

McWane, LLC Terms and Conditions of Purchase - PRC Companies

1. ENTIRE AGREEMENT. McWane, LLC ("Buyer") may agree from time to time to purchase Goods and/or Services from Seller. These Terms and Conditions of Purchase, any applicable order for Goods and/or Services from Buyer ("Order") and any other of Buyer's specifications constitute the entire agreement between the parties with respect to Goods and Services (collectively the "Agreement"). No other or inconsistent terms of Seller, no modification, amendment or waiver to this Agreement and no cancellation, change or return of any Order will be binding on Buyer until agreed in writing by Buyer's authorized representative. No representation, promise or term not set forth herein has been or may be relied on by Seller, and any terms not contained in this Agreement are expressly objected to and rejected. Buyer's acceptance of any Order, whether oral or written, is based on the express condition that Seller agrees to all terms and conditions of this Agreement, including these Terms and Conditions of Purchase. Seller acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each Order will be governed by the version of these Terms and Conditions available online at the time of such Order. Seller's acknowledgment of this Agreement, the delivery of Goods or performance of Services referenced herein or presentation of an invoice by Seller will constitute Seller's acceptance of this Agreement.

2. DEFINITIONS AND INTERPRETATION

- A. **Definitions.** Unless already defined in the PO, the following words and expressions have the following meanings in these T&Cs:
- (1) "Affiliate" means, in relation to any Party, any other person or entity that directly or indirectly controls or is controlled by or is under common control with such Party. For purposes of this definition 'control' means that a person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a Party, whether through ownership of voting shares, by contract or otherwise, and 'controls' and 'controlled' will be interpreted accordingly.
 - (2) "Agreement" means these T&Cs, the Appendices and the PO.
 - (3) "Appendices" are those documents attached to or incorporated into the PO.
 - (4) "Business Day" means a Day which is not a Saturday, Sunday or a public holiday (for the whole Day) or a bank holiday (for the whole Day) in the US or PRC.
 - (5) "Claim" means any suit, claim, action, demand, proceeding, penalty, fine, order or adverse judgment under, arising out of or in any way in connected with Goods or Services, this Agreement or the Project.
 - (6) "Commencement Date" is the date set forth in the PO for beginning Services.
 - (7) "Company" is the purchaser set forth in the PO.
 - (8) "Company Group" means Company, its Affiliates and their respective directors, officers, employees and consultants, but excluding Seller.
 - (9) "Completion" means the time at which Goods or Services meet the requirements of the PO including after: (a) any tests which are required under the PO to be carried out and passed have been carried out and passed; and (b) any regulatory permits and approvals required by Law for such Goods or Services have been obtained and delivered to Company.
 - (10) "Completion Date" is the date set forth in the PO for completion of Services.
 - (11) "Confidential Information" is defined in Clause 13.A.
 - (12) "Consents" means all permits, authorizations, approvals, licenses, exemptions, clearances, consents, permissions, notifications, filings, registrations, deeds, certificates, directions or declarations, or similar decisions of any kind.
 - (13) "Day" means a calendar day.
 - (14) "Default" is defined in Clauses 12.A and 12.B.
 - (15) "Delivery" and "Delivered" means the delivery of Goods or Services to the Delivery Point in accordance with the requirements of the PO and acceptance of such Goods or Services by Company.
 - (16) "Delivery Date" means the date or dates for Delivery of Goods or Services specified in the PO.
 - (17) "Delivery Point" means the location or locations for Delivery of Goods or Services specified in the PO.
 - (18) "Force Majeure Event" means an event which is not within the reasonable direct or indirect control of the Party affected, and is not the direct or indirect result of a breach by the affected Party of any of its obligations under this Agreement and as a result of which the affected Party is prevented from or delayed in performing any of its non-financial obligations under this Agreement where the event or its consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligation and is limited to: (a) fire, lightning, explosion, severe flood, tsunami, severe storms, hurricanes, cyclones, typhoons, volcanic activity, or earthquakes; (b) any official or unofficial strike or lockout affecting any industry related to provision of Goods to, or performance of Services in, the US, that directly affects the Project; and (c) failure by any Relevant Authority to carry out works or provide services, provided always that a Force Majeure Event does not include: (i) adverse weather conditions other than those set out in subsection (a) of this definition; (ii) changes in general economic conditions, interest or inflation rates, commodity prices, changes in prices, currency fluctuations or exchange rates; or (iii) changes in the financial condition of Seller or an Affiliate of Seller.
 - (19) "Goods" means all products, supplies, materials, spares, replacement goods, processes and/or equipment specifically described in the PO, and any subsequent amendments, changes or modifications thereof.
 - (20) "Insolvency Event" means, in relation to a Party, the occurrence of any of the following events:
 - (a) passing by that Party of a resolution for, or that Party being under, bankruptcy, judicial management, insolvency, winding up, liquidation, or other similar proceeding;

