

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings assigned to them below: -

"Acceptance" means the written acceptance of the Works by JPB in accordance with Clause 5;

"Agreement" means these Terms and Conditions for Purchase Orders together with the relevant Purchase Order and all documents incorporated by reference including any request for quotation, specification, schedule, appendix, variation, amendment, modification, supplement or replacement thereto agreed in writing by JPB;

"Applicable Taxes" means any tax, levy, duty, impost, withholding, charge or assessment imposed by any competent governmental or taxation authority including but not limited to income tax, withholding tax, sales tax, service tax, customs duty, excise duty or any similar tax, duty or levy imposed under the laws of Malaysia;

"Appropriate Authorities" means any governmental, semi-governmental, statutory, regulatory or local authority, ministry, department, agency, commission or other body having lawful jurisdiction over the Works or the Parties;

"Business Day" means any day other than a Saturday, Sunday or public holiday in the State of Johor or the Federal Territory of Kuala Lumpur on which commercial banks are generally open for business;

"Delivery" means the complete supply, packing, marking, loading, transportation, unloading and delivery of the Works to the Delivery Address in accordance with this Agreement;

"Delivery Address" means the location specified in the relevant Purchase Order;

"Delivery Date" means the date or dates specified in the relevant Purchase Order for delivery of the Works;

"Delivery Order" means the document accompanying the Delivery of the Works containing, among other things, the Purchase Order number, description, specifications and quantity of the Works;

"Force Majeure Event" means any event beyond the reasonable control of the affected Party, including but not limited to acts of God, flood, earthquake, tsunami, epidemic, pandemic, war, invasion, terrorism, riot, civil commotion, embargo, sanctions, governmental action, strikes (other than those involving the affected Party's own employees), fire or other similar events, which prevents or materially delays the performance of the affected Party's obligations under this Agreement;

"Intellectual Property Rights" means all present and future intellectual property rights of every kind, whether registered or unregistered, including patents, trademarks, service marks, trade names, copyrights, industrial designs, utility innovations, layout designs, database rights, software, source codes, object codes, trade secrets, confidential information, know-how, technical

information, domain names and all applications, renewals, extensions and rights to sue for infringement, whether arising under the laws of Malaysia or elsewhere;

"Invoice" means a valid tax invoice or invoice issued by the Supplier in accordance with this Agreement specifying the Price payable by JPB;

"JPB" means Johor Port Berhad (Registration No. 199201021890, Company Number 253394-D), its successors-in-title and permitted assigns;

"LD" means Liquidated Damages payable by the Supplier pursuant to Clause 17;

"Legislative Requirements" means: -

- (a) all applicable Acts of Parliament, ordinances, regulations, rules, by-laws, directives, orders, guidelines, codes of practice and subsidiary legislation having the force of law; and
- (b) all licences, permits, approvals, consents, certificates, authorisations and requirements imposed by any Appropriate Authority in connection with the Works;

"Party" means either JPB or the Supplier individually, and **"Parties"** means both of them collectively;

"Purchase Order" means the purchase order issued by JPB to the Supplier for the supply of the Works and incorporating this Agreement;

"Specification" means the technical specifications, scope of work, drawings, schedules, quality standards, performance requirements or other requirements specified in the Purchase Order or otherwise issued by JPB in writing;

"Supplier" means the successful supplier, contractor, consultant and/or service provider appointed by JPB to supply, perform or deliver the Works in accordance with this Agreement;

"Warranty" means the Supplier's obligation to repair, replace, rectify, modify or otherwise remedy any defect, deficiency, non-conformity or failure in the Works at the Supplier's sole cost and expense in accordance with Clause 11;

"Works" means all goods, services, works, materials, equipment, deliverables, documentation and other obligations to be supplied, performed, executed or delivered by the Supplier under the relevant Purchase Order, including any variation, amendment or additional works approved in writing by JPB.

1.2 INTERPRETATION

- (a) Headings are for convenience only and do not affect interpretation;
- (b) Words importing the singular include the plural and vice versa;
- (c) References to one gender include all genders;
- (d) References to a person include a company, partnership, statutory body and other legal entity;

- (e) References to legislation include any amendments, re-enactments and subsidiary legislation;
- (f) References to writing include email where expressly permitted under the Agreement;
- (g) "Including", "such as" and similar expressions mean "including without limitation";
- (h) References to clauses, schedules and appendices are references to those in the Agreement;
- (i) Where an obligation is imposed on two or more persons, it is joint and several;
- (j) Any approval or consent by JPB must be in writing unless otherwise expressly stated;
- (k) Where any act is required to be done on a day that is not a Business Day, it shall be done on the next Business Day.

2. ACCEPTANCE OF AGREEMENT

2.1 This Agreement shall be deemed to have been accepted by the Supplier upon the earlier of: -

- (a) the Supplier's written acceptance of the Purchase Order;
- (b) the commencement of the performance of the Works;
- (c) the supply, delivery or performance of any part of the Works; or
- (d) the Supplier's conduct indicating acceptance of the Purchase Order,

whereupon a legally binding contract shall come into existence between JPB and the Supplier on the terms and conditions of this Agreement.

2.2 Upon acceptance of this Agreement, the Supplier shall strictly observe, comply with and perform all of its obligations in accordance with the terms and conditions of this Agreement and the relevant Purchase Order.

2.3 Subject to Clause 30, JPB expressly rejects and shall not be bound by any additional, inconsistent or different terms, conditions, specifications, qualifications, reservations, limitations or amendments proposed or introduced by the Supplier, whether contained in any quotation, proposal, acknowledgement of the Purchase Order, invoice, delivery note, correspondence or any other document or communication issued by the Supplier, unless expressly agreed to in writing and signed by JPB.

2.4 In the event of any inconsistency or conflict between this Agreement, the Purchase Order and any document issued by the Supplier, the terms and conditions of this Agreement and the Purchase Order shall prevail, unless otherwise expressly agreed in writing by JPB.

3. SUPPLY AND DELIVERY

- 3.1 The Supplier shall, at its own cost and expense, supply, perform and/or deliver the Works to the Delivery Address on or before the Delivery Date specified in the relevant Purchase Order and in accordance with the terms and conditions of this Agreement.
- 3.2 The Supplier warrants and undertakes that the Works shall: -
- (a) strictly comply with this Agreement, the Purchase Order, the Specification and any drawings, samples, approved submissions or other documents forming part of the Contract;
 - (b) correspond in all respects with the description, quantity, quality, dimensions, model, design, configuration and other requirements specified by JPB;
 - (c) be new (unless otherwise expressly agreed in writing), free from defects in design, materials and workmanship, and of satisfactory and merchantable quality;
 - (d) be fit for the purpose for which they are intended or for any purpose expressly or impliedly made known to the Supplier by JPB;
 - (e) comply with all applicable Legislative Requirements, industry standards and manufacturers' specifications; and
 - (f) not infringe or misappropriate any Intellectual Property Rights or other proprietary rights of any third party.
- 3.3 The Supplier shall ensure that the Works are properly packed, protected, labelled and transported in accordance with good industry practice so as to prevent any loss, damage or deterioration during loading, transit, unloading and delivery.
- 3.4 The Works shall be delivered to the Delivery Address together with all documents reasonably required by JPB including:-
- (a) the delivery note or delivery order specifying the Purchase Order number and details of the Works delivered;
 - (b) all operating manuals, technical specifications, installation, operation and maintenance instructions (where applicable);
 - (c) certificates of origin, certificates of conformity, quality certificates, inspection reports or test certificates (where applicable);
 - (d) all manufacturers' warranties and guarantees; and
 - (e) any other document specified in the Purchase Order or reasonably required by JPB.
- 3.5 The Supplier shall provide, at its own cost and expense, all labour, personnel, supervision, equipment, tools, vehicles, materials and other resources necessary to supply, perform and deliver the Works.

