

**General Terms and Conditions**

**of**

**TÜV Rheinland Group Greater China**

**for**

**Procurement of Goods and/or Work**  
**(Including Services)**

**Contents**

**A. General Provisions**

1 Definitions..... 3

2 The coming into existence of the Agreement..... 3

3 Execution of the Supplies of Goods and/or the Work ..... 4

4 Contract Price and terms of payment ..... 5

5 Right of Audit and Inspection ..... 6

6 Failure ..... 6

7 Liability and insurance..... 6

8 Intellectual property rights ..... 7

9 Force majeure ..... 8

10 Termination ..... 8

11 Assignment of rights and/or obligations and subcontracting ..... 8

12 Confidentiality..... 8

13 Legislation and regulations, safety and the environment, Business Principles ..... 9

14 Applicable law, dispute resolution and language ..... 9

**B. Supplementary provisions governing the execution of Work**

15 Contractor, Subcontractor(s) and Personnel ..... 9

16 Materials and Equipment ..... 10

17 The Work Site ..... 10

18 Modification of Work (including additional or less work) ..... 11

19 Acceptance of the Work..... 11

20 Warranty on the Work ..... 11

**C. Supplementary provisions governing Supplies of Goods**

21 Risk / Transfer of title / Delivery / Incoterms ..... 13

22 Modifications ..... 13

23 Warranty on Goods delivered ..... 13

## A. General Provisions

### 1 DEFINITIONS

For the purposes of these General Conditions and all related documents, the following terms shall have the following meanings.

The definition of a term in the singular also covers the plural form and vice versa, as the context requires.

Agreement - The agreement (or contract) concluded in writing between the Company and the Contractor to which the General Conditions have been declared applicable, including all appendices belonging thereto such as specifications and/or drawings and the Execution Schedule, if any.

Company – TÜV Rheinland (China) Ltd.; TÜV Rheinland (Shenzhen) Co., Ltd.; TÜV Rheinland/CCIC (Qingdao) Co., Ltd.; TÜV Rheinland (Shanghai) Co., Ltd.; TÜV Rheinland (Wuxi) Automotive Testing Co., Ltd; TÜV Rheinland/CCIC (Ningbo) Co., Ltd.; TÜV Rheinland (Guangdong) Ltd.; TÜV Rheinland Antaeon (Kunshan) Co., Ltd.; TÜV Rheinland Mandy Co., Ltd.; TÜV Rheinland Hong Kong Ltd.; TÜV Rheinland Taiwan Ltd.; TÜV Rheinland AIMEX Ltd.

Contractor - The party with which the Company has concluded the Agreement.

Contract Price - The total amount of the consideration payable by the Company to the Contractor for the execution of the Supplies of Goods and/or the Work.

Equipment - All tools, instruments, means of transport, auxiliary machines and other means and instruments required for the proper execution of the Work and for carrying out the ancillary tasks required therefore, other than Materials.

Execution Schedule - The schedule that has been approved by the Company and that states the sequence of and the time allowed for the execution of the Supplies of Goods and/or the Work or parts thereof, the delivery date of the Goods and/or the completion date of the Work, and the supply of Materials and the Equipment and Personnel to be deployed in the Work.

General Conditions - The present "General Terms and Conditions for the Procurement of Goods and/or Work (Including Services).

Goods - The goods to be supplied under the Agreement.

Materials - All materials, raw materials, components, devices or other independent or accessory parts of goods of any nature whatsoever forming part of or intended to form part of the Work.

Personnel - Any person working on the execution of the Supplies of Goods and/or the Work under the supervision and responsibility of the Contractor or its Subcontractor(s), whether in the employment of the Contractor or its Subcontractor(s) or otherwise.

Subcontract - Any agreement concluded between the Contractor and a Subcontractor or between Subcontractors in connection with the execution of part of the Supplies of Goods and/or the Work.

Subcontractor - Any party other than the Company with which the Contractor has either directly or indirectly concluded the Subcontract.

Supplies of Goods and/or the Work - The Work or the Supplies of Goods to be executed by the Contractor under the Agreement.

Work - The performance of activities, rendering of services and/or the realisation of a material work, which may include the supply of Materials and/or Equipment under the Agreement.

