any third party's claim arguing that the goods constitute(d) infringement, violation or misappropriation of any intellectual property right or other proprietary right of a third party. In the event of the foregoing, without prejudice to any other right or remedy available to Buyer under the Agreement or at law, Supplier shall procure the right for Buyer to continue to use the goods at no extra costs to Buyer.
- 22.2 Without limitation or prejudice to **Clause 22.1**, if any legal action is necessary to enforce this Agreement, Buyer shall be entitled to reasonable attorneys' fees and expenses in addition to any other allowable relief.

## 23 LIMITATION OF LIABILITY

IN NO EVENT SHALL SUPPLIER BE ENTITLED TO LOSS OF PROFITS, REVENUE, GOODWILL, OR PRODUCTION DOWNTIME, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SSMC IS ADVISED OF THE SAME. BUYER'S TOTAL LIABILITY FOR DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED THE PRICE ALLOCABLE TO THE GOODS OR SERVICES GIVING RISE TO THE CLAIM.

## 24 SUBCONTRACTING AND ASSIGNMENT

Supplier shall not subcontract, transfer or assign any of its rights or obligations under the Agreement to any third party or any of its affiliates without the prior written consent of Buyer. In case Supplier is permitted to subcontract any of its obligations hereunder, it shall remain fully responsible and liable for the proper performance of its obligations under any Agreement. Buyer may assign any Agreement to any of its Affiliates or to any third party in connection with any merger, acquisition, re-structuring, disposal, change of control, or sale or other transaction in relation to all or substantially all or part of Buyer's business and/or assets upon written notice to Supplier.

## 25 NO WAIVER

No waiver by Buyer of any breach of any condition, covenant or term of the Agreement shall be effective unless it is expressly stated in writing and no failure or delay by Buyer in enforcing any provision of the Agreement or in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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## 26 SEVERABILITY

In the event that any provision(s) of the Agreement shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions hereof.

## 27 LANGUAGE

Translated versions of this Agreement may also be available. If there is any inconsistency between the English language version of this Agreement and any translated version of this Agreement, then the English language version shall prevail.

## 28 GENERAL

This Agreement can only be modified by a writing signed by authorized representatives of both parties. Supplier is an independent contractor in the performance of its obligations under this Agreement, and Buyer is to have no control over the methods and means that Supplier uses to fulfill its obligations. Neither Supplier nor its employees will be considered employees of Buyer or entitled to participate in any Buyer employee benefits or plans of any kind.

## 29 TERMINATION

- 29.1 Buyer may terminate this Agreement for convenience in whole or in part, at any time, by written and/or written notice to Supplier. If Buyer provides the written notice to Supplier at least thirty (30) days prior to the specified shipping date of the relevant goods, Buyer shall have no liability for the termination. If Buyer terminates the Agreement on less than thirty (30) days' notice, Buyer and Supplier will negotiate a reasonable termination charge, if any, based on all appropriate factors, including, without limitation, the percentage of work performed by Supplier prior to termination, Supplier's ability to resell or reuse the goods or services, and market conditions prevailing at the time of termination. Supplier has a duty to use its best efforts to mitigate any damages or losses resulting from a termination by Buyer. Buyer shall have the right to audit all elements of the termination charge and Supplier shall make available to Buyer on request, all books, records and papers relating thereto.
- 29.2 If Supplier fails to comply with any obligations of the Agreement, Supplier shall be in default without further notice being required. In the event of default, insolvency or bankruptcy proceedings are instituted against Supplier (including voluntary insolvency or bankruptcy proceedings), Supplier is liquidated or dissolved, any attachment is made over the assets of Supplier or on its behalf, Supplier makes an unauthorised assignment for the benefit of creditors, or any other person or entity than the person or entity having control over Supplier at the date of the Agreement acquires control over Supplier, Buyer shall be entitled to rescind or terminate the Agreement, in whole or in part, without prejudice to any other rights or remedies available to Buyer under the Agreement or at law (including, without limitation, the right to seek damages). If Buyer for any reason anticipates any difficulty for Supplier in complying with any obligations of the Agreement, Buyer shall be entitled to require Supplier to remedy such non-compliance within a period to be set by Buyer in its discretion.
- 29.3 All provisions of the Agreement destined to survive the dissolution, termination or expiration thereof shall survive such dissolution, termination or expiration.

## 30 GOVERNING LAW AND DISPUTE RESOLUTION

- 30.1 The Agreement shall be governed by and construed in accordance with the laws of Singapore.

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- 30.2 The UN Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.
- 30.3 All disputes arising out of or in connection with the Agreement shall first be attempted by Supplier and Buyer to be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. All disputes that are not so settled within a period of thirty (30) days from date the relevant dispute first arose shall be submitted to the courts of Singapore which shall have jurisdiction over the parties hereto, provided that Buyer shall always be permitted to bring any action or proceedings against Supplier in any other court of competent jurisdiction.