- 3.6 Risk of loss of or damage to the Works shall remain solely with the Supplier until the Works have been delivered to, inspected and accepted by JPB in accordance with Clause 5. Delivery of the Works shall not constitute acceptance by JPB.
- 3.7 Where transportation insurance is required, the Supplier shall procure and maintain adequate insurance covering all risks of physical loss of or damage to the Works during packing, loading, transportation, unloading and delivery until acceptance by JPB.
- 3.8 Unless otherwise expressly agreed in writing by the Parties, all prices shall be inclusive of packaging, carriage, freight, transportation, handling, loading, unloading, insurance and all other incidental charges necessary for delivery of the Works to the Delivery Address. No additional charges shall be payable by JPB unless expressly approved in writing.
- 3.9 Unless otherwise specified in the relevant Purchase Order, all international deliveries shall be made on a **Delivered Duty Paid (DDP)** basis in accordance with **Incoterms® 2020**, with the Supplier being responsible for all costs, duties, taxes, customs clearance, import formalities, risks and obligations up to delivery of the Works at the Delivery Address.
- 3.10 Time shall be of the essence in respect of the Supplier's obligations to supply and deliver the Works. Any delay in delivery shall constitute a material breach of this Agreement unless otherwise expressly approved in writing by JPB.
- 3.11 Delivery shall not be deemed complete until the Works have been inspected and accepted by JPB in accordance with Clause 5. JPB's inspection, testing, use of or payment for the Works shall not constitute acceptance of the Works nor prejudice any rights or remedies available to JPB under this Agreement or at law.

4. HAZARDOUS MATERIALS AND DANGEROUS GOODS

- 4.1 Where any part of the Works comprises or contains any hazardous materials, hazardous substances or dangerous goods (collectively, "**Hazardous Materials**") as classified under the applicable Legislative Requirements, the Supplier shall ensure that the manufacture, packaging, labelling, handling, storage, transportation, delivery and disposal of such Hazardous Materials are carried out in full compliance with all applicable Legislative Requirements and recognised industry standards.
- 4.2 The Supplier shall, upon delivery of the Works and in any event prior to the use of the Hazardous Materials by JPB, provide JPB with the following documents where applicable: -
- (a) the latest Safety Data Sheet ("SDS");
 - (b) all handling, storage, transportation and emergency response instructions;
 - (c) all manufacturers' warnings, safety labels and usage instructions; and
 - (d) any licences, permits, certificates or other documents required under the applicable Legislative Requirements.

4.3 The Supplier warrants that all SDS and other safety information supplied to JPB are complete, accurate, current and comply with all applicable Legislative Requirements. The Supplier shall promptly notify JPB in writing of any amendment, revision or update to the SDS or any safety information relating to the Hazardous Materials and shall immediately provide the updated documents.

4.4 Delivery of any Hazardous Materials shall not be deemed complete until: -

- (a) the Supplier has delivered all documents required under Clause 4.2;
- (b) JPB has been afforded a reasonable opportunity to review the SDS and other safety documentation; and
- (c) the Works have been inspected and accepted by JPB in accordance with Clause 5.

For the avoidance of doubt, JPB's review of the SDS or other safety documentation shall not constitute acceptance of the Works or relieve the Supplier of any of its obligations or liabilities under this Agreement.

4.5 The Supplier shall indemnify and keep JPB fully indemnified against all losses, damages, liabilities, claims, penalties, costs and expenses (including legal costs on a solicitor-and-client basis) arising out of or in connection with the Supplier's failure to comply with this Clause 4 or any applicable Legislative Requirements relating to Hazardous Materials.

5. ACCEPTANCE OF THE WORKS

5.1 JPB shall be entitled, at any time and within such period as may be specified by JPB, to require the Supplier to furnish such certificates, test reports, inspection records, warranties and other evidence or supporting documents as JPB may reasonably require to verify that the Works comply with this Agreement, the Purchase Order and the Specification.

5.2 Where no Specification is prescribed, the Supplier warrants that the Works shall be of satisfactory and merchantable quality, fit for their intended purpose, free from defects in design, materials and workmanship, and performed or supplied with reasonable skill, care and diligence in accordance with good industry practice.

5.3 All Works delivered under this Agreement shall be subject to inspection, examination, testing and Acceptance by JPB. JPB may inspect or test the Works at any time before or after delivery and may reject all or any part of the Works that do not comply with this Agreement.

5.4 No inspection, examination, testing, Acceptance, payment, use or failure by JPB to reject the Works shall: -

- (a) constitute a waiver of any rights or remedies available to JPB;
- (b) relieve the Supplier of any obligation, warranty or liability under this Agreement or at law; or
- (c) prejudice JPB's right subsequently to reject the Works or claim any remedy in respect of any defect, non-conformity, breach, latent defect or misrepresentation.

- 5.5 Acceptance of the Works shall be without prejudice to JPB's rights in respect of any latent defect, concealed defect, fraud, negligent workmanship, misrepresentation, breach of warranty or any defect which could not reasonably have been discovered during inspection or testing and shall at all times remain subject to Clause 6.

6. REJECTION AND RETURN OF THE WORKS

- 6.1 JPB may, at any time before or after Acceptance, reject all or any part of the Works by written notice to the Supplier if JPB reasonably determines that: -
- (a) the Works fail to comply with this Agreement, the Purchase Order or the Specification, including the requirements under Clause 3;
 - (b) the Supplier has breached any provision of this Agreement;
 - (c) the quantity of the Works delivered exceeds the quantity specified in the Purchase Order;
 - (d) any defect, deficiency, damage, non-conformity or non-compliance is identified through inspection, testing, analysis, commissioning or subsequent operation or use of the Works;
 - (e) the Works are subject to any latent defect, concealed defect, fraud or misrepresentation; or
 - (f) the Works fail to comply with any applicable Legislative Requirements or any applicable safety, environmental or regulatory requirements.
- 6.2 Upon receipt of JPB's notice of rejection, the Supplier shall, at its own cost and expense without any liability to JPB and within the period specified by JPB: -
- (a) collect and remove the rejected Works;
 - (b) replace the rejected Works with conforming Works; or
 - (c) rectify or remedy the rejected Works,
- as may be directed by JPB.
- 6.3 If the Supplier fails to comply with Clause 6.2 within the specified period, JPB may, without prejudice to any other rights or remedies available under this Agreement or at law: -
- (a) return, store, dispose of or sell the rejected Works at the Supplier's sole cost and risk;
 - (b) procure substitute goods, services or works from any third party, and recover from the Supplier all additional costs, expenses and losses incurred by JPB;
 - (c) deduct or set off any sums due to the Supplier against any costs, losses or damages suffered by JPB; and/or

- (d) terminate the relevant Purchase Order and/or this Agreement in accordance with its terms.

- 6.4 Risk in the rejected Works shall remain with or immediately revert to the Supplier upon JPB issuing a notice of rejection and shall continue until the rejected Works have been collected by the Supplier.
- 6.5 Any Acceptance, replacement, repair or rectification of the Works shall not prejudice JPB's right to recover from the Supplier any losses, damages, costs or expenses arising out of or in connection with the rejected Works, including any consequential costs reasonably incurred in procuring replacement goods, services or works.

7. DISPATCH, ROUTING OF GOODS AND CUSTOMS CLEARANCE

- 7.1 The Supplier shall, at its own cost and expense, strictly comply with and procure compliance with all applicable Legislative Requirements and all directions, requirements and instructions issued by the relevant governmental authorities, customs authorities, port authorities and any other competent authority ("Appropriate Authorities") relating to the packaging, dispatch, routing, transportation, importation, exportation, customs clearance and delivery of the Works. The Supplier shall obtain and maintain all licences, permits, approvals and customs documentation necessary for the lawful delivery of the Works. The Supplier shall be solely responsible for and shall indemnify JPB against all losses, damages, claims, penalties, fines, duties, taxes, costs and expenses arising out of or in connection with the Supplier's failure to comply with this Clause.
- 7.2 The Supplier shall be solely responsible for determining and arranging the appropriate mode of transportation, routing, handling, loading, unloading and delivery of the Works to the Delivery Address specified in the Purchase Order. Unless otherwise expressly agreed in writing by JPB, all freight, carriage, handling, packing, insurance, customs duties, taxes, demurrage, storage charges and all other costs and expenses incurred in connection with the transportation and delivery of the Works shall be borne solely by the Supplier. Risk of loss of or damage to the Works shall remain with the Supplier until the Works have been duly delivered to and accepted by JPB in accordance with this Agreement.

