



STANDARD TERMS AND CONDITIONS OF SALES AND SERVICES (“AGREEMENT”)

1. BASIS OF SALE

1.1 J.M. Pang & Seah (Pte) Ltd (“JMPS”) shall sell and the Purchaser shall purchase the Goods and/or Services in accordance with any written quotation of JMPS which is accepted by the Purchaser, or any written order of the Purchaser (“**Purchase Order**”) which is accepted by JMPS, subject in either case to terms and conditions of this Agreement, which shall govern the sale of Goods or the provision of Services to the exclusion of any other terms, conditions, arrangements, customs or practices PROVIDED HOWEVER that any terms or conditions stipulated incorporated or referred to by JMPS in the written quotation (or in JMPS’s written acceptance) that are inconsistent with or differs from the terms and conditions of this Agreement, such terms and conditions shall prevail over those of this Agreement.

1.2 No variation to this Agreement shall be binding unless agreed in writing and signed by the authorised representatives of the Purchaser and JMPS. For the avoidance of doubt, no terms proposed by the Purchaser in its Purchase Order or any other document of the Purchaser shall form part of this Agreement without the express written consent and signature of the authorised representative of JMPS.

1.3 This Agreement shall supersede any other express or implied, written or oral terms, arrangements, customs or practices unless otherwise accepted in writing.

1.4 This Agreement as may be varied or supplemented by the terms of the Purchase Order shall hereafter be referred to as the “**Contract**”.

2. PRICE & TAXES

2.1 The price shall be JMPS’s quoted price, or the price accepted in writing by JMPS. The quoted prices are based upon the scope of the Services and/or Goods referred to in JMPS’s quotation. In the event of any variation in the scope of Services and/or Goods ordered from those stated in JMPS’s quotation, JMPS reserves the right to vary the price.

2.2 All transportation costs shall be for the

account of the Purchaser and shall be added to the invoice.

2.3 The price is exclusive of any applicable goods and services tax (“GST”) or other government charge or duty, which the Purchaser shall be liable to pay at the rate from time to time prescribed by law. Any additional costs incurred by JMPS pursuant to any Act or any order or regulation made by any governmental body or department shall be paid by the Purchaser. The price shall be net of any withholding tax payable by the Purchaser.

3. TERMS OF PAYMENT

3.1 The Purchaser shall settle all invoices issued by JMPS within 30 days of the date of JMPS’s invoice. The time of payment of the price shall be of the essence of the Contract. If the Purchaser fails to make payment on the due date, then, without prejudice to any other right or remedy available at law or in equity, JMPS shall be entitled to:

(a) Cancel this Agreement or suspend any further deliveries and/or Services to the Purchaser; and

(b) Charge the Purchaser interest on the amount unpaid on a daily basis at the rate of three per cent (3%) per annum above the United Overseas Bank prime lending rate, from the due date until payment in full is made.

3.2 JMPS shall have the right to require full or partial payment in advance at any time if in its absolute opinion the financial condition of the Purchaser does not justify the terms of payment specified.

4. EQUIPMENT INFORMATION

All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Contract.

5. DRAWINGS AND DESCRIPTIONS

- 5.1 All drawings and technical documents relating to the Equipment or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract shall remain the property of the submitting party.
- 5.2 Drawings, technical documents or other technical information received by one party shall not, without the consent in writing of the other party, be used for any purpose other than that for which they were provided. They may not, without the consent in writing of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
- 5.3 JMPS shall, not later than at the date of delivery, provide information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the Equipment. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. JMPS shall not be obliged to provide manufacturing drawings for the Equipment or for spare parts.
- 6. ACCEPTANCE TEST**
- 6.1 Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.
- 6.2 JMPS shall notify the Purchaser in writing of the acceptance tests in sufficient time, but not less than three (3) working days to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.
- 6.3 If the acceptance tests show the Equipment not to be in accordance with the Contract, JMPS shall without reasonable delay remedy any deficiencies in order to ensure that the Equipment complies with the Contract. New tests shall then be carried out at the Purchaser's request. If the acceptance test criteria are materially satisfied except for minor deficiencies, the Purchaser shall accept the Equipment on condition that JMPS remedy the defect within reasonable period of completion of

the acceptance tests.

- 6.4 JMPS shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

7. RISK OF LOSS

- 7.1 Risk of damage to or loss of the Goods and/or Equipment shall pass to the Purchaser at the time of delivery or, if the Purchaser wrongfully fails to take delivery of the Goods and/or Equipment, the time when JMPS has tendered delivery of the Goods and/or Equipment. If the Services are performed on the Purchaser's Site, risk of damage to or loss of the Goods and/or Equipment shall remain with the Purchaser at all times.
- 7.2 Risk of loss or damage during transit to and from an JMPS factory or repair facility shall remain with the Purchaser.