- (b) appointment of a trustee, judicial manager, liquidator, custodian, or similar person in a proceeding referred to in subsection (a) of this definition which appointment has not been set aside or stayed within thirty (30) Business Days;
 - (c) making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of that Party, which order has not been set aside or stayed within forty-five (45) Business Days;
 - (d) appointment of a receiver, receiver and manager, official manager, trustee, administrator, controller or similar official over any of the assets or undertaking of that Party;
 - (e) except to reconstruct or amalgamate while solvent, entering into or resolving to enter into by that Party of a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or proposing a reorganization, moratorium or other administration involving any of them;
 - (f) inability of that Party to pay its debts when they are due as determined by a court or properly constituted arbitral tribunal or statement by that Party that it is insolvent;
 - (g) suspension by that Party of payment of its debts generally;
 - (h) when the accumulated losses of that Party in any financial year equal or exceed the total of the paid-up capital and free reserves of such Party; or
 - (i) the secured creditors of such Party, representing at least 50% of its outstanding debt, make a demand and such Party fails to make payment within thirty (30) Days of receipt of such notice.
- (21) "IP Rights" means all present and future worldwide rights conferred by Law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results in the industrial, commercial, scientific, literary or artistic fields, whether or not capable of registration, registered or patentable and any Proprietary Information.
- (22) "Law" means: (a) any decree, resolution, law, statute, act, ordinance, rule, directive, order, treaty, code, regulation or requirements, or any interpretation of those, to the extent having force of law in the US or PRC, as enacted, issued or determined from time to time; and (b) requirements and Consents of Relevant Authorities (including conditions in respect of those Consents).
- (23) "Loss" includes any cost, expense (including legal expenses and attorneys' fees on an indemnity basis), loss, charge, fee, payment (including payments made under indemnities), damage or liability whether present or future, fixed or unascertained, actual or contingent.
- (24) "Parties" or "Party" means Company and Seller, or either of them.
- (25) "Payment Terms" are those terms set forth in the PO for payment of the Price.
- (26) "PRC" means the People's Republic of China.
- (27) "Price" is the price for Goods or Services set forth in the PO.
- (28) "Project" is the project described in the PO.
- (29) "Project Site" is the location of the Project set forth in the PO.
- (30) "Proprietary Information" means information rightfully in the possession of a person, including documents, ideas, policies, procedures, methods, processes, materials or other tangible or intangible things relating to Goods or Services or the Project.
- (31) "PO" means the order issued by Company, as amended or modified from time to time.
- (32) "Relevant Authority" means any court or tribunal with relevant jurisdiction, any local, national or supra-national government, council, agency, authority, inspectorate, department, ministry, official or public or statutory person.
- (33) "Seller" is the seller of Goods or Services set forth in the PO.
- (34) "Seller Group" means Seller, its subcontractors or subvendors of any tier, their respective Affiliates and their respective directors, officers, employees and consultants.
- (35) "Seller Personnel" means all persons employed by Seller to provide Goods or to perform Services.
- (36) "Services" means all services, work or labor of any kind furnished or performed by Seller pursuant to this Agreement as more specifically described in the PO.
- (37) "T&Cs" means these Terms and Conditions.
- (38) "Time for Payment" is the time when payment is due as set forth in the PO.
- (39) "Third Party" means any person who is not a member of either Company Group or Seller Group.
- (40) "US" means the United States of America.

B. Interpretation. In these T&Cs, unless the context requires otherwise:

- (1) the singular includes the plural and vice versa;
- (2) a gender includes the other genders;
- (3) headings are used for convenience only and do not affect the interpretation of these T&Cs;
- (4) if something is to be done on a Day which is not a Business Day then that thing must be done on the next or following Business Day;
- (5) the word "person" includes a natural person and anybody or entity whether incorporated or not;
- (6) the word "month" means calendar month and the word "year" means 12 months;
- (7) the words "in writing" include any communication sent by letter, facsimile transmission or electronic mail;

(8) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time; and

(9) use of the words “includes” or “including” when introducing an item or list of items does not limit the meaning of the words which follow that item or those items or to items of a similar kind and is intended to mean 'includes, without limitation' or 'including without limitation', as applicable.

3. PERFORMANCE STANDARDS

A. Standard of Care for Services. Seller will perform Services: (a) diligently and with the standard of skill, care and attention expected of an experienced and competent provider of services of the same or similar type as Services exercising good industry practice; and (b) in accordance with all applicable Laws, Consents and industry codes and in accordance with this Agreement.