Work Site - The site owned or in use by the Company where the Work is to be executed pursuant to the Agreement and any site designated as such by the Company in connection with the Work.

### 2 THE COMING INTO EXISTENCE OF THE AGREEMENT

- 2.1 The Contractor shall not derive any rights from oral agreements unless they have been confirmed by the Company in writing.
- 2.2 The General Conditions form part of the Agreement. Variations from the General Conditions shall be valid only if and insofar as they have been expressly accepted by the Company in writing. Unless expressly otherwise stated by the Company in the Agreement, any other terms and conditions to which the Contractor refers in its offer, order

confirmation or any other document are expressly rejected and shall not be applicable to the Agreement.

- 2.3 If the Contractor starts executing the Supplies of Goods and/or the Work without having received a written order to do so from the Company, it shall be doing so for its own account and at its own risk. The Company shall not be liable to pay any remuneration whatsoever on such account and may demand that the Work, Work and/or Goods be restored to their original state and condition.
- 2.4 In the event of any errors or inconsistencies in parts of the Agreement or in other information furnished by or on behalf of the Company, the Contractor shall inform the Company thereof and consult with the Company before commencing to carry out the Supplies of Goods and/or the Work.
- 2.5 Communication in writing includes communication by electronic means provided this is done in the manner indicated by the Company.

### **3 EXECUTION OF THE SUPPLIES OF GOODS AND/OR THE WORK**

- 3.1 The Contractor warrants that the Supplies of Goods and/or the Work shall be executed:
  - In accordance with the applicable legislation and regulations;
  - With due diligence, care, skill and knowledge;
  - With sufficient, qualified and competent personnel (including any Designated Persons as set out in the Agreement);
  - In accordance with the provisions of the Agreement;
  - In accordance with standards of sound workmanship and without faults and defects;
  - In accordance with generally accepted industrial principles and standards; and
  - In accordance with the reasonable expectations of the Company in respect of (inter alia) the properties, quality and reliability of the Supplies of Goods and/or the Work with a view to their intended use in so far as such use is known or should in reason have been known to the Contractor.
- 3.2 If the Company so requests, the Contractor shall submit detailed progress reports to the Company following the latter's directions with respect thereto.
- 3.3 The Contractor shall forthwith inform the Company in writing of any circumstance, which may affect or prevent the performance of the Agreement. If the Company suspects the existence of such a circumstance, either as a result of said information or on other reasonable grounds, the Company may take all necessary measures that are reasonable with a view to the Company's interests, without prejudice to the Company's other rights and remedies.
- 3.4 The Company shall moreover have the right to intervene and stop the execution of the Supplies of Goods and/or the Work with immediate effect if the activities are carried out in violation of any regulations in the field of safety, health, welfare and the environment.
- 3.5 In the event of any delay in the progress of the Supplies of Goods and/or the Work due to the reason that can be attributable to the Contractor, the Contractor shall deploy such additional Equipment and/or Personnel as are needed to make up for the delay. The additional costs entailed thereby shall fall on the Contractor.
- 3.6 The Contractor shall collect all the information that is necessary to carry out the Supplies of Goods and/or the Work, e.g. information on the nature of the Supplies of Goods and/or the Work, local circumstances and facilities, working conditions, safety requirements and other regulations. The Contractor shall not be released from any of its obligations under the Agreement if any information obtained from third parties turns out to be incorrect.
- 3.7 Unless otherwise agreed, the Contractor shall check all information furnished by or on behalf of the Company for accuracy. If any inaccuracies are detected the Contractor shall forthwith notify the Company thereof in writing.
- 3.8 The Contractor is responsible for obtaining any and all permits and licenses required for entering into and performance of the Agreement, the Supplies of Goods and/or the Work and for the deployment of Personnel and for possessing, bringing into action, using,

removing and/or disposing of Materials and Equipment, with the exception of permits and licenses which the Company has undertaken to obtain.

- 3.9 The Company may give the Contractor directions concerning the execution of the Supplies of Goods and/or the Work and the results to be achieved pursuant to the Agreement, but the Contractor shall at all times remain responsible for and have the control, supervision and management of the methods and manners to be used in order to achieve such results.