8. DELIVERY, DELAY & FORCE MAJEURE

- 8.1 Delivery of the Equipment and/or Goods by JMPS shall be EX WORKS at JMPS' designated premises (the "**EX WORKS Point**"). For purposes of this Agreement, EX WORKS shall be construed in accordance with INCOTERMS 2000 of the International Chamber of Commerce. Upon the delivery of the Equipment and/or Goods at the EX WORKS Point, JMPS shall have no further responsibility for the Equipment and/or Goods, and all risk of damage, loss or delay of, and title to, the Equipment and/or Goods shall pass to the Purchaser. The Purchaser shall be responsible for all shipping and import/export taxes and costs, as set forth in Clause 2.2.
- 8.2 Shipping and or completion dates are approximate and are subject to prompt receipt of all necessary information from the Purchaser.
- 8.3 If work is delayed by the Purchaser, JMPS may require payment for all Goods procured, materials accumulated and Services performed on this order and any expenses incurred as a result of such delay.
- 8.4 For the provision of Services at the Purchaser's Site, the Purchaser shall at its own costs and expense, take all necessary

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measures, to prepare the Purchaser's Site and make available to JMPS free of charge such labour and equipment and any other materials and tools which JMPS requires for the provision of the Services. The Purchaser is responsible for all things related to the Purchaser's Site and shall supply JMPS with any information relating to the Purchaser's Site which is relevant for the purposes of the provision of the Services.

- 8.5 JMPS shall not be liable for any failure to perform or for any delay in performance due to force majeure. For the purposes of this clause, force majeure shall mean any unforeseen event beyond the reasonable control of JMPS such as, but not limited to any act of God, act of government or any authorities, hostilities between nations, war, riot, civil commotions, civil war, insurrection, blockades, import or export regulations or embargoes, rainstorms, national emergency, earthquake, fires, explosion, flooding, hurricane or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings due to any such events. In the event of any delay in performance due to any such cause the date of delivery or time for completion will be postponed by such length of time as may be reasonable necessary to compensate for the period of force majeure.

9. CONTAINERS

An extra charge will be made for returnable containers and special shipping devices (such as oil barrels, reels, tarpaulins, commutator clamps, etc.) where they are consigned to the Purchaser, but refund will be made if returned in good condition to the factory, or other points designated by JMPS, within ninety (90) days from the date of original shipment, charges prepaid.

10. SCRAP MATERIAL

All scrap materials shall become the property of JMPS.

11. WARRANTY

11.1 JMPS warrants that:

- (a) Services performed hereunder shall

be free of defects in workmanship or material. Should any failure of the Services to conform to this warranty appear under normal and proper use within one year (or any time period mutually agreed in writing by both parties) after shipment of the repaired or revamped Equipment by JMPS (or in the case of Equipment repaired or revamped on the Purchaser's Site, after JMPS has notified the Purchaser that the same is ready for commercial operation) JMPS shall correct the same by replacement or repair, F.O.B. factory of the defective part or parts.

- (b) If the Goods sold hereunder are the products of manufacturers other than JMPS, JMPS makes no warranty, express or implied concerning such Goods. Such Goods are sold "as is" with all faults, but JMPS shall use its best reasonable efforts to obtain from the manufacturer, in accordance with such manufacturer's customary practices, the repair or replacement of any Goods as may prove defective in workmanship or material.

11.2 JMPS shall be under no liability whatsoever:-

- (a) In respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow JMPS's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without JMPS's approval in writing or improper or inadequate maintenance by the Purchaser; or
- (b) If the total price for the Services and/or Goods has not been paid by the due date for payment.

11.3 The warranty expressed in this paragraph is exclusive and in lieu of all other warranties, express or implied, including any warranties of satisfactory quality and fitness for purpose.

11.4 The remedy(ies) provided above shall be the Purchaser's sole remedy(ies) for any failure of JMPS to comply with the warranty provisions, whether claims by the Purchaser are based in contract or in tort (including negligence) or otherwise, time) on the next working day.

12. CLAIMS

The Purchaser agrees in consideration of JMPS's execution of the Agreement that any claim of any kind by the Purchaser based on or arising out of this Agreement or otherwise shall be barred unless asserted by the Purchaser by the commencement of an action within 12 months after the delivery of the Services and/or Goods or other event, action or inaction to which such claim relates. This provision shall survive any termination of the Contract however arising.

13. LIMITATION OF LIABILITY

13.1 Neither JMPS nor its subcontractors and suppliers shall be liable in contract or in tort (including negligence) for any special, indirect, incidental or consequential damages including but not limited to damage or loss of other property or equipment, loss of profits or revenue, loss of contracts, loss of use of Equipment, cost of capital, economic loss or other loss of turnover business, goodwill, data or losses arising from production stoppage, or claims of customers of the Purchaser for service interruptions.