B. Undertakings. Seller undertakes to Company that Seller: (a) has full power and authority to execute this Agreement; (b) will comply with all Laws and the applicable requirements of any Relevant Authority relating to Goods, Services and the Project, including all applicable environmental and international trade Laws; (c) will not accept or give any secret commission or benefits of any kind in connection with Services, Goods or this Agreement; and (d) understands that it performs Services and Delivers Goods at its own risk.

C. Coordination and Other Obligations. Seller will: (a) regularly consult with Company regarding the performance of Services and/or Delivery of Goods, including providing regular updates to Company on the status of all deliveries; and (b) fully co-operate with, and co-ordinate Services with the work and services of Company and Company's consultants, contractors, and agents working in the vicinity where Services are being performed.

4. COMMENCEMENT AND COMPLETION

A. Commencement of Services. Seller will commence Services on the Commencement Date and regularly and diligently perform Services so that they reach the stage of Completion, to Company's satisfaction, by the Completion Date(s).

B. Delivery of Goods.

(1) TIME IS OF THE ESSENCE IN THIS AGREEMENT. Seller will: (a) ensure the Delivery of Goods in complete and undamaged condition on or before the Delivery Date(s) in accordance with the provisions of this Agreement and the applicable PO; (b) ensure that a packing list accompanies each Delivery of Goods showing the PO reference number, the quantity and description of Goods and Seller's name; and (c) at its own expense, ensure that Goods are properly secured for Delivery and if transported from outside the US, properly packed for export (taking into account the mode of transport and the location of Goods).

(2) Except when Seller is in compliance with Clause 4.D(3) and/or if Company extends the Completion Date in accordance with Clause 4.D(4) (in which case this Clause will not apply), if any Goods are not Delivered or Services are not performed by the Delivery Date, Company may: (a) cancel the relevant PO in whole or in part; (b) refuse to accept any late delivery of Goods (or any part); or (c) accept late delivery of Goods or Services and claim liquidated damages in accordance with Clause 4.E.

(3) If Goods are delivered in excess of the quantities ordered by Company, Company will not be bound to pay for the excess and any excess will be and will remain at Seller's risk.

(4) If Seller encounters unknown or latent conditions which could impair the performance or quality of Goods or Services, Seller will give immediate notice of the nature of such condition to Company.

C. Inspection and Testing.

(1) Company may inspect and test Goods at any time prior to Delivery, including during their manufacture, processing or storage, and on Delivery.

(2) Company will not be deemed to have accepted any Goods until Company has had a reasonable time to inspect and test any Goods. For the avoidance of doubt, Company's signing or stamping of any delivery note acknowledging receipt of Goods will not be construed as Company's acceptance of Goods.

(3) If Company is satisfied with the testing, Company will notify Seller in writing that it accepts Goods. If Company is not satisfied with the testing, Company will notify Seller in writing that it does not accept Goods and Seller will (without prejudice to Company's other rights and remedies) promptly and at its expense carry out all necessary remedial work and re-submit Goods to testing and acceptance again.

(4) Notwithstanding any inspection or testing, Seller will remain fully responsible for Goods and no inspection or testing will diminish or affect Seller's obligations under this Agreement.

D. Completion of Services and Extension of Time.

- (1) Seller will notify Company in writing when it considers it has completed Services. If Company, within seven (7) Days of the Completion Date, is not satisfied that Seller has performed Services in accordance with this Agreement, Company will notify Seller that Seller is required to continue to perform Services until they reach the stage of Completion to Company's satisfaction and Seller will continue to perform Services accordingly.
- (2) Any inspection or review of Services by Company will not relieve Seller of its obligations to comply with the requirements of this Agreement and will in no way impair Company's right to require subsequent correction of non-conforming Services.
- (3) Seller will notify Company in writing as soon as practicable, but in any event within five (5) Days, after becoming aware of any matter or circumstance which may adversely affect the scope, timing and/or performance of Services and/or the Delivery of Goods (as applicable), detailing the matter or circumstance and its anticipated effect on the scope, timing and/or performance of Services and/or Delivery of Goods (as applicable).
- (4) Subject to Clause 4.D(5), Company will, within five (5) Days of receipt of Seller's notice in writing, notify Seller of the period, if any, by which a Completion Date or Delivery Date (as applicable) is to be extended due to any such delay.
- (5) Seller is only entitled to an extension to a Completion Date or a Delivery Date (as applicable) if Seller is delayed by a Force Majeure Event, an act, omission, breach or Default of Company or its employees or agents, or a variation to Services and/or Goods (as applicable) under this Agreement requested by Company (except where directed because of an act, omission, breach or Default of Seller).