8. PRICE

Subject to Clauses 16 and 19 and the Supplier's full compliance with the terms and conditions of this Agreement, JPB shall pay the Price to the Supplier in accordance with the payment terms specified in the Purchase Order, free from any additional charges, fees or expenses not expressly agreed to in writing by JPB. JPB shall be entitled to deduct, withhold or set off from any amount payable to the Supplier any sum due and owing by the Supplier to JPB under this Agreement, the Purchase Order or otherwise at law. Any payment made by JPB shall not constitute acceptance of the Works, a waiver of any breach by the Supplier or prejudice any rights or remedies available to JPB under this Agreement or at law.

9. APPOINTMENT AND PAYMENT

- 9.1 The Supplier hereby agrees to supply and deliver the Works to JPB, and JPB hereby agrees to purchase and accept the Works at the Price specified in the relevant Purchase Order and in accordance with the terms and conditions of this Agreement.
- 9.2 Title to the Works shall remain vested in the Supplier until the Works have been duly delivered to, inspected, accepted by JPB in accordance with this Agreement and the relevant Delivery Order has been duly acknowledged by JPB's authorised representative. Notwithstanding the foregoing, risk in the Works shall remain with the Supplier until Acceptance by JPB in accordance with Clause 5.
- 9.3 Subject to Clauses 16 and 19 and the Supplier's full compliance with this Agreement, JPB shall pay the Supplier for the Works accepted by JPB within sixty (60) days from the date of receipt of: -
- (a) a valid and undisputed tax invoice quoting the relevant Purchase Order number;
 - (b) the duly acknowledged Delivery Order; and
 - (c) all supporting documents required by JPB under this Agreement or the relevant Purchase Order.
- 9.4 Where JPB disputes any invoice or any part thereof, JPB shall notify the Supplier of the disputed amount and the reasons for such dispute. JPB shall be entitled to withhold payment of the disputed portion without incurring any interest or liability pending resolution of the dispute, provided that JPB shall pay any undisputed portion of the invoice in accordance with this Agreement.
- 9.5 JPB shall be entitled to deduct, withhold or set off from any amount payable to the Supplier any sum due and owing by the Supplier to JPB under this Agreement, the Purchase Order or otherwise at law.
- 9.6 JPB shall not be liable to pay for any Works which: -
- (a) do not comply with this Agreement, the Purchase Order or the Specification;
 - (b) have not been delivered or have only been partially delivered;
 - (d) have been rejected by JPB pursuant to Clause 6; or
 - (e) are lost, damaged, stolen or otherwise fail to reach the Delivery Address before Acceptance by JPB.
- 9.7 Any inspection, Acceptance or payment made by JPB shall not constitute or be deemed to constitute: -
- (a) acceptance that the Works comply with this Agreement;
 - (b) a waiver of any breach, warranty or other obligation of the Supplier; or

- (c) a prejudice to any rights, remedies or claims available to JPB under this Agreement or at law.

9.8 For the avoidance of doubt, JPB shall only be liable to pay for the Works that have been duly delivered, accepted and invoiced in accordance with this Agreement.

10. NON-EXCLUSIVITY

- 10.1 This Agreement constitutes a non-exclusive framework agreement between JPB and the Supplier and shall not be construed as creating any exclusive relationship, preferred supplier status, guaranteed minimum purchase commitment or obligation on the part of JPB to procure any minimum quantity or value of the Works from the Supplier.
- 10.2 The Supplier acknowledges and agrees that JPB shall, at all times during the term of this Agreement, be entitled, at its sole and absolute discretion, to purchase or procure goods, services and/or works similar to or competing with the Works from any other supplier, contractor or service provider without prior notice to, or consent from, the Supplier and without incurring any liability whatsoever to the Supplier.
- 10.3 The Supplier shall have no claim whatsoever against JPB arising from or in connection with JPB's procurement of goods, services and/or works from any other supplier, including any claim for loss of business, loss of profits, loss of opportunity or any indirect or consequential loss.
- 10.4 Nothing in this Agreement shall be construed as obliging JPB to issue any Purchase Order to the Supplier. Each Purchase Order issued by JPB shall constitute a separate offer to purchase the Works and shall only become binding upon acceptance by the Supplier in accordance with this Agreement.

11. WARRANTY

- 11.1 The Supplier warrants that the Works shall, throughout the Warranty Period specified in the Purchase Order or, where no such period is specified, for a period of twelve (12) months from the date of Acceptance by JPB ("Warranty Period"): -
 - (a) conform in all respects with this Agreement, the Purchase Order and the Specification;
 - (b) be new (unless otherwise agreed in writing by JPB), of satisfactory and merchantable quality, fit for their intended purpose and free from any defect in design, materials, workmanship and manufacture;
 - (c) comply with all applicable Legislative Requirements; and
 - (d) be free from any lien, encumbrance or third-party claim.
- 11.2 If, at any time during the Warranty Period, JPB determines that the Works are defective, non-compliant with this Agreement or the Specification, or otherwise fail to satisfy any warranty under this Agreement, JPB may notify the Supplier in writing specifying the nature of the defect or non-compliance.

- 11.3 Upon receipt of JPB's notice, the Supplier shall, at its sole cost and expense and within the period specified by JPB, promptly repair, rectify, alter, modify or replace the defective or non-compliant Works to the satisfaction of JPB. All costs associated with such repair, rectification, replacement, transportation, removal, reinstallation, testing and commissioning shall be borne solely by the Supplier.
- 11.4 If the Supplier fails to remedy the defect or non-compliance within the period specified by JPB, or where immediate remedial action is reasonably required for operational, safety or commercial reasons, JPB shall be entitled, without prejudice to any other rights or remedies available under this Agreement or at law, to engage a third party to carry out the necessary repair, rectification or replacement, and the Supplier shall immediately reimburse JPB for all costs, expenses, losses and damages incurred in connection therewith. JPB shall also be entitled to deduct or set off such costs against any monies due or becoming due to the Supplier.
- 11.5 Any repaired, rectified or replacement Works shall be subject to the same warranties contained in this Clause and a fresh Warranty Period of twelve (12) months or such longer period as specified in the Purchase Order, shall commence from the date of Acceptance of the repaired, rectified or replacement Works by JPB.
- 11.6 Where the Specification, Purchase Order or this Agreement requires a manufacturer's warranty, the Supplier shall procure, assign or otherwise ensure that JPB receives the full benefit of such manufacturer's warranty. Where the Supplier fails to do so, the Supplier shall remain fully liable as if such manufacturer's warranty had been validly obtained and assigned to JPB and shall indemnify JPB against all losses, damages, costs and expenses that would otherwise have been recoverable under the manufacturer's warranty.
- 11.7 The warranties contained in this Clause are cumulative and are in addition to, and shall not limit or exclude, any other rights, warranties, guarantees or remedies available to JPB under this Agreement, at law or in equity.

12. INSURANCE

- 12.1 The Supplier shall, at its own cost and expense, procure and maintain throughout the term of this Agreement and for such additional period as may be required under this Agreement or by applicable Legislative Requirements, all insurance policies appropriate to the nature of the Works and the risks arising from the performance of this Agreement, including, where applicable: -
- (a) Public Liability Insurance;
 - (b) Workmen's Compensation and/or Employer's Liability Insurance;
 - (c) Product Liability Insurance (where the Works comprise goods or products);
 - (d) Professional Indemnity Insurance (where the Works comprise professional or consultancy services); and
 - (e) any other insurance required under the Purchase Order, the Specification or applicable Legislative Requirements.

All such insurance policies shall be maintained with insurers duly licensed or authorised to carry on insurance business in Malaysia and on terms satisfactory to JPB.