#### **4 CONTRACT PRICE AND TERMS OF PAYMENT**

- 4.1 As consideration for executing and completing the Supplies of Goods and/or the Work in conformity with the Agreement, the Company shall pay the Contractor the Contract Price. The Contract Price is stated in the Agreement, inclusive of all taxes and duties for the Supplies of Goods and /or the Work.

The Contractor undertakes to make every effort to obtain any and all legally permissible discounts, credits and refunds from authorities, suppliers and Subcontractors in favour of the Company.

The amounts stated in the Agreement are fixed amounts and may not be increased or decreased unless otherwise provided for in the Agreement.

- 4.2 Payment is 30 days after satisfactory acceptance of the Goods/Work subject to compliance by the Contractor with agreed contractual terms and the invoicing instructions specified below in this Article and Articles 4.3 and 4.4. In respect of amounts payable by the Company, the Contractor shall issue properly supported, commercial invoices (or debit notes) for the Goods/Work provided both inside and outside PRC as well as legal Chinese invoices ('fapiao') for the Goods/Work provided within in PRC.

- 4.3 Invoices and supporting documents should be made specific reference to the Company's number of the Agreement or order.

- 4.4 The Contractor shall state the following information on each commercial invoice:

- Name and department of the Company
- Number of the Agreement and/or the order
- Invoice date
- Invoice reference
- Description of the Supplies of Goods and/or the Work;
- Currency
- Invoice amount, specifying taxes/duties.
- Beneficiary of payment
- Bank Account number
- Bank name and Bank address
- Bank account currency

The Contractor shall highlight the same in the commercial invoice if the payment information stated on the invoice has changed since previous payments by the Company.

- 4.5 The Contractor assumes full liability for payment of all social security charges, contributions and taxes levied at any time in respect of any Personnel deployed by the Contractor in connection with the performance of the Agreement. Moreover, the Contractor shall assure that all the above social security charges, contributions and taxes are levied in respect of any Personnel deployed by the Contractor in strict accordance with the applicable laws and regulations. Any conflict or dissension incurred among the Contractor, its personnel and the relevant PRC authorities will be for account of the Contractor. The Company will not have any liabilities for the dissension or conflict.
- 4.6 At the Company's request the Contractor shall provide a bank guarantee (or other adequate security to be judged by the Company) made out in a format and issued by a bank approved by the Company for an amount equal to 10 per cent of the Contract Price or 10 per cent of the estimated total price of the Supplies of Goods and/or the Work as security that the Contractor will meet all its obligations under the Agreement towards the Company or towards Subcontractors or third parties throughout the term of the Agreement (including the warranty period). The costs entailed by said bank guarantee shall fall on the Contractor.

- 4.7 At the Company's request the Contractor shall provide an irrevocable performance guarantee in a format approved by the Company. This guarantee shall be issued by the Contractor's ultimate parent company or a reputable bank acceptable to the Company and serve as security for the proper execution of the Supplies of Goods and/or the Work.
- 4.8 The Company shall at all times be entitled to offset any amounts that will be due at any time by the Contractor to the Company on any account whatsoever against any amounts that will be due at any time by the Company to the Contractor.
- 4.9 If the Contractor goes bankrupt or if an application to such effect is filed, the Company may discharge its liability towards the Contractor by paying directly to these Subcontractor(s) the amount owing by the Contractor to one or more Subcontractors. The above provision shall only be applicable to the extent that the debts owing to the Subcontractor(s) are directly connected with the Supplies of Goods and/or the Work and the Contractor has defaulted in the timely payment of said debts.

## **5 RIGHT OF AUDIT AND INSPECTION**

- 5.1 The Company shall at all times, until 5 years after completion of the Supplies of Goods and/or the Work, be entitled to subject the manner of performing the Agreement to an examination and to take the necessary measures for such examination. Such measures include inter alia the inspection of the locations where the Supplies of Goods and/or the Work or parts thereof are carried out and/or conducting an audit of the Contractor's accounts and records or causing such audit to be carried out.
- 5.2 The Contractor warrants that the Company will be able to exercise the right of audit referred to in Article 5.1 in respect of Subcontractor(s) as well.
- 5.3 The fact that the Company has exercised the right of audit or carried out any inspection shall not release the Contractor from any obligation under the Agreement.