E. Liquidated Damages.

- (1) If a rate for liquidated damages is set out in the PO for late Completion of Services (or any part) or Delivery of Goods and Seller fails to reach Completion of Services by the Completion Date or fails to ensure Delivery of Goods by the Delivery Date (as applicable), Seller will pay liquidated damages to Company for such delay. Seller accepts that the sum of liquidated damages represents Company's genuine pre-estimate of the Loss likely to be suffered by Company because of the delay by Seller and that the liquidated damages are not a penalty.
- (2) Liquidated damages will be paid at the rate set out in the PO for each Day of such delay until and including the date Services have reached the stage of Completion or Goods have been Delivered (as applicable) in accordance with this Agreement. The total sum of liquidated damages payable by Seller to Company will not exceed the amount set out in the PO.
- (3) Payment of liquidated damages will not relieve Seller of its obligation to reach Completion of Services by the Date for Completion or to ensure Delivery of Goods by the Delivery Date.
- (4) If no liquidated damages are set out in the PO, or for any reason such liquidated damages are not recoverable by Company, Company will be entitled to recover general damages at Law for such delay.

F. Ownership, Title and Risk. Unless otherwise stipulated in the PO, Goods will be shipped DAP (Delivered at Place) (per Incoterms® 2010). Ownership and title to Goods will pass to Company at the time specified in the PO, or if nothing is stated, upon Delivery of Goods.

5. PRICE AND PAYMENT

A. Price. The Price for Delivery of Goods and performance of Services (as applicable) by Seller will be those specifically set forth in the PO. All Prices are fixed and not subject to any variation, including, variations in the cost of labor, materials or exchange rates or expenses and disbursements or any changes in any applicable Laws after the Commencement Date set out in that PO, unless otherwise provided for in this Agreement or agreed to in writing by Company.

B. Payment.

- (1) Subject to Seller's performance of Services or Delivery of Goods (as applicable) to the satisfaction of Company and otherwise in accordance with this Agreement, Company will pay for such Services or Goods (as applicable) at the Time for Payment and on the Payment Terms subject to Company receiving the invoice from Seller in accordance with Clause 5.B(2).
- (2) Seller may submit to Company an invoice for the Price payable in accordance with the Time for Payment and upon Completion of Services and/or Delivery of Goods, as applicable. Each invoice must include the PO number and must be forwarded together with full original documentary evidence. All invoices will be in such detail as may be requested by Company.

(3) All invoices validly submitted will be paid at the Time for Payment; however, if Company has a bona fide dispute in relation to any invoice, it will pay the undisputed amount and then the balance (if any) after agreement with Seller or after dispute resolution proceedings have been finalized, whichever occurs first. As a condition precedent to any obligation on Company to pay any portion of the Price, Seller must have fully performed its obligations under this Agreement relating to such portion of the Price, including completion of Services by the Completion Date(s) and/or Delivery of Goods by the Delivery Date(s). Payment of any invoice does not prejudice the right of Company to claim reimbursement of any Price if any of Services or Goods are found to be defective or otherwise not in compliance with this Agreement.

C. Retentions and Security.

(1) If stated in the PO, Company may retain moneys from payments to Seller up to the amounts specified in the PO. Such retentions will be released and returned to Seller thirty (30) Days after Services have been completed and/or Goods have been Delivered to Company's satisfaction.

(2) Company may request alternative security such as bank guarantees, letters of credit and/or parent company guarantees in lieu of retentions and Seller will comply with such request to Company's satisfaction. In such case, as a condition precedent to any obligation on Company to pay the Price, Seller must have provided the bank guarantee, letter of credit and/or parent company guarantee to Company.

D. Taxes and Currency of Payments. Unless specifically stated in this Agreement, the Price is inclusive of all taxes of any kind, expenses and disbursements and all payments will be made in the currency indicated in the PO.

6. VARIATIONS

A. Right to Vary. Company may at any time, upon five (5) Days' written notice to Seller, increase, omit, decrease, modify or revise in any respect Services and/or the quantity or nature of Goods, provided the relevant Goods have not been dispatched by Seller for Delivery. If Company omits any part of Services and/or Goods, it may engage another seller to perform such omitted Services or to provide such omitted Goods and the Price will be reduced accordingly.

B. Adjustments to the Price. Any changes in Services or the quantities or nature of Goods will be calculated in accordance with the rates stated in the applicable PO; however, where no rates are specified, Company and Seller will in good faith negotiate and attempt to reach agreement on an equitable increase or reduction to the Price based on rates or other methods determined by the Parties. If no agreement is reached, Company will assess a reasonable adjustment to the Price. If Seller disputes the assessment, it may refer the dispute to dispute resolution. In case of cancellation in whole of a PO in accordance with Clause 4.B(2)(a), Seller will, immediately upon being notified of the cancellation, refund any advance payment received from Company.