13.2 The remedies of the Purchaser set forth herein are exclusive, and the liability of JMPS with respect to any contract, or anything done in connection therewith such as the performance or breach thereof or from the manufacture, sale, delivery, resale, installation or technical assistance during installation, maintenance, repair, technical assistance during maintenance and repair, or use of any equipment covered by or furnished under the Contract whether in contract, in tort or otherwise shall not, except as expressly provided in the provision entitled "Warranty", exceed the price set forth herein for the Goods and/or Services in question.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 If any claim, demand, action or proceeding is brought against the Purchaser for alleged infringement of any registered design or trade mark or trade name or copyright or letters patent (the specifications of which are published prior to the date of the Purchase Order) by the Goods or any part thereof or any allegation of such infringement is made, and provided that the Purchaser does not concede the existence of an infringement but gives JMPS immediate notice in writing of any such allegations or infringement or of the institution of any such action or proceeding

and permits JMPS to answer the allegation as it deems fit, and also provided that the Purchaser gives JMPS (at JMPS's costs and expense) all information assistance and authority required for those purposes and does not by any act (including any admission or acknowledgment) or omission prejudice the conduct of such defence; then JMPS will at its own election either effect any settlement or compromise which it deems reasonable or at its own costs and expense defend any such action or proceeding, or inform the manufacturer of the Goods accordingly, and if the Goods or any part thereof is in such action or proceeding held to constitute infringement and is the subject of an injunction restraining its use or any order providing for its delivery up or destruction JMPS shall at its own election and costs and expense either:

- (a) Procure the Purchaser the right to retain and continue to use the Goods or part thereof; or
- (b) Modify the Goods or any part thereof so that it becomes non-infringing; or
- (c) Replace the Goods or any part thereof with one that is non-infringing.

14.2 JMPS shall not be liable for any of the obligations specified in clause 14.1 hereof in any of the following events:

- (a) Any infringement or allegation thereof which is based upon the use of the Goods in a manner or for a purpose not reasonably to be inferred by JMPS or disclosed to JMPS prior to making the Contract; or
- (b) The Purchaser entering into any compromise or settlement in respect of such action or proceeding without JMPS's prior consent in writing; or

(c) Modifications of the Goods by the Purchaser or a third party.

14.3 If the Purchaser stops using the Equipment and/or Goods in order to reduce the damage or for any other reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

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14.4 In any event, JMPS shall not be liable for any damage or losses, actual or consequential, incurred by the Purchaser arising from the use or non-use of the Equipment, any infringing Goods or any part thereof.

15. TERMINATION

15.1 JMPS shall be entitled to (i) cancel the Contract or suspend any further deliveries of the Goods and/or the Services under the Contract without any liability to the Purchaser, and (ii) if the Goods and/or Services have been delivered or completed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and (iii) retain any security given or monies paid by the Purchaser and apply the said security or monies against the assessed loss and damages, if any, suffered by JMPS, in the event that:

- (a) The Purchaser is in material breach of any terms of the Contract; or
- (b) The Purchaser makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or have an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such propJMPSI, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager or be placed under a judicial management order; or
- (c) An encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Purchaser; or
- (d) The Purchaser ceases, or threatens to cease to carry on business; or
- (e) There is a change in control of the Purchaser which in the reasonable opinion of JMPS adversely affects the position, rights or interests of the Purchaser (For the purpose of this sub-clause, "control" means the ability

to direct the affairs of another whether by virtue of contract, ownership of shares, or otherwise howsoever); or

- (f) In the absolute opinion of JMPS, there occurs a material change in the financial position of the Purchaser which is likely to affect the Purchaser's ability to perform its obligations under the Contract; or
- (g) JMPS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies in writing the Purchaser accordingly.

15.2 Termination of the Contract by JMPS shall not discharge the Purchaser from any existing obligation accrued due on or prior to the date of termination.

15.3 The rights and remedies granted to JMPS pursuant to this Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

16. MISCELLANEOUS

16.1 No waiver by JMPS of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision. If JMPS delays or chooses not to enforce its right under the Contract, it shall not affect its right to do so at a later date.

16.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part such provision shall be construed, limited or if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected but shall remain in full force and effect.

16.3 The Contract and this Agreement shall be governed by and construed in accordance with the laws of Singapore. The parties submit themselves to the exclusive jurisdiction of the Singapore courts.

17. DEFINITIONS

17.1 "Equipment" means the Purchaser's equipment which is the subject of the

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Services to be provided by JMPS in accordance with this Agreement.

- 17.2 **“Goods”** means the goods (including spare parts and replacement parts) which JMPS is to supply together with the provision of the Services in accordance with this Agreement.
- 17.3 **“Services”** means without limitation the maintenance, overhaul, rebuilding, repair, retrofitting, testing, upgrading, and project related services which are the subject of the Contract and provided by JMPS in accordance to this Agreement.
- 17.4 **“Site”** means the address where any Services are to be performed.
- 17.5 **“Contract”** means the definitive agreement between JMPS and the Purchaser for the sale of Equipment, Services and/or Goods which includes this Agreement and if applicable, other variations or additional terms provided in the Purchase Order.