## **6 FAILURE**

- 6.1 In case of late completion or late delivery the Contractor shall be in default without further notice being required.
- 6.2 Any failure on the part of the Contractor in fulfilling any of its obligations shall entitle the Company, without prejudice to the Company's other rights and remedies in connection with such failure:
- a. To demand that the Contractor at its own expense once again carry out, repair and/or replace each rejected part of the Supplies of Goods and/or the Work within a period that is acceptable to the Company, with the obligation for the Contractor to keep the Company fully informed of the repair work to be undertaken and the results achieved; or
  - b. To terminate the Agreement without judicial, arbitral or other intervention. Insofar as prescribed by law the Company shall first give notice of default prior to such termination.
- 6.3 Furthermore the Company may itself execute the Supplies of Goods and/or the Work or cause the same to be executed in full or in part at the Contractor's expense if:
- a. The Contractor fails to remedy the failure within the period referred to in Article 6.2, in which case the Company will also be entitled to return any Materials or Goods already delivered and demand immediate restitution of any payments made for such Materials or Goods; or
  - b. Circumstances arise in which the Company cannot in reason be expected to wait for repair work to be done by the Contractor, for instance in the event of imminent (further) damage or loss or risk to persons or things.

## **7 LIABILITY AND INSURANCE**

- 7.1 The Contractor is liable for any loss or damage resulting from any default in the performance or proper or timely performance of the Agreement or from any breach of any other contractual or non-contractual obligation, unless otherwise provided in the Agreement. The Contractor shall indemnify and hold the Company harmless from any claims on account of such loss or damage. Without prejudice to other rights and remedies

of the Company, the Contractor shall pay the Liquidated Damages to the Company as set out in the Agreement.

- 7.2 The Contractor is liable for any loss of or damage to property (including Equipment) of the Contractor, Subcontractor and Personnel, howsoever caused and no matter whether such loss or damage results wholly or partly from any act or omission on the part of the Company, its employees or any other third party save to the extent and for such part that such loss or damage is solely and directly caused by the gross negligence of the Company. The Contractor shall indemnify and hold the Company harmless from any claims on account of such loss or damage and waive all claims against the Company on such account.
- 7.3 The Company is not liable for any death or physical injury of employees of the Contractor and Subcontractor, and Personnel howsoever caused and no matter whether the death or physical injury results wholly or partly from any act or omission on the part of the Company, its employees or any other third party save to the extent and for such part that such death or injury is solely and directly caused by the gross negligence of the Company. The Contractor shall indemnify and hold the Company harmless from any claims on account of such death or injury and waive all claims on such account against the Company.
- 7.4 The Contractor shall indemnify and hold the Company harmless from any loss and damages (direct, foreseeable, incidental, consequential, indirect, special or punitive and otherwise), including but not limited to downtime, loss of use or loss of profits, or diminished operability.
- 7.5 Except as otherwise expressly limited elsewhere in the Agreement, all indemnity obligations and/or contribution and/or liabilities and/or responsibilities assumed by such parties shall be without monetary limit and shall not be limited by any amounts of insurance carried or required in the Agreement and shall be without regard to the cause or causes thereof including pre-existing conditions or strict liability, and to the fullest extent permitted by law.
- 7.6 The Contractor and Subcontractor shall at their own costs and expenses take out and maintain insurance throughout the duration of the Agreement of customary type and scope as well as any insurance prescribed by law. In determining what is customary in terms of the type and scope of cover, the Contractor shall have regard to the type and scope of insurance cover that a prudent supplier of the Goods and/or Work contemplated under the Agreement should procure and maintain.
- 7.7 Without prejudice to Article 7.6 above, the Contractor and Subcontractor shall take out and maintain at their own costs and expenses insurance as specified in the Agreement with insurers acceptable to the Company throughout the duration of the Agreement.