7. FORCE MAJEURE

A. Notice. Upon a Force Majeure Event occurring, the affected Party must notify the other Party as soon as practicable providing details of the Force Majeure Event and what steps it will take to mitigate the effects of the Force Majeure Event. The affected Party must notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement.

B. No Breach Due to Force Majeure Events. Whilst a Force Majeure Event is occurring: (a) the affected Party is not liable for any inability to perform any of its obligations under this Agreement that are affected by the Force Majeure Event; (b) the affected Party must use its best efforts to mitigate against any Losses due to the Force Majeure Event, including where a Force Majeure Event occurs, but the effects of such Force Majeure Event do not occur immediately, in which case the affected Party must use reasonable efforts to mitigate its exposure to the future consequences; and (c) if the affected Party is the Seller, and it is actually critically delayed in reaching the Completion Date or Delivery Date as a result of a Force Majeure Event, it will be entitled to an extension of time to a Completion Date or a Delivery Date by a fair and reasonable period determined by Company having regard to the nature of the Force Majeure Event and its impact.

C. Price Adjustment. Seller agrees that Company may, during the period Seller is unable to perform its obligations under this Agreement, reduce the Price to the extent of the reduction in the ability of Seller to perform its obligations under this Agreement notwithstanding any other provision in this Agreement or the PO to the contrary.

D. Termination for Continuing Force Majeure. If a Force Majeure Event is continuing or its consequence remains such that the affected Party has been or is unable to comply with its obligations under this Agreement for a period of more than four (4) weeks, then Company may terminate this Agreement by giving twenty (20) Days' written notice to Seller.

8. INTELLECTUAL PROPERTY

A. Warranty Regarding IP Rights. Seller warrants to Company that the use by Company (or any party licensed by Company) of any Proprietary Information provided by Seller to Company will not infringe the IP Rights of any Third Party. The warranty under this clause survives expiry or termination of this Agreement.

B. Indemnity Regarding IP Rights. Seller agrees to defend and indemnify Company from and against all claims, damages, actions or causes of action, together with all expenses and attorneys' fees, incident to any infringement or claimed infringement of any IP Rights arising from the use or sale of any of the Goods.

C. Licenses under IP Rights. In the event Seller provides to Company any Goods or process to be utilized by Company after Seller's Completion of Services, Seller will, at no expense to Company, provide to Company upon final payment a paid-up, irrevocable, royalty-free, nonexclusive license to operate said Goods and/or perform said processes. If Seller is unable to secure such license, Seller will, at no expense to Company, modify Goods to render them non-infringing or will remove Goods and replace them with Goods which will not infringe upon any IP Rights, provided that the modified or replacement Goods continue to meet the specifications of this Agreement.

9. INDEMNITY

A. Seller's Indemnity. Seller is responsible for, and must release and indemnify Company and any other member of Company Group from and against any Claim or Loss incurred or sustained by Company or any other member of Company Group in respect of: (a) death or personal injury to any person; (b) loss of or damage to property (including property belonging to Company or any other member of Company Group); and (c) any claim by a Third Party against Company or any other member of the Company Group for infringement of that Third Party's IP Rights; which may arise out of any act, omission or default on the part of Seller including the performance or non-performance by Seller of its obligations under this Agreement.

B. Reductions. Seller's obligations under Clause 9.A are reduced to the extent that any Claim or Loss is caused by: (a) the wrongful, negligent or unlawful acts or omissions or willful misconduct of Company or any other member of Company Group; or (b) a breach by Company of its express obligations under this Agreement.

C. Indirect Losses. Neither Party is liable to the other for any indirect, special, incidental or consequential losses, including loss of profits, loss of use, loss of production, loss of business, or loss of business opportunity; however, nothing in this clause will be construed to limit Company's right to Liquidated Damages as indirect, special, incidental or consequential losses, including loss of profits, loss of use, loss of production, loss of business or loss of business opportunity.

10. INSURANCE

A. General. Without prejudice to the provisions of Clause 9 (Indemnity), Seller will, at its own expense, and will require its subcontractors at their own expense to, obtain and maintain as a minimum insurance coverage (under an "occurrence" policy form) from insurers that are of good reputation, and in an amount satisfactory to Company in its sole discretion and ensure that they are in full force and effect throughout the duration of the Agreement. Such insurance will insure: (a) Seller's indemnity obligations under this Agreement; and (b) Seller's and/or Company's liability for any property damage, bodily injuries or death sustained by any person or persons, including Seller's employees, which was in any manner caused by, arising from or related to Goods provided by Seller or Services performed by Seller, regardless of whether the alleged injury or damage was caused or alleged to be caused in whole or in part by the conduct of Company.