- 12.2 To the extent permitted by law and the relevant insurance policy, the Supplier shall procure that JPB is named as an additional insured under the applicable insurance policies and that each policy contains a waiver of the insurer's rights of subrogation against JPB, its directors, officers, employees and agents in respect of any claim arising out of or in connection with this Agreement. All deductibles, excesses and uninsured amounts shall be borne solely by the Supplier.
- 12.3 Prior to the commencement of the Works and at any time upon request by JPB thereafter, the Supplier shall provide JPB with copies of the relevant certificates of insurance, insurance policies, evidence of payment of the premiums and such other documents as JPB may reasonably require to verify compliance with this Clause. The Supplier shall promptly notify JPB in writing of any cancellation, lapse, suspension, material amendment or non-renewal of any insurance policy required under this Agreement.
- 12.4 The Supplier's obligation to procure and maintain insurance under this Agreement shall not limit, reduce or otherwise affect the Supplier's liabilities, obligations or indemnities under this Agreement or at law. Any failure by the Supplier to obtain or maintain the required insurance shall not relieve the Supplier from any liability arising under this Agreement.
- 12.5 Where the Supplier fails to procure or maintain any insurance required under this Clause, JPB may (but shall not be obliged to) procure such insurance on behalf of the Supplier and all premiums, costs and expenses incurred by JPB shall be recoverable from the Supplier as a debt due and may be deducted or set off against any monies payable by JPB to the Supplier.

13. REPRESENTATIONS AND WARRANTIES

- 13.1 The Supplier represents, warrants and undertakes to JPB, both as at the date of this Agreement and on a continuing basis throughout the term of this Agreement that: -
- (a) it is duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has full power, authority and legal capacity to enter into, perform and comply with its obligations under this Agreement;
 - (b) the execution, delivery and performance of this Agreement have been duly authorised by all necessary corporate or other actions and constitute valid and legally binding obligations enforceable against the Supplier in accordance with their terms;
 - (c) it has the full legal right, title and authority to manufacture (where applicable), sell, supply and deliver the Works to JPB free and clear of all liens, charges, encumbrances and third-party rights;
 - (d) the Works shall at all times: -
 - (i) conform strictly to this Agreement, the Purchase Order and the Specification;

- (ii) be new (unless otherwise expressly agreed in writing by JPB), free from defects in design, materials, manufacture and workmanship;
 - (iii) be of satisfactory and merchantable quality and fit for the purpose for which they are intended;
 - (iv) comply with all applicable Legislative Requirements; and
 - (v) not infringe or misappropriate any intellectual property or proprietary rights of any third party;
- (e) it shall duly and punctually pay all Applicable Taxes, duties, levies and other statutory charges arising in connection with the supply of the Works under this Agreement;
 - (f) it shall procure and maintain all insurance policies required under this Agreement throughout the term of this Agreement;
 - (g) it shall obtain and maintain throughout the term of this Agreement all licences, permits, approvals, registrations and authorisations required under applicable Legislative Requirements for the performance of its obligations under this Agreement;
 - (h) it shall comply with all applicable anti-bribery, anti-corruption, anti-money laundering, sanctions and other applicable Legislative Requirements in connection with this Agreement;
 - (i) there are no pending or threatened actions, proceedings, investigations or claims which may materially affect its ability to perform its obligations under this Agreement;
 - (j) it is not insolvent, under judicial management, in liquidation or receivership, has not entered into any arrangement or composition with its creditors and no event has occurred which is likely to materially impair its ability to perform its obligations under this Agreement; and
 - (k) all information, documents, certificates and representations provided by the Supplier to JPB in connection with this Agreement are true, accurate, complete and not misleading in any material respect.

13.2 The Supplier acknowledges and agrees that JPB has entered into this Agreement in reliance upon the representations, warranties and undertakings contained in this Clause.

13.3 The representations, warranties and undertakings contained in this Clause shall be deemed to be repeated on each date that the Supplier supplies any Works under this Agreement.

13.4 Any breach of the representations, warranties or undertakings contained in this Clause shall constitute a material breach of this Agreement, without prejudice to any other rights or remedies available to JPB under this Agreement, at law or in equity.

14. SUPPLIER'S COVENANTS

- 14.1 The Supplier shall perform, supply and complete the Works in accordance with the terms and conditions of this Agreement, the Purchase Order, the Specification and all applicable Legislative Requirements and shall exercise the degree of skill, care, diligence and professional competence reasonably expected of an experienced supplier undertaking works of a similar nature.
- 14.2 The Supplier shall ensure that the Works are performed in a safe, efficient and workmanlike manner and to the reasonable satisfaction of JPB.
- 14.3 The Supplier shall provide, at its own cost and expense, all labour, supervision, tools, equipment, materials, transportation and other resources necessary for the proper execution and completion of the Works unless otherwise expressly agreed in writing by JPB.
- 14.4 The Supplier shall exercise all reasonable care in the use of JPB's premises, equipment, machinery, fixtures, facilities and other property and shall ensure that the same are not damaged, misused or interfered with during the performance of the Works.
- 14.5 The Supplier shall not make or permit any alteration, addition, modification or attachment to JPB's premises, equipment, fixtures or facilities without JPB's prior written approval.
- 15.6 The Supplier shall immediately notify JPB of any accident, incident, damage, loss, defect or unsafe condition occurring at JPB's premises in connection with the performance of the Works and shall take all necessary steps to minimise any resulting loss or damage.
- 14.7 The Supplier shall be responsible for the acts, omissions, negligence and defaults of its employees, agents, subcontractors and representatives as if they were the acts, omissions, negligence and defaults of the Supplier itself.
- 14.8 The Supplier shall keep JPB's premises clean, orderly and free from rubbish, debris and surplus materials arising from the performance of the Works and shall, upon completion of the Works, remove all of its equipment, temporary structures, waste materials and other property from JPB's premises and leave the affected areas in a clean, safe and satisfactory condition.
- 14.9 The Supplier shall promptly repair, reinstate or replace, at its sole cost and expense and to JPB's satisfaction, any loss of or damage to JPB's premises, equipment, fixtures, facilities or property caused by or arising from the Supplier's acts, omissions, negligence or breach of this Agreement. Where the Supplier fails to do so within the period specified by JPB, JPB may carry out or procure such repair or reinstatement and recover all costs and expenses incurred from the Supplier, including by way of deduction or set-off against any monies due or becoming due to the Supplier.
- 14.10 The obligations contained in this Clause are in addition to, and shall not prejudice, any other obligations, warranties, indemnities or liabilities of the Supplier under this Agreement or at law.

15. INDEMNITY

15.1 To the fullest extent permitted by applicable law, the Supplier shall indemnify, defend and keep indemnified JPB, its holding company, subsidiaries, directors, officers, employees, agents and representatives (collectively, the "Indemnified Parties") from and against all actions, claims, demands, proceedings, liabilities, losses, damages, fines, penalties, costs and expenses (including legal costs on a full indemnity basis or solicitor-client basis, as applicable) arising out of or in connection with: -

- (a) any breach or non-performance by the Supplier of this Agreement, the Purchase Order or any applicable Legislative Requirements;
- (b) any negligent act, omission, misconduct, fraud or wilful default of the Supplier or its employees, agents, subcontractors or representatives;
- (c) any death, personal injury or damage to or loss of property caused by or attributable to the Supplier or its employees, agents, subcontractors or representatives in connection with the supply of the Works;
- (d) any defect in, or failure of, the Works supplied by the Supplier;
- (e) any failure by the Supplier to comply with any statutory, regulatory or licensing requirement; or
- (f) any act or omission of the Supplier giving rise to liability on the part of JPB.

15.2 The Supplier shall indemnify and keep JPB fully indemnified against all claims, proceedings, liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis or solicitor-client basis, as applicable) arising out of or in connection with any actual or alleged infringement or misappropriation of any Intellectual Property Rights resulting from or relating to the manufacture, supply, delivery, use or possession of the Works, except to the extent that such infringement arises solely from a design or specification provided in writing by JPB.

15.3 Where any claim is made or threatened against JPB which may give rise to an indemnity under this Clause, JPB may, at its sole discretion, defend, settle or compromise such claim, and all reasonable costs and expenses incurred by JPB shall be recoverable from the Supplier.

15.4 The indemnities contained in this Clause shall: -

- (a) be continuing obligations and shall survive the expiry, completion or termination of this Agreement for any reason whatsoever;
- (b) be in addition to, and shall not limit or prejudice, any other rights or remedies available to JPB under this Agreement, at law or in equity; and
- (c) not be reduced or affected by any inspection, Acceptance, payment, waiver or approval by JPB under this Agreement.

15.5 Nothing in this Clause shall operate to limit or exclude any liability of the Supplier which cannot lawfully be limited or excluded under applicable law.