## **8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Contractor warrants that the Supplies of Goods and/or the Work, the component parts thereof, the manner in which the Supplies of Goods and/or the Work are realised and the use of the Supplies of Goods and/or the Work, in the widest sense, shall not infringe any patent rights, trademark rights, copyrights or other intellectual property rights belonging to any party. The Contractor shall indemnify and hold the Company harmless from any claims from any party on account of any such infringement and from any costs, including litigation costs, incurred in connection with such claims.
- 8.2 The intellectual property rights in all drawings, calculations, specifications, documents and other data carriers (including software) produced in connection with the Supplies of Goods and/or the Work shall vest in the Company. The said documentation and other data carriers shall be handed over to the Company on demand. The Company shall have the exclusive right to file patent applications, in its own name or in the name of a third party designated by the Company, for inventions made as part of the execution of the Supplies of Goods and/or the Work and the Contractor shall give its full co-operation to such patent applications. If specific intellectual property rights are held by the Contractor or any Subcontractor, the Contractor shall ensure that the Company has the irrevocable right to exercise these rights without any restriction.

## 9 FORCE MAJEURE

A party to the Agreement affected by force majeure in performing the Agreement shall forthwith inform the other party of all the circumstances and particulars which prevent the said party from performing its obligations under the Agreement. The parties shall consult with one another about the measures to be taken in order to limit the consequences of the situation of force majeure to a minimum and to safeguard the execution of the Supplies of Goods and/or the Work as far as possible.

## 10 TERMINATION

- 10.1 If the Agreement is terminated on account of an imputable failure as referred to in Article 6, the Contractor shall be entitled exclusively to payment for the part of the Supplies of Goods and/or the Work that has been executed in accordance with the Agreement, without prejudice to the right of the Company to offset any costs and damages against such amount. Any amounts paid in excess of what was due by the Company shall be immediately returned to the Company.
- 10.2 If the Agreement is terminated for any reason whatsoever the Contractor shall forthwith:
- a Cease executing the Supplies of Goods and/or the Work in a safe and responsible manner;
  - b Enable the Company or third parties designated by the Company to take over the execution of the Supplies of Goods and/or the Work and to take possession of all Materials and/or Goods;
  - c If the Company so desires, assign to the Company or to third parties designated by the Company all rights and obligations under a Subcontract;
  - d Remove the Equipment and any other property of the Contractor and its Subcontractors from the Work Site, unless otherwise agreed.

## 11 ASSIGNMENT OF RIGHTS AND/OR OBLIGATIONS AND SUBCONTRACTING

- 11.1 The Contractor shall not assign any of its rights and obligations under the Agreement nor enter into any agreement with Subcontractors with respect thereto without the prior written consent of the Company.
- 11.2 The Contractor shall not be released from any obligation and/or liability under the Agreement with regard to any part of the Supplies of Goods and/or the Work executed by a Subcontractor. As far as the Company is concerned, every part of the Supplies of Goods and/or the Work executed by a Subcontractor shall be deemed to have been executed by the Contractor.
- 11.3 Subcontracts shall not be binding on the Company nor purport to bind the Company either directly or indirectly and every Subcontract shall include a clause providing for the possibility of its immediate termination if the Company terminates the Agreement. In addition, all Subcontracts shall include a clause providing that in the event of such termination the ownership of all or part of the Materials and/or Goods procured by the Subcontractor for the purposes of the Supplies of Goods and/or the Work contracted out to the Subcontractor may be transferred to the Company if the Company so requests.
- 11.4 The Company may assign all or part of its rights and obligations under the Agreement to a third party after having sent prior written notice thereof to the Contractor.

## 12 CONFIDENTIALITY

- 12.1 The Contractor shall keep secret both the existence and the contents of the Agreement as well as all know-how and data coming to its knowledge in connection with the performance of the Agreement, and shall use the same solely for the purposes of performing the Agreement. The Contractor shall bind any third parties involved by it in the performance of the Agreement to similar confidentiality in writing or shall cause them to sign the undertakings of confidentiality supplied by The Company.
- 12.2 Upon acceptance of the Supplies of Goods or the Work or upon termination or dissolution of the Agreement the Contractor shall, on demand, forthwith return all drawings, designs,



specifications and other documents (in any form whatever) furnished by or on behalf of the Company to the Contractor.