B. Insurance Types and Limits. The types and limits of insurance will be as set forth in the PO. In addition to those set forth in the PO, Seller will be required to effect and maintain any additional insurances required by any authority having jurisdiction in respect of any part of Goods or Services. An umbrella or excess liability policy may be utilized if necessary to satisfy total limits required.

C. Additional Insured/Waiver of Rights of Recourse. All such insurances will include Company Group as additional assureds to the extent of the liabilities assumed by Seller under this Agreement and will be primary as regards any other coverage in respect of the risks assumed by Seller hereunder. Seller will obtain from its insurers a waiver of all rights of recourse, including without limitation, subrogation against Company Group. All policies will be endorsed by use of language substantially similar to:

"The insurers waive their rights of subrogation against McWane, LLC and its divisions and subsidiaries ("Company") under Agreement No. [Insert Agreement number] between Company and [Insert Seller name] ("Seller"), and against any individuals, firms, or corporations for whom or with whom Company may be acting in connection with the performance of the Agreement."

The insurance will contain provisions which provide Company with a minimum of thirty (30) days' prior notification from the insurer of cancellation of, or any amendment in, the insurance policy. The insurer will also notify Company of failure to pay the insurance premiums or any other default of the policy.

D. Certificates Required. Prior to performance of Services or provision of Goods under this Agreement, Seller will provide evidence of all insurances required herein, and will provide certificates with respect to the policies carried, together with any other relevant information Company may reasonably require.

E. Failure to Provide Evidence of Coverage. If Seller will fail to produce to Company satisfactory evidence that there are in force the insurances referred to in Clause 10.B and the PO, or any other insurance which Seller is required to effect under the terms of this Agreement, Company may effect and maintain any such insurance and pay such premiums as may be necessary for that purpose at Seller's expense. Any amount paid by Company for this purpose will immediately become due and payable by Seller. Company can deduct the amount so paid from any monies due, or which may become due, to Seller, or recover the same as a debt from Seller, by action at law or otherwise.

F. Renewals. If the insurance becomes renewable during the term of the Agreement, Seller will, if so requested, submit to Company copies of the renewed insurance certificates on the due dates.

G. Insurance Not a Limitation. Failure to secure the required insurance coverage; or to comply fully with any of the insurance provisions of the Agreement; or to secure such endorsements on the policies as may be necessary to carry out the terms and provisions of the Agreement; will in no way act to relieve Seller from its obligations under the Agreement nor will it in any way limit the obligations of Seller to indemnify Company Group as set out in this Agreement.

11. DISPUTES

A. Dispute or Difference. Any dispute or difference arising out of, relating to, or in connection with this Agreement or the conduct of the parties in relation to its subject matter (including any question regarding the existence, validity or termination of this Agreement) ("Dispute"), must be resolved in accordance with the procedure in this Clause 11.

B. Notice of Dispute. When a Dispute arises, either party may serve notice in writing on the other party ("Notice of Dispute"), which must specify the particulars of the Dispute and the position which the party believes is correct.

C. Negotiation. If a Notice of Dispute is served, the Chief Executive Officer or similar position or its designated official of each party will promptly meet and negotiate in good faith with a view to resolving the Dispute.

D. Arbitration. Any Dispute not resolved by negotiation as provided above within thirty (30) days following the Notice of Dispute, including but not limited to a Dispute involving an alleged tort, will be submitted to the China International Economic and Trade Arbitration Commission (CIETAC), Beijing Sub-Commission (Arbitration Center) for arbitration, which will be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding on both parties. Each party may be represented by representatives, including but not limited to legal counsel, of its own choosing.

E. Survival. This Clause 11 will survive termination of this agreement.

C. Continuation of Contractual Obligations. During resolution of a Dispute, the parties will continue to comply with and perform their respective obligations under this Agreement.

12. DEFAULT, SUSPENSION AND TERMINATION

A. Default by Seller. Each of the following will constitute an event of "Default" by Seller: (a) failure to perform Services or deliver Goods within the time or with the quality specified or guaranteed in this Agreement; (b) failure to comply with any provisions of this Agreement including breach of any warranty or guarantee; or (c) an Insolvency Event occurring in relation to Seller.

B. Default by Company. Each of the following will constitute an event of "Default" by Company: (a) failure to make payment of any undisputed moneys due and payable to Seller under this Agreement and such failure to pay is not cured within twenty-one (21) Business Days following written notice from Seller to Company; or (b) an Insolvency Event occurring in relation to Company.