16. WITHHOLDING FOR PAYMENT AND TAXES

16.1 JPB shall be entitled to deduct, withhold or retain from any payment due or payable to the Supplier any amount which JPB is required or authorised to deduct or withhold under any applicable Legislative Requirements including any Applicable Taxes, withholding taxes or other statutory deductions.

16.2 The Supplier shall be solely responsible for the payment of all Applicable Taxes, duties, levies, contributions, charges and other statutory impositions arising out of or in connection with the supply of the Works under this Agreement except where such taxes are expressly stated to be payable by JPB under the Purchase Order or applicable Legislative Requirements.

16.3 Where JPB is required by any applicable Legislative Requirements to deduct or withhold any Applicable Taxes from any payment due to the Supplier, JPB may make such deduction or withholding without incurring any liability to the Supplier and shall remit the amount so deducted or withheld to the relevant Taxation Authority in accordance with the applicable Legislative Requirements. The amount so deducted or withheld shall be deemed to have been duly paid to the Supplier.

16.4 If, after making any payment to the Supplier without deduction or withholding, JPB subsequently becomes aware (whether by notification from the Taxation Authority, a change in law, an audit, assessment or otherwise) that any Applicable Taxes ought to have been deducted or withheld from such payment, the Supplier shall, upon written demand by JPB, immediately reimburse JPB for: -

- (a) the amount of the Applicable Taxes that ought to have been deducted or withheld;
- (b) any interest, penalties, fines or additional taxes imposed on JPB by the Taxation Authority arising from such failure to deduct or withhold; and
- (c) all reasonable costs and expenses (including legal and professional fees) incurred by JPB in connection therewith.

Such amount shall be paid by the Supplier within thirty (30) days from the date of JPB's written demand.

16.5 JPB shall be entitled, without prejudice to any other rights or remedies available under this Agreement or at law, to deduct, withhold or set off any amount recoverable under this Clause against any monies due or becoming due to the Supplier under this Agreement or otherwise.

16.6 The Supplier shall promptly provide JPB with all documents, declarations, certificates, tax residency certificates and other information reasonably required by JPB to determine the correct withholding tax treatment or to enable JPB to claim any exemption, reduction or relief available under the applicable Legislative Requirements or any applicable double taxation agreement.

16.7 The provisions of this Clause shall survive the expiry, completion or termination of this Agreement to the extent necessary to give effect to the rights and obligations of the Parties.

17. LIQUIDATED DAMAGES

17.1 Time shall be of the essence under this Agreement. If the Supplier fails to supply, deliver, complete or perform the Works within the time specified in this Agreement, the Purchase Order or any delivery schedule approved by JPB, JPB shall be entitled to impose liquidated damages ("LD") which shall accrue automatically without the need for any prior demand or notice to the Supplier.

17.2 Without prejudice to Clause 17(1), JPB shall also be entitled to impose LD where: -

- (a) the Works are required to be repaired, rectified, altered, modified or replaced during the Warranty Period pursuant to this Agreement; and
- (b) the Supplier fails to complete and return the repaired, rectified, altered, modified or replacement Works within the period specified by JPB.

Where the Supplier reasonably anticipates that it will be unable to complete the required repair, rectification, alteration, modification or replacement within the stipulated period, the Supplier shall immediately notify JPB in writing stating the reasons for the delay and the expected completion date. JPB may, at its sole discretion grant an extension of time subject to such terms and conditions as it deems appropriate. Any extension of time granted by JPB shall not prejudice JPB's right to impose LD for any period of delay unless JPB expressly agrees otherwise in writing.

17.3 The LD shall be calculated at the rate of one per cent (1%) of the Purchase Order Price for each day or part thereof during which the delay continues subject to a maximum aggregate amount of ten per cent (10%) of the Purchase Order Price.

17.4 JPB shall be entitled to deduct, withhold or set off any LD payable by the Supplier against any monies due or becoming due to the Supplier under this Agreement or otherwise recover the same as a debt due and payable.

17.5 The imposition or recovery of LD shall be without prejudice to JPB's other rights and remedies under this Agreement, at law or in equity including the right to recover any losses or damages exceeding the amount of the LD where such recovery is permitted by law.

17.6 Where the aggregate LD reaches or exceeds ten per cent (10%) of the Purchase Order Price, JPB may, without prejudice to its other rights and remedies, terminate this Agreement and/or the relevant Purchase Order with immediate effect by written notice to the Supplier.

17.7 The termination of this Agreement or the relevant Purchase Order shall not affect JPB's right to recover any LD accrued prior to the effective date of termination or any other rights or remedies available to JPB.

18. TERMINATION

18.1 Notwithstanding anything to the contrary contained in this Agreement, JPB may, without prejudice to any other rights or remedies available under this Agreement, at law or in equity, terminate this Agreement and/or any Purchase Order in whole or in part by written notice to the Supplier upon the occurrence of any of the following events: -

- (a) the Supplier commits a material breach of any provision, obligation, covenant, representation, warranty or undertaking under this Agreement and where such breach is capable of remedy, fails to remedy the same within seven (7) days (or such other period as JPB may specify) after receipt of written notice from JPB requiring the breach to be remedied;
- (b) the Supplier breaches this Agreement or fails to perform its obligations whether or not any individual breach is capable of remedy;
- (c) the Supplier fails to supply, deliver or complete the Works in accordance with this Agreement or fails to meet the Delivery Date or any other milestone specified by JPB;
- (d) the Supplier becomes insolvent, is unable to pay its debts as they fall due, enters into liquidation (other than for the purpose of a solvent reconstruction or amalgamation), judicial management, receivership, administration or any arrangement or composition with its creditors or any analogous proceeding is commenced against it;
- (e) the Supplier ceases or threatens to cease carrying on its business or a substantial part thereof;
- (f) any representation or warranty made by the Supplier under this Agreement proves to be false, inaccurate or misleading in any material respect;
- (g) the Supplier fails to maintain any insurance required under this Agreement or fails to comply with any applicable Legislative Requirements;
- (h) the Supplier, its directors, employees, agents or subcontractors are found to have engaged in fraud, corruption, bribery, unlawful conduct or any act that in JPB's reasonable opinion, may materially prejudice JPB's reputation or interests; or
- (i) any other event occurs which materially affects the Supplier's ability to perform its obligations under this Agreement.

18.2 The termination or expiry of this Agreement shall not affect: -

- (a) any rights, remedies, obligations or liabilities accrued by either Party before the effective date of termination;
- (b) any provision of this Agreement which is expressly or by implication intended to survive termination including but not limited to the provisions relating to confidentiality, intellectual property, warranties, indemnities, taxes, governing law, dispute resolution and limitation periods; or

- (c) JPB's right to recover liquidated damages, losses, costs, expenses or any other sums due from the Supplier.

18.3 Upon termination of this Agreement or any Purchase Order for any reason: -

- (a) JPB may withhold, retain, deduct or set off any monies due or becoming due to the Supplier against any amount owed by the Supplier to JPB;
- (b) where JPB has paid for any Works not delivered, accepted or completed in accordance with this Agreement, the Supplier shall within seven (7) days of receiving JPB's written demand, refund all such amounts together with any reasonable costs and expenses incurred by JPB;
- (c) JPB may procure replacement goods, services or works from any third party and the Supplier shall indemnify and reimburse JPB for any additional costs, losses or expenses reasonably incurred as a result of such procurement;
- (d) where termination arises from the Supplier's breach, JPB may engage a third party to complete, rectify, repair or replace the Works at the Supplier's sole cost and expense without prejudice to JPB's other rights and remedies;
- (e) the Supplier shall immediately cease representing itself as acting on behalf of JPB and shall deliver to JPB all Works (whether completed or in progress), documents, records, reports, drawings, specifications, manuals, data, keys, access cards and all other property belonging to JPB in its possession or control;
- (f) the Supplier shall immediately return to JPB or at JPB's option, permanently destroy all Confidential Information and certify in writing that it has complied with this obligation except where retention is required by applicable law; and
- (g) the Supplier shall vacate JPB's premises and remove all of its personnel, equipment, tools, temporary structures and property without delay, making good any damage caused to JPB's premises to JPB's reasonable satisfaction.

18.4 Except in respect of antecedent breaches or obligations expressly stated to survive termination, neither Party shall have any further liability to the other arising solely by reason of the termination of this Agreement.