### **13 LEGISLATION AND REGULATIONS, SAFETY AND THE ENVIRONMENT, BUSINESS PRINCIPLES**

- 13.1 When executing the Supplies of Goods and/or the Work the Contractor shall comply with all applicable laws and regulations and any other regulations, instructions and conditions in the field of health, safety and environment attached to permits, licences or orders of a similar nature which have been issued in connection with the Supplies of Goods and/or the Work and shall ensure that Subcontractors, Personnel and third parties called in by the Contractor likewise comply with the same.
- 13.2 The Contractor shall be responsible for ensuring that all necessary safety measures are taken, that the means required therefore are present and that all persons involved in the execution of the Supplies of Goods and/or the Work are properly protected and instructed. Where several organisations are simultaneously at work on one site, the Contractor shall effectively collaborate with the other organisations to ensure the safety, health and well being of all persons. The Contractor shall give the Company or any representative designated by the Company access to all locations, installations, Materials, Equipment, Personnel and documentation for the purpose of enabling said person(s):
- To ascertain whether the Contractor is executing the Supplies of Goods and/or the Work in conformity with all relevant regulations; and
  - To conduct an independent enquiry in the event of incidents or accidents.
- Even if the Company exercises supervision, the Contractor shall at all times remain responsible for full compliance with the laws and regulations and shall be liable for any loss or damage, including the costs of administrative and penal fines and sanctions, and/or for any delays resulting from non-compliance.
- 13.3 In all its acts the Contractor shall be guided by norms and values of at least the same standard as those embodied in the most recent edition of the Business Principles and Health, Safety and Environment Policies of the Company.

### **14 APPLICABLE LAW, DISPUTE RESOLUTION AND LANGUAGE**

- 14.1 For all purposes, the English version of the Agreement (including these General Terms and Conditions) shall prevail unless the Company and the Contractor have signed only the Chinese version of the Agreement (including these General Terms and Conditions).

## **B. Supplementary provisions governing the execution of Work**

### **15 CONTRACTOR, SUBCONTRACTOR(S) AND PERSONNEL**

- 15.1 With regard to the Work the Contractor shall act as an independent contracting party. When executing the Work the Contractor, Subcontractor(s) and Personnel shall never be deemed to do so in the capacity of employees, agents or representatives of the Company.
- 15.2 The Contractor shall remove from the Work any member of the Personnel who, in the reasonable judgement of the Company, is unsuitable or incompetent. Notwithstanding this right of the Company, the Contractor shall be responsible for removing any such a member of the Personnel and for all consequences thereof. Changes in staff and supervision by the Contractor shall be discussed with and approved by the Company in advance.
- 15.3 The Contractor shall employ such numbers of Personnel and Personnel having such qualifications as are required for the proper and timely execution of the Work.
- 15.4 The Work shall not be executed outside normal working hours as prescribed by the Company except with the Company's prior consent.
- 15.5 The Contractor shall maintain good labour relations in its business as befits a good employer, inter alia with regard to pay, allowances, social benefits, overtime, etc., and shall provide more detailed information on such matters to the Company on request.

**16 MATERIALS AND EQUIPMENT**

16.1 The Contractor is responsible for providing Materials and Equipment, unless otherwise agreed in writing. The Contractor shall keep up-to-date records of Materials and Equipment in a manner acceptable to the Company and on request shall place copies thereof at the disposal of the Company, so that the Company is at all times able to form an opinion of the Materials and Equipment at the disposal of the Contractor and the use made thereof.

The Work shall be executed in such manner as to prevent any incorrect or inefficient use of Materials and Equipment.

16.2 The Materials to be supplied by the Contractor shall be new and unused, of sound quality and entirely fit for their intended use at all times. The Equipment to be provided by the Contractor shall be in proper condition and shall be provided in adequate quantities and shall be entirely fit for its intended use at all times. Any Materials or Equipment provided by the Contractor that do not satisfy said requirements shall be removed from the Work Site at the Company's request and shall be replaced by Materials and/or Equipment meeting the aforementioned requirements at the Contractor's expense.

16.3 The Contractor is responsible for transporting the Materials and Equipment to be provided by the Contractor to the Work Site. Without prejudice to the provisions pertaining to liability and insurance the ownership of Materials supplied by the Contractor shall pass to the Company upon their arrival at the Work Site. The Contractor shall not accept any reservation of ownership or other security charge in favour of third parties when purchasing Materials from third parties.