C. Suspension by Company. Company may suspend the performance of Services or provision of Goods at any time and for any reason. Seller will recommence performance of Services and/or provision of Goods as soon as directed by Company. Seller will not be entitled to any extra costs of increase in the Price as a direct result of any suspension, unless the suspension was directed by Company without any fault on the part of Seller, in which case the Seller may submit a claim for the standby costs associated with such suspension.

D. Termination by Company.

(1) In addition to Company's right to terminate under Clause 7.D for prolonged Force Majeure Events, Company may terminate this Agreement for convenience at any time, but if it does so it will pay Seller for Services already performed and completed and Goods already Delivered in accordance with this Agreement, plus the actual and documented extra costs necessarily incurred by Seller as a direct result of such termination, but not for any loss of profits or opportunity, or any indirect or consequential loss.

(2) Company may terminate this Agreement for Seller's Default. Upon Seller's Default, Company may immediately: (a) terminate this Agreement and obtain a return of all money already paid to Seller for Goods not Delivered and/or Services not completed, or, at its sole option and without liability to Company, suspend all or any part of Services or Delivery of Goods and/or exclude Seller from Company's premises until Seller furnishes satisfactory evidence that such Default has been cured; (b) take possession of any of Company's samples and materials held by Seller; (c) finish Services or correct any non-conformity of Goods at Seller's expense by whatever method Company deems expedient; (d) reject, repair or replace non-conforming Goods or Services or procure same or similar Goods or Services from another source, in which case Seller will be liable to Company for any additional costs or expenses incurred by Company; or (e) require Seller to correct or cure any non-conformity at Seller's expense.

(3) Seller agrees to cooperate with Company in any way reasonably required to complete Services or purchase replacement Goods. In such case, Company will pay for that portion of Services previously completed by Seller, subject to the terms and provisions above.

(4) In addition to its other remedies, Company will have a right of set-off and may withhold from time to time out of monies due Seller, amounts sufficient to fully compensate Company for any loss or damage resulting from any Default by Seller.

(5) As an alternative, Company may, in its sole discretion, extend the Delivery Date(s) or Completion Date(s) or waive any deficiencies in performance; provided, however, that no such waivers or extensions will be binding unless in writing and signed by Company's authorized representative. Company will have the right at any time to require adequate assurances of Seller's performance.

(6) In any action or proceeding between Company and the Seller, Company will be entitled to recover all its attorneys' fees, expenses and other costs of litigation if it prevails on its cause(s) of action or defense(s).

(7) The rights given to Company by this clause are in addition to any other rights that Company may have at Law.

E. Termination by Seller. Seller may, by notice in writing, terminate this Agreement for Company's Default, in which case Company will pay Seller for Services already performed and completed and Goods already Delivered in accordance with this Agreement, plus the actual and documented extra costs reasonably incurred by Seller as a direct result of such termination, but not for any loss of profits or opportunity, or any indirect or consequential loss.

13. CONFIDENTIALITY

A. Confidentiality. Seller will treat all material and information relating to this Agreement, including without limitation material and information supplied to it by, or on behalf of, Company in relation to Goods, Services, the Project or this Agreement, and/or prepared or developed by, or on behalf of, Seller or Seller Personnel and agents for the purpose of fulfilling its obligations under this Agreement as confidential ("Confidential Information"), and will not disclose such Confidential Information to any Third Party without Company's prior written permission.

B. No Interest in Confidential Information. Seller will not acquire any interest in any Confidential Information and agrees that it will use, and will require that Seller Personnel, subcontractors, vendors and agents use, such Confidential Information only as necessary for the performance of their obligations under this Agreement.

C. No Media. Seller will not, without Company's prior written approval, take or permit to be taken any photographs at any site where Services are being performed or the Goods are Delivered. Seller will not, without Company's prior written approval, permit or promote any publicity or advertising or publish, alone or in conjunction with any other person, any articles, photographs, images or other illustrations relating to Goods, Services and/or this Agreement, nor impart to any publication, journal, newspaper, journalist, radio or television program or any other media any information regarding Goods, Services and/or this Agreement.

14. SAFETY

A. Seller agrees that the safety of all Seller Personnel employed by Seller, and/or any other person who enters upon Company's premises for reasons relating to Services or Goods, will be solely Seller's responsibility.

B. Seller will confine all equipment and Seller Personnel to those areas of Company's premises where Services are to be performed or Goods Delivered and to any other area which Company may permit Seller to use.