18.5 The rights of termination provided under this Clause are cumulative and shall not prejudice or restrict any other rights or remedies available to JPB under this Agreement, at law or in equity.

19. CHANGE OF PURCHASE ORDER

19.1 JPB may, at any time and from time to time, by written notice to the Supplier, direct any variation to the Purchase Order whether in whole or in part including but not limited to any change, addition, omission, substitution, modification or alteration to the quantity, scope, specification, design, drawings, quality, packaging, delivery location, delivery schedule, method of delivery or any other requirement relating to the Works ("Variation"). The Supplier shall promptly comply with such Variation.

- 19.2 Unless otherwise agreed in writing by JPB, no Variation shall invalidate this Agreement or relieve the Supplier from its obligations hereunder. The Supplier shall continue to perform its obligations under this Agreement pending the Parties' agreement on any adjustment arising from the Variation.
- 19.3 Where a Variation materially increases or decreases the Supplier's direct cost of supplying the Works, the Parties shall negotiate in good faith an equitable adjustment to the Purchase Order Price. Any claim for adjustment shall: -
- (a) be submitted in writing within fourteen (14) days from the date of JPB's Variation notice;
 - (b) be supported by detailed documentary evidence satisfactory to JPB demonstrating the actual increase or decrease in the Supplier's direct costs; and
 - (c) exclude any claim for loss of profit, loss of opportunity, financing costs, overheads, consequential loss, disruption costs or any indirect costs unless expressly approved in writing by JPB.
- 19.4 No adjustment to the Purchase Order Price or Delivery Schedule shall be effective unless expressly agreed in writing by JPB. Pending such agreement, the Supplier shall continue to perform the Works in accordance with the Purchase Order as varied.
- 19.5 Where the Parties are unable to reach agreement on any adjustment within thirty (30) days from the date of JPB's Variation notice, JPB may, at its sole discretion and without liability, by written notice: -
- (a) determine a reasonable adjustment based on the available evidence and industry practice which determination shall be binding pending final resolution of any dispute; or
 - (b) cancel the affected portion of the Purchase Order or terminate this Agreement and/or the relevant Purchase Order in whole or in part without prejudice to JPB's accrued rights and remedies.
- 19.6 The Supplier shall not implement any variation, modification or change to the Works, the Specification, the Purchase Order or the method of performance unless expressly authorised in writing by JPB. Any unauthorised variation shall be deemed to have been carried out at the Supplier's sole cost and risk and JPB shall be under no obligation to make any additional payment in respect thereof.

20. ASSIGNMENT AND SUBCONTRACTING

- 20.1 The Supplier shall not assign, transfer, novate, charge, declare a trust over, dispose of or otherwise deal with this Agreement or any of its rights, benefits, interests or obligations under this Agreement whether in whole or in part without the prior written consent of JPB. Any purported assignment, transfer, novation or dealing made without JPB's prior written consent shall be null, void and of no effect.

- 20.2 The Supplier shall not subcontract the whole or any part of the Works without the prior written approval of JPB. Any approval granted by JPB shall not relieve the Supplier of any of its obligations or liabilities under this Agreement and the Supplier shall remain fully responsible and liable for the acts, omissions, negligence and defaults of its subcontractors, agents and representatives as if they were the acts, omissions, negligence and defaults of the Supplier itself.
- 20.3 The Supplier shall ensure that every approved subcontract contains terms and conditions consistent with and no less onerous than those imposed on the Supplier under this Agreement including obligations relating to confidentiality, intellectual property, warranties, insurance, compliance with Legislative Requirements and indemnities.
- 20.4 JPB may, at any time, assign, transfer, novate or otherwise deal with this Agreement or any of its rights, interests or obligations under this Agreement to any of its holding companies, subsidiaries, related corporations, successors, statutory bodies or any person acquiring all or a substantial part of JPB's business or assets by giving written notice to the Supplier. The Supplier hereby irrevocably consents to such assignment, transfer or novation and shall execute all documents and do all acts necessary to give effect thereto.
- 20.5 Any change in the ownership or control of the Supplier which in JPB's reasonable opinion materially affects the Supplier's ability to perform its obligations under this Agreement shall be notified to JPB immediately. JPB may upon such change, review the continuation of this Agreement and where such change materially prejudices JPB's interests, terminate this Agreement in accordance with Clause 18.
- 20.6 Nothing in this Clause shall relieve the Supplier of any liability or obligation under this Agreement unless JPB expressly agrees otherwise in writing.

21. PURCHASE FROM ANOTHER SUPPLIER

21.1 If: -

- (a) the Supplier fails or is unable to supply or deliver the Works by the Delivery Date;
- (b) the Supplier fails to comply with any requirement of this Agreement or the Specification;
- (c) the Works are rejected by JPB pursuant to this Agreement; or
- (d) in JPB's reasonable opinion, the Supplier is unlikely to perform its obligations within the required time,

JPB may, without prejudice to any other rights or remedies available under this Agreement or at law, procure the same or substantially similar goods, services or works from any other supplier ("Replacement Supplier") whether temporarily or permanently without any obligation to first terminate this Agreement or obtain the Supplier's consent.

- 21.2 The Supplier shall upon demand, indemnify and reimburse JPB for all additional costs, expenses, losses and damages incurred by JPB arising from or in connection with such procurement, including but not limited to: -

- (a) the difference between the Purchase Order Price and the price paid to the Replacement Supplier;
- (b) all administrative, transportation, procurement, mobilisation, inspection, testing and handling costs;
- (c) any costs incurred in expediting the procurement or delivery of replacement goods or services;
- (d) any costs of rectification, repair, replacement or completion of the Works; and
- (e) all legal costs (on a solicitor and client basis) and other costs reasonably incurred by JPB in enforcing its rights under this Agreement.

21.3 Any amount recoverable by JPB under this Clause shall constitute a debt immediately due and payable by the Supplier and may be deducted, set-off or withheld by JPB from any monies otherwise due or becoming due to the Supplier under this Agreement or any other agreement between the Parties, without prejudice to JPB's other rights and remedies.

21.4 The exercise by JPB of its rights under this Clause shall not constitute a waiver of any breach by the Supplier nor prejudice JPB's right to: -

- (a) impose Liquidated Damages under Clause 17;
- (b) terminate this Agreement under Clause 18;
- (c) recover any direct, indirect or consequential losses and damages to the extent recoverable under law; or
- (d) exercise any other rights or remedies available under this Agreement or at law.

21.5 For the avoidance of doubt, the Supplier shall remain liable for all Liquidated Damages, losses, damages, costs and expenses suffered or incurred by JPB arising out of or in connection with the Supplier's breach, delay, default or failure to perform its obligations under this Agreement notwithstanding JPB's procurement of the Works from a Replacement Supplier.

22. CONFIDENTIALITY

22.1 For the purposes of this Agreement, "**Confidential Information**" means all information, whether in written, oral, electronic, visual or any other form, disclosed or made available by one Party ("Disclosing Party") to the other Party ("Receiving Party") in connection with this Agreement including but not limited to any commercial, financial, technical, operational, business, contractual, pricing, customer, supplier, procurement, security, trade secret, know-how, software, drawings, specifications, reports, data, documents and any other proprietary or confidential information, whether expressly designated as confidential or which ought reasonably to be regarded as confidential.

22.2 Each Party shall during the term of this Agreement and thereafter: -

- (a) keep all Confidential Information strictly confidential;
- (b) use the Confidential Information solely for the purpose of performing its obligations or exercising its rights under this Agreement;
- (c) not disclose, publish, copy, reproduce, distribute or otherwise make available any Confidential Information to any third party without the prior written consent of the Disclosing Party, except as expressly permitted under this Agreement;
- (d) disclose the Confidential Information only to its employees, directors, officers, agents, subcontractors, professional advisers, related corporations and affiliates who have a strict need to know such information for the purposes of this Agreement and who are bound by confidentiality obligations no less stringent than those contained herein; and
- (e) exercise at least the same degree of care in protecting the Confidential Information as it exercises in protecting its own confidential information of a similar nature, and in any event not less than a reasonable standard of care.

22.3 Each Party shall be fully responsible and liable for any act, omission or breach of this Clause by its employees, officers, directors, agents, subcontractors, consultants, professional advisers, related corporations and affiliates.