16.4 Where it has been agreed that the Company will supply Materials and Equipment for its own account, it is further stipulated that:

- a the Contractor shall receive and unload such Materials and Equipment at agreed places of delivery and where necessary shall transport them to the Work Site under the Contractor's responsibility. The Contractor shall inform the Company in writing of the arrival of the Materials and Equipment. On the completion of the Work or so much earlier as the Company desires, the Contractor shall be responsible for returning to the Company all surplus Materials and Equipment and the Contractor shall provide the Company with an itemised list thereof;
- b the Contractor shall inspect the Materials and Equipment for completeness and visible damage or defects within 48 hours of their arrival at the place of delivery, in the presence of employees of or persons acting on behalf of the Company if the Company so desires. The Contractor will be deemed to have received the Materials and Equipment in complete and undamaged condition. If any damage and/or defects are detected, the Contractor shall forthwith provide the Company with sufficient information for the purpose of lodging complaints with the transport company, supplier or manufacturer concerned;
- c the Company shall make every effort to obtain any such Materials and Equipment and place them at the disposal of the Contractor at the agreed places of delivery on time;
- d the Contractor shall forthwith inform the Company in writing if the Materials and Equipment are not delivered in accordance with the Execution Schedule;
- e the Contractor shall ensure that the Materials and Equipment are at all times identifiable as the property of the Company.

16.5 The Contractor is responsible for the proper care, guarding, storage and surveillance of all Materials and Equipment.

16.6 Without prejudice to the provisions of the present Article, both the Materials and Equipment supplied and/or made available by the Contractor and the Materials and Equipment supplied and/or made available by the Company shall be at the risk of the Contractor until moment of acceptance of the Work.

**17 THE WORK SITE**

17.1 The Company shall place the Work Site at the disposal of the Contractor for the Work in good time.

- 17.2 The Contractor shall in good time furnish the Company with all such particulars of the Personnel and/or third parties as are necessary to arrange for their access to the Work Site. The Company may temporarily or permanently refuse any member of the Personnel and/or third parties admission to the Work Site if their presence would pose a threat to the industrial peace and/or safety in the business or would otherwise prejudice the Company's interests.
- 17.3 The Contractor shall provide or maintain, as the case may be, all such facilities at the Work Site as are necessary in the reasonable opinion of the Company for the execution of the Work and shall not remove any such facilities from the Work Site without the Company's prior consent in writing.
- 17.4 The Contractor shall remove all Equipment and all facilities referred to above from the Work Site when the Company holds the opinion that they are no longer required for the Work.
- 17.5 The Contractor warrants that any surplus Materials and waste will always be removed promptly in order to keep the Work Site in a tidy and environmentally acceptable condition at all times, also with a view to safe working conditions.

## **18 MODIFICATION OF WORK (INCLUDING ADDITIONAL OR LESS WORK)**

- 18.1 The Company may at any time commission the Contractor to carry out additional work or less work or to execute the Work in a different way (hereinafter referred to as: "Modification of Work"). The Contractor shall inform the Company as soon as possible in writing of the consequences the intended Modification of the Work may have for the Contract Price or the Execution Schedule. No Modification of Work shall be carried out by the Contractor unless the Company has issued a written order to do so.
- 18.2 If a Modification of Work as referred to in 18.1 gives reason to adjust the Contract Price and/or the Execution Schedule, such adjustment shall be made on the basis of the unit prices and rates laid down in the Agreement or in a fair and reasonable manner in relation to the norms underlying the Agreement. The lack of disagreement on the adjustment of the Contract Price and/or Execution Schedule after the Company has ordered the Modification of Work shall not authorise the Contractor to suspend execution of the Modification of Work.
- 18.3 If the Contractor believes that a circumstance has arisen with regard to the Work that might give reason for a Modification of Work, the Contractor shall forthwith request the Company to order a Modification of Work pursuant to Article 18.1 before continuing the execution of the Work or the relevant part thereof.