C. Company will maintain Safety Data Sheets to the extent required by applicable Laws and will have them available in its engineering and/or personnel office for inspection and copying by Seller. Seller is responsible for inspecting and complying with the Safety Data Sheets requirements and for making all other necessary inquiries or investigation to ensure a safe workplace.

D. Seller will inform all Seller Personnel of, and require their compliance with, Company's emergency response plan.

15. WARRANTIES AND GUARANTEES

A. Warranties by Seller. Seller warrants that it has, and will have when ownership passes to Company, clear and full title to all Goods furnished and that they are free of all liens, encumbrances and security interests. Unless otherwise specified in writing by Company, Seller warrants to Company that all Goods provided by Seller will be new. In addition to all warranties prescribed by Law, Seller warrants to Company that: (a) all Goods (including any approved samples) will be of the best available quality, material and workmanship and will conform to the requirements of this Agreement and the PO, all applicable Laws, Company's specifications, descriptions and drawings; (b) Goods will be merchantable, fit for Company's intended use and free from defects in design, material and workmanship; and (c) Goods will be capable of providing the functions and features described in the PO and in any relevant standard published by the manufacturers of Goods. Seller warrants that all Services provided by Seller will be performed by qualified and competent personnel in a professional manner using the highest standards of quality and workmanship.

B. Warranties by Subcontractors and Vendors. Seller will procure or obtain from manufacturers, subcontractors and vendors for the benefit of Company all warranties, guarantees or other contractual obligations with respect to design, materials, workmanship, equipment, supplies or goods used for or in connection with the supply and Delivery of Goods which are described in the applicable PO or, if nothing is described, as are given by manufacturers, subcontractors and vendors in the ordinary course of business, including fire rating fabrication certificates and maintenance documentation. If a manufacturer, subcontractor or vendor seeks to defend on grounds that Seller committed error, Company may enforce this warranty against Seller and Seller will resolve all such issues with the manufacturer, subcontractor and/or vendor.

C. Survival of Warranties. All warranties will survive Company's acceptance of Goods or Services.

16. GENERAL PROVISIONS

A. Relationship of the Parties. Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary. Seller will at all times be an independent contractor with respect to Goods and Services and not an agent or employee of Company. Any Services provided by Seller will be carried on by Seller according to its own methods subject only to specifications and agreements outlined in this Agreement. Seller will have full and exclusive control of Seller Personnel engaged in the performance of any Services or manufacture or delivery of any Goods.

B. No Waiver. A failure, delay, relaxation or indulgence by a Party in exercising any power or right conferred on the Party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach. No waiver of any provision, right or remedy contained in this Agreement, including the terms of this clause, is binding on, or effective against, Company unless expressly set forth in writing and signed by Company's authorized representative. Seller expressly agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage.

C. Severability. This Agreement is made of separable parts. If any part or provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that part or provision will, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other parts and provisions of this Agreement will not be affected.

D. No Variation. This Agreement cannot be amended or varied except in writing signed by the Parties.

E. Governing Law and Jurisdiction. This Agreement and all rights and obligations hereunder will be governed by and construed in accordance with the Laws applying in Beijing, Peoples Republic of China, without regard to its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

F. Order of Precedence and Conflict in Documents. In the event of any ambiguity, discrepancy or inconsistency between the documents forming this Agreement, Company will issue an instruction having regard to the following order of precedence, which will apply in decreasing priority: (a) the applicable PO; and (b) these T&Cs. No additional cost may be claimed against the Price (nor any extension of a Completion Date or Delivery Date) arising from such instruction.

G. Assignment. Seller may not assign and/or novate this Agreement in whole or in part (or any part of the Services) without Company's prior written consent. Company may assign and/or novate in whole or in part its right and obligations under this Agreement to any Affiliate without Seller's consent. Any other assignment and/or novation by Company to a Third Party may only be made with Seller's prior written consent, not be unreasonably withheld or delayed.

H. Subcontracting. Seller may not subcontract any of its obligations under this Agreement (in whole or in part) without Company's prior written consent. Notwithstanding Company's consent to any subcontract, the act of subcontracting will not relieve Seller from any of its obligations or liabilities under this Agreement and Seller will remain responsible for the acts and/or omissions of any subcontractor as if they were the acts and/or omissions of Seller.

I. Liens. Seller will pay, satisfy and discharge all mechanics', suppliers', materialmen's and other liens and all claims, obligations and liabilities which may be asserted against Company or its property by reason or as a result of Seller's acts or omissions relating to furnishing of Goods or performance of Services governed or controlled by this Agreement.

J. Cumulative Nature of Remedies. Company's remedies under this Agreement are cumulative and in addition to any other remedies available to Company, whether at Law or otherwise.