22.4 The obligations under this Clause shall not apply to Confidential Information which the Receiving Party can demonstrate:

- (a) was lawfully in its possession without restriction prior to disclosure by the Disclosing Party;
- (b) is or becomes publicly available otherwise than through any breach of this Agreement;
- (c) is lawfully obtained from a third party without any obligation of confidentiality; or
- (d) is required to be disclosed pursuant to any applicable law, regulation, court order or the lawful requirement of any governmental, statutory or regulatory authority, provided that, where legally permissible, the Receiving Party shall promptly notify the Disclosing Party before making such disclosure and shall disclose only the minimum information legally required.

22.5 Upon the expiry or termination of this Agreement or upon the written request of the Disclosing Party at any time, the Receiving Party shall promptly return or at the option of the Disclosing Party, permanently destroy all Confidential Information (including all copies, extracts and reproductions thereof) in its possession, custody or control and if requested, certify in writing that it has complied with this obligation save that one archival copy may be retained solely for legal, regulatory or audit purposes.

22.6 The Receiving Party acknowledges that any unauthorised use or disclosure of the Confidential Information may cause irreparable harm to the Disclosing Party for which damages alone may not be an adequate remedy. Accordingly, the Disclosing Party shall be entitled, without prejudice to any other rights or remedies available at law or under this

Agreement, to seek injunctive relief, specific performance or any other equitable relief to prevent or restrain any actual or threatened breach of this Clause.

22.7 The Receiving Party shall indemnify and keep indemnified the Disclosing Party against all losses, damages, liabilities, claims, proceedings, costs and expenses (including legal costs on a solicitor and client basis) arising from or in connection with any breach of this Clause by the Receiving Party or any person for whom it is responsible.

22.8 The obligations contained in this Clause shall survive the expiry, completion or termination of this Agreement for any reason and shall continue in full force and effect unless and until the relevant Confidential Information lawfully enters the public domain other than through a breach of this Agreement.

23. GOVERNING LAWS

This Agreement and any dispute, controversy, claim or difference arising out of or in connection with this Agreement including any question regarding its existence, validity, interpretation, performance, breach, termination or any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Malaysia without regard to its conflict of laws principles. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Malaysia for the purpose of hearing and determining any such dispute, controversy, claim or difference and waives any objection on the grounds of venue, forum non conveniens or any similar ground.

24. FORCE MAJEURE

24.1 For the purposes of this Agreement, **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of the affected Party which prevents or materially delays the performance of its obligations under this Agreement including but not limited to acts of God, flood, earthquake, tsunami, storm, lightning, fire, epidemic, pandemic, war (whether declared or undeclared), invasion, armed conflict, terrorism, riot, civil commotion, sabotage, strikes or industrial disputes (other than those involving the affected Party's own workforce), embargo, sanctions, acts or omissions of any governmental or regulatory authority, or any other event of a similar nature beyond the reasonable control of the affected Party.

24.2 A Party affected by a Force Majeure Event ("Affected Party") shall not be liable for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is directly caused by the Force Majeure Event provided that the Affected Party: -

- (a) gives written notice to the other Party as soon as reasonably practicable and in any event within seven (7) days of becoming aware of the Force Majeure Event, specifying the nature, anticipated duration and effect of the Force Majeure Event;
- (b) uses all reasonable endeavours to mitigate, overcome and minimise the effects of the Force Majeure Event and to resume full performance of its obligations as soon as reasonably practicable; and

- (c) keeps the other Party reasonably informed of the progress of the Force Majeure Event and the steps being taken to mitigate its effects.

- 24.3 During the continuance of the Force Majeure Event, only those obligations directly affected by the Force Majeure Event shall be suspended for the duration of the Force Majeure Event. All other obligations under this Agreement which are not affected shall continue in full force and effect.
- 24.4 For the avoidance of doubt, a Force Majeure Event shall not excuse, suspend or relieve either Party from any obligation to pay any amount that had become due and payable before the occurrence of the Force Majeure Event.
- 24.5 If the Force Majeure Event continues for a continuous period exceeding sixty (60) days or such other period as the Parties may mutually agree in writing, either Party may terminate this Agreement by giving fourteen (14) days' prior written notice to the other Party without liability save for any rights, obligations or liabilities accrued prior to the effective date of termination.
- 24.6 The occurrence of a Force Majeure Event shall not prejudice or affect any rights, remedies or liabilities accrued by either Party before the commencement of the Force Majeure Event.

25. AMENDMENT

No amendment, variation, modification, supplement, waiver or addition to any provision of this Agreement shall be valid or binding unless it is made in writing and expressly stated to amend this Agreement and is duly executed by the authorised representatives of both Parties. For the avoidance of doubt: -

- (a) no oral agreement, representation, undertaking, course of dealing or conduct of either Party shall constitute or be deemed to constitute any amendment or variation to this Agreement;
- (b) no failure or delay by JPB in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy or any subsequent breach; and
- (c) any amendment, variation or waiver granted by JPB shall apply only to the specific matter for which it is given and shall not constitute a continuing waiver or affect any other rights or remedies available to JPB under this Agreement or at law.

26. INDEPENDENT CONTRACTOR, NO PARTNERSHIP OR AGENCY

- 26.1 The relationship between JPB and the Supplier under this Agreement is solely that of independent contracting parties. Nothing contained in this Agreement shall be construed or deemed to constitute a partnership, joint venture, agency, employment, fiduciary relationship or any other form of legal association between the Parties.
- 26.2 Neither Party shall have any authority to act for, represent, bind or incur any obligation or liability on behalf of the other Party nor shall either Party hold itself out as having such authority unless expressly authorised in writing by the other Party.

- 26.3 The Supplier shall not make any representation, warranty, commitment or undertaking or enter into any contract or arrangement in the name of or on behalf of JPB without JPB's prior written approval.
- 26.4 Nothing in this Agreement shall create any exclusive relationship between the Parties and JPB shall remain free to procure goods, services or works similar to the Works from any other supplier at any time.
- 26.5 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties or constitute either Party as an agent for the other for any purpose.

27. TIME OF THE ESSENCE

- 27.1 Time shall be of the essence in respect of all obligations, duties, milestones, delivery dates, completion dates, notice periods and other time limits specified in this Agreement.
- 27.2 The Supplier shall strictly comply with all time requirements under this Agreement. No extension, waiver or relaxation of any time period shall be valid unless expressly agreed to in writing by JPB.
- 27.3 Any failure by the Supplier to comply with any time requirement under this Agreement shall constitute a material breach of this Agreement and shall entitle JPB without prejudice to any other rights or remedies available under this Agreement or at law, to exercise any of its contractual rights, including the imposition of liquidated damages (where applicable), suspension, termination and/or the recovery of any losses or damages suffered by JPB.

28. NOTICES

- 28.1 Unless otherwise expressly provided in this Agreement, every notice, demand, request, consent, approval or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid registered post, courier service or electronic mail to the address or email address of the relevant Party as specified in the Purchase Order or such other address or email address as may be notified in writing by that Party from time to time.
- 28.2 Any notice or communication shall be deemed to have been duly received: -
- (a) if delivered by hand, on the date of delivery;
 - (b) if sent by prepaid registered post or courier service, on the third (3rd) Business Day after posting or collection for delivery;
 - (c) if sent by electronic mail, at the time of transmission provided that no error or failure of delivery notification is received by the sender.
- 28.3 Either Party may change its address, email address or other contact details for the purpose of this Clause by giving prior written notice to the other Party.
- 28.4 A notice given in accordance with this Clause shall be deemed to satisfy any legal or contractual requirement that such notice be given in writing.

29. SEVERABILITY

If any provision of this Agreement or any part thereof is held by any court or competent authority to be invalid, illegal, void or unenforceable under any applicable law, such provision shall, to the extent of such invalidity, illegality or unenforceability be deemed severed from this Agreement and shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement, all of which shall remain in full force and effect. To the extent permitted by law, any invalid, illegal or unenforceable provision shall be construed, modified or limited so as to give effect as nearly as possible to the original intention of the Parties while remaining valid and enforceable. If such provision cannot be so construed, modified or limited, the Parties shall negotiate in good faith to replace the invalid, illegal or unenforceable provision with a valid and enforceable provision that achieves as nearly as possible, the same legal and commercial effect as the original provision.