## **19 ACCEPTANCE OF THE WORK**

- 19.1 If the Contractor holds the opinion that the Work is completed, it shall inform the Company accordingly in writing.
- Unless otherwise provided in the Agreement, completion or acceptance shall be deemed to have taken place when the Company has accepted the Work in writing and the Work Site has been surrendered in accordance with the requirements to be stated by the Company.
- 19.2 The Company may put the Work or part of the Work into use or cause it to be taken into use prior to its completion. If as a result the Contractor is required to do more than it can reasonably be expected to do, the consequences shall be arranged between the parties by means of a Modification of Work. The fact that it has been put into use shall not have the effect that the Work or the relevant part of the Work is deemed to have been accepted.
- 19.3 Until its acceptance by the Company the Work shall remain at the risk of the Contractor and in the event of the loss of or any damage to the Work the Contractor shall be bound to see to its replacement or repair, unless the Contractor proves that the Work was lost or damaged as a result of its being put to use before completion as referred to in Article 19.2.

## **20 WARRANTY ON THE WORK**

- 20.1 The Contractor warrants that the Work shall be free of defects and shall meet the requirements of the Agreement throughout the warranty period. The term warranty period

is understood to mean: the twelve-month period commencing on the date of acceptance of the Work or such other period set out in the Agreement.

- 20.2 The provisions of Article 6 shall apply mutatis mutandis to any claims under the warranty set forth in Article 20.1.
- 20.3 The warranty period shall be extended by a period equal to any period or periods during which the Work did not meet or did not fully meet the requirements of the Agreement. A new warranty period equal to the original warranty period shall apply to any part of the Work that has been repaired, adjusted or replaced.
- 20.4 The provisions of the present Article 20 shall not prejudice the other rights and remedies of the Company.

## **C. Supplementary provisions governing Supplies of Goods**

### **21 RISK / TRANSFER OF TITLE / DELIVERY / INCOTERMS**

- 21.1 Unless otherwise agreed in writing, the risk of the Goods to be delivered shall transfer on delivery. Title to the Goods shall transfer to the Company at the time of delivery.
- 21.2 The Contractor warrants (in addition to any warranty and condition imposed by law in favour of the Company) that:
- a The Contractor has the full and good title and the unencumbered right to sell the Goods and the Company shall acquire the full and unencumbered ownership of the Goods;
  - b The Goods are of best merchantable quality and free from any defects in design, workmanship and materials;
  - c The Goods are fit for purpose, and comply with the specifications stated in the Agreement; and
  - d The Goods correspond with any description and sample under which they are sold.
- 21.3 The Goods shall be delivered free of any additional charges to the Company at the location designated by the Company and packed in adequate packaging.
- 21.4 If the Agreement refers to Incoterms such reference shall be to the most recent edition of "Incoterms" published by the International Chamber of Commerce, Paris, France. In the event of any conflict of the applicable Incoterms with the provisions of the present Article 21, the provisions of Incoterms shall prevail, subject to express contrary provisions in the Agreement.

### **22 MODIFICATIONS**

- 22.1 The Company may at all times demand that modifications be made in the nature and/or volume of the Goods or part of the Goods to be delivered. The Contractor shall notify the Company in writing as soon as possible of the consequences such an intended modification may have for the Contract Price or the time of delivery. No such modification shall be carried out by the Contractor unless the Company has issued a written order to that effect.
- 22.2 If a modification referred to in Article 22.1 gives reason to adjust the Contract Price and/or the time of delivery, such adjustment shall be made on the basis of the unit prices and rates laid down in the Agreement or in a fair and reasonable manner in relation to the norms underlying the Agreement. The lack of disagreement on the adjustment of the Contract Price and/or the time of delivery after the Company has demanded the modification shall not authorise the Contractor to suspend execution of the modification

### **23 WARRANTY ON GOODS DELIVERED**

- 23.1 The Contractor warrants that the Goods shall be free of defects and shall meet the requirements of the Agreement throughout the warranty period. The term warranty period is understood to mean: the twelve-month period commencing on the moment when the Goods are taken into use or 18 months after delivery of the Goods, whichever of the two is the shorter period or such other period as set out in the Agreement.
- 23.2 The provisions of Article 6 shall apply mutatis mutandis to any claims under the warranty set forth in Article 23.1.
- 23.3 The warranty period shall be extended by a period equal to any period or periods during which the Goods did not meet or did not fully meet the requirements of the Agreement. A new warranty period equal to the original warranty period shall apply to any part of the Goods that has been repaired, adjusted or replaced.
- 23.4 The provisions of the present Article 23 shall not prejudice the other rights and remedies of the Company.