30. SPECIAL CONDITIONS

- 30.1 The Special Conditions, if any shall form an integral part of this Agreement and shall be read and construed together with the terms and conditions of this Agreement as though fully set out herein.
- 30.2 The Special Conditions are intended to supplement the terms and conditions herein. In the event of any inconsistency, conflict or ambiguity between the terms and conditions herein and the Special Conditions, the Special Conditions shall prevail solely to the extent of such inconsistency, conflict or ambiguity.
- 30.3 Except as expressly modified, amended, supplemented or varied by the Special Conditions, all other provisions of this Agreement shall remain in full force and effect and shall continue to bind the Parties.
- 30.4 The inclusion of any Special Condition shall not be construed as limiting, waiving or prejudicing any right, remedy or entitlement of JPB under this Agreement unless such waiver or limitation is expressly stated in the relevant Special Condition.

31. ANTI-BRIBERY, ANTI-CORRUPTION AND COMPLIANCE

- 31.1 Each Party represents, warrants and undertakes that in connection with this Agreement, it shall at all times: -
 - (a) comply with all applicable laws, regulations and codes relating to anti-bribery, anti-corruption, anti-money laundering and the prevention of financial crime including but not limited to the Malaysian Anti-Corruption Commission Act 2009 (including Section 17A thereof), the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 and all other applicable laws and regulations;
 - (b) not directly or indirectly offer, promise, give, solicit, receive or accept any gratification, bribe, commission, facilitation payment, kickback, gift, hospitality, advantage or other improper benefit of any kind to or from any person for the purpose of improperly influencing any act or decision in connection with this Agreement;

- (c) establish, maintain and enforce adequate policies, procedures and internal controls designed to prevent bribery, corruption, money laundering and other unlawful conduct and shall ensure that its directors, officers, employees, agents, consultants, subcontractors and any other persons acting on its behalf comply with such policies and applicable laws;
- (d) immediately notify the other Party in writing upon becoming aware of any actual, suspected or alleged breach of this Clause or any investigation, prosecution or enforcement action commenced by any competent authority relating to corruption, bribery or money laundering; and
- (e) provide such reasonable information or assistance as may be requested by the other Party to verify compliance with this Clause.

31.2 The Supplier shall ensure that its directors, officers, employees, agents, consultants, subcontractors and any other persons engaged by it in connection with this Agreement comply with the obligations set out in this Clause and the Supplier shall remain fully responsible for any act or omission of such persons.

31.3 If JPB reasonably believes or there is credible evidence that the Supplier has breached or is likely to breach this Clause, JPB may require the Supplier to provide such information, documents or explanations as JPB reasonably considers necessary and may suspend the performance of this Agreement pending the outcome of its review or investigation.

31.4 Any breach of this Clause shall constitute a material breach of this Agreement and shall entitle the non-defaulting Party to terminate this Agreement with immediate effect by written notice without prejudice to any other rights or remedies available under this Agreement or at law.

31.5 The defaulting Party shall indemnify and keep indemnified the non-defaulting Party against all losses, damages, liabilities, penalties, fines, claims, proceedings, costs and expenses (including legal costs on a solicitor and client basis) arising out of or in connection with any breach of this Clause or the termination of this Agreement pursuant to this Clause.

31.6 The rights and obligations under this Clause shall survive the expiry or termination of this Agreement.

32. SAFETY, HEALTH, SECURITY AND ENVIRONMENT ("SHE")

33.1 The Supplier shall at all times during the performance of the Works comply with: -

- (a) all applicable laws, regulations, codes of practice and statutory requirements relating to occupational safety, health, security and environmental protection;
- (b) all rules, regulations, policies, procedures, standards, guidelines and instructions issued by JPB from time to time including but not limited to the Safety, Health, Security and Environmental ("SHE") Guidelines set out in Appendix I; and

- (c) all lawful directions issued by JPB or its authorised representatives relating to safety, health, security and environmental matters.
- 33.2 JPB may, from time to time, amend, revise, replace, supplement or introduce additional SHE rules, regulations, policies or guidelines. The Supplier shall comply with such amended or additional requirements upon being notified by JPB and such requirements shall form part of this Agreement.
- 33.3 In the event of any inconsistency between this Agreement and the SHE Guidelines, the SHE Guidelines shall prevail solely in relation to matters concerning safety, health, security and environmental compliance.
- 33.4 The Supplier shall be solely responsible for the safety, health and welfare of its employees, agents, subcontractors, representatives and any other persons engaged by it in connection with the Works and shall ensure that all such persons comply with this Clause and the SHE Guidelines.
- 33.5 The Supplier shall register its personnel with JPB's Port Police and obtain all necessary entry passes, permits and approvals before entering the Port. The Supplier shall ensure compliance with all Port security requirements and shall immediately surrender any pass upon expiry, termination or upon request by JPB. JPB may refuse, suspend or revoke the access of any person whose conduct, behaviour or non-compliance is considered unacceptable or poses a safety, security or operational risk.
- 33.6 The Supplier shall provide, maintain and ensure the proper use of suitable and approved Personal Protective Equipment ("PPE") by all of its personnel in accordance with the SHE Guidelines and applicable laws. Where JPB reasonably determines that any PPE is inadequate, defective or non-compliant, JPB may require the Supplier to immediately replace such PPE at the Supplier's sole cost and expense.
- 33.7 The Supplier shall maintain good housekeeping standards at all times and shall promptly remove all rubbish, waste materials, surplus materials, temporary works, plant, equipment and debris arising from the performance of the Works. Upon completion or termination of the Works, the Supplier shall reinstate and leave the Site in a clean, safe and workmanlike condition to the satisfaction of JPB.
- 33.8 The Supplier shall carry out the Works in a manner that prevents injury, environmental harm, pollution, contamination or nuisance. Where any environmental damage, contamination, pollution or unsafe condition is caused by the Supplier or any person under its control, the Supplier shall immediately take all necessary remedial measures and fully restore the affected area at its sole cost and expense without prejudice to JPB's other rights and remedies.
- 33.9 JPB shall not be liable for any injury, loss, damage, penalty, claim or liability arising from the Supplier's failure or the failure of its employees, agents, subcontractors or representatives to comply with this Clause, the SHE Guidelines or any applicable laws nor shall JPB be responsible for any breach of the SHE requirements by other port users, contractors, tenants, licensees or third parties.

33.10 The Supplier acknowledges that compliance with this Clause is a fundamental obligation under this Agreement. Any breach of this Clause by the Supplier or any of its employees, agents, subcontractors or representatives shall constitute a material breach of this Agreement and shall entitle JPB, without prejudice to any other rights or remedies available under this Agreement or at law to: -

- (a) issue a stop-work order;
- (b) require the immediate removal of any non-compliant personnel from the Site;
- (c) suspend the performance of the Works until the breach is remedied;
- (d) recover from the Supplier all costs, losses and expenses incurred by JPB arising from such breach; and/or
- (e) terminate this Agreement with immediate effect by written notice.

33. STAMP DUTY

33.1 The Supplier shall at its sole cost and expense, be responsible for the adjudication (where applicable), stamping and registration (if required by law) of this Agreement and any amendment, variation, supplemental agreement or other instrument executed pursuant to this Agreement in accordance with the Stamp Act 1949 and all other applicable laws.

33.2 The Supplier shall bear and promptly pay all stamp duties, adjudication fees, registration fees (if applicable), penalties, fines, interest and all other costs and expenses arising out of or in connection with the stamping, adjudication or registration of this Agreement or any related instrument including any penalties resulting from any delay, omission or failure by the Supplier to comply with the applicable statutory requirements.

33.3 The Supplier shall indemnify and keep indemnified JPB against all losses, damages, penalties, fines, interest, claims, liabilities, costs and expenses (including legal costs on a solicitor and client basis) incurred or suffered by JPB arising out of or in connection with the Supplier's failure or delay to comply with this Clause.

33.4 Without prejudice to any other rights or remedies available under this Agreement or at law, JPB shall be entitled to deduct, set-off or recover from any monies due or becoming due to the Supplier any amount paid or incurred by JPB arising from the Supplier's failure to comply with this Clause.