

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

"Acceptance" shall mean when the Acceptance Requirements are achieved as evidenced by the issue of an Acceptance Certificate.

"Acceptance Certificate" shall mean a written certificate issued by CMI, that CMI is satisfied that the Product meets the Acceptance Requirements.

"Acceptance Period" shall mean the period set out in a Purchase Order.

"Acceptance Requirements" shall mean, in respect of Products:

- (a) all requirements in the Specifications and the Acceptance Test Plan; and
- (b) consistency with the description of the relevant Products as set out in a Purchase Order.

"Acceptance Test Plan" shall mean the procedure set out in a Purchase Order.

"Applicable Laws" shall mean all national, state, local, municipal, legislation, regulations, statutes, by-laws, consents and/or other laws of any relevant government authority and any other instrument having the force of law as may be issued and in force from time to time relating to or connected with the activities contemplated under these General Terms and Conditions.

"General Terms and Conditions" shall mean this document including the appendices and any other document expressly included as agreed between the parties.

"CMI" shall mean China Mobile International Limited or its affiliated companies, which has placed Purchase Order with the Supplier for the purchase of Products.

"Confidential Information" shall mean all information of each party (in any form or media) including trade secrets, know-how, processes, techniques, source codes and object codes, computer records, products, business and marketing plans and projections, details of agreements or arrangements with third parties, client information and lists, information about clients' clients, designs, plans, drawings and modules.

"Contract" shall mean a contract which is formed upon the receipt by the Supplier of a Purchase Order in accordance with **clause 2.1**.

"Contract Price" or "Contract Prices" shall mean the price of the Product set out in the Supplier's then current Price List less the discount (if any) and inclusive of all applicable sales or other taxes, and varied as permitted under these General Terms and Conditions.

"Defect" or "Defects" shall include:

- (a) any fault, failure, degradation, deficiency, error or non-conformance with the Specification caused by the Product itself;
- (b) any functionality or performance below or not in accordance with the Specification caused by the Product itself; or
- (c) any partial performance or non-performance of the Product caused by the Product itself.

"Delivery" shall mean, in respect of the Product, receipt by CMI at the Place of Delivery.

"Delivery Lead Time" shall mean the time specified in the Price List, commencing on receipt by the Supplier of a Purchase Order as specified in **clause 4.3**, by which Delivery must be effected.

"Documentation" shall mean handbooks, user manuals, information, drawings and other documents or material which:

- (a) the Supplier normally supplies to its customers generally to facilitate the import, export, use, operation and maintenance of the Product; or
- (b) is otherwise supplied or to be supplied by the Supplier under these General Terms and Conditions or any Contract.

"Force Majeure" shall mean:

- (a) riot, war, invasion or act of foreign enemies, or hostilities;
- (b) ionising radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity;
- (e) in the case of the Supplier, a shortage of components necessary for the manufacture of the Product which is beyond the reasonable control of the Supplier; and
- (f) any other event beyond the reasonable control of a party.

"Hardware" shall mean all physical items to be provided to CMI by the Supplier under these General Terms and Conditions or any Contract.

"Insolvency Event" shall mean, for a person, being in liquidation or provisional liquidation or under administration, having a controller to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration, entering into a compromise or arrangement with, or

assignment for the benefit of, any of its members or creditors, or any analogous event.

"Installation and Integration Requirement" shall mean the requirements of installation and/or integration requirement indicated in a Purchase Order.

"Intellectual Property Rights" shall mean all intellectual property rights throughout the world conferred by statute, common law or equity including intellectual property rights in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include all rights in all applications to register these rights and all renewals and extensions of these rights.

"Licence Conditions" shall mean the licence conditions in a Purchase Order, including but not limited to Supplier's licence for Software and Documentation, and if applicable, specifying whether the source code of all or part of the Software is to be held in escrow and, if it is, the name and contact details of the Escrow Agent.

"Liquidated Damages" shall mean the liquidated damages which CMI will be entitled to pursuant to **clause 6.2.** Calculation of the Liquidated Damages is indicated in a Purchase Order.

"Liquidated Damages Maximum" shall mean the maximum amount of Liquidated Damages indicated in a Purchase Order.

"Maintenance and Support Services" shall mean the maintenance and support services for the Product to be provided by the Supplier pursuant to a Purchase Order.

"Party's Address" shall mean each party's address for notices specified in a Purchase Order or as otherwise notified by a party to the other party from time to time.

"Place of Delivery" shall mean the location or locations for Delivery of the Product specified by CMI in a Purchase Order.

"Price List" shall mean the price list or quotation provided by the Supplier.

"Product" or **"Products"** shall mean the product ordered under a Purchase Order which will at all times comply with the Specifications for the product, more specifically described in a Purchase Order and includes the Hardware, the Software and any Documentation. In these General Terms and Conditions and any Contract (unless otherwise indicated), a reference to the Product includes a reference to any component or part of the Product.

"Purchase Order" shall mean the order CMI places with the Supplier when CMI wishes to purchase the Product from the Supplier.

"Personnel" of a party shall mean directors, officers, employees, agents and contractors of that party.

"Software" shall mean all software that is licensed to, or otherwise provided to CMI, under these General Terms and Conditions or a Contract, and all releases and versions of that software, including software that is firmware or otherwise embedded in Hardware.

"Specification" shall mean the Supplier's specifications for Products attached to a Purchase Order or otherwise provided by the Supplier from time to time.

"Supplier" shall mean the party named in a Purchase Order who will sell the Products to CMI.

"Warranty Period" shall mean the period specified in a Purchase Order commencing on the date of Delivery of the relevant Product.

1.2 Interpretation

In these General Terms and Conditions and any Contract, except to the extent that the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to these General Terms and Conditions, a Contract, an agreement or other instrument, includes any variation to, or replacement of, any of them;
- (c) a reference to a **clause** is a reference to a **clause** of these General Terms and Conditions;
- (d) a reference to any standard, specification, handbook or other documentation is a reference to the latest agreed version of that standard, specification, handbook or documentation;
- (e) a reference to a person includes a reference to a natural person, a partnership, a firm, a body corporate, a joint venture, an unincorporated association or an authority as well as a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments, or replacements of any of them;
- (g) headings are inserted for convenience and do not affect interpretation;
- (h) where a word or phrase is specifically defined other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
- (i) a reference to a thing (including, any amount) is a reference to the whole and each part of it; and
- (j) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

1.3 Order of precedence

Unless otherwise indicated, if there is any inconsistency between **clauses 1 to 27** (inclusive) of this document, a document expressly incorporated into these General Terms and Conditions or a Purchase Order, then the documents will be given the following order of priority (such that the inconsistent provision in the document lower in the order of priority will be read down or if necessary severed to the extent necessary to resolve the inconsistency):

- (a) the Purchase Order;
- (b) **clauses 1 to 27** (inclusive) of this document; and
- (c) a document expressly incorporated these General Terms and Conditions.

2. FORMATION OF CONTRACT

- 2.1 Each Purchase Order will, upon receipt by the Supplier, constitute a separate binding contract between CMI and the Supplier for the Delivery of Products by the Supplier, and the purchase by CMI of the items of the Product specified in the Purchase Order on the terms and conditions set out in these General Terms and Conditions and the Purchase Order. A Purchase Order will be deemed correct and accepted by the Supplier unless CMI is notified to the contrary within five (5) days of placing the Purchase Order.
- 2.2 The terms of the Purchase Order must not be inconsistent with these General Terms and Conditions unless otherwise agreed in writing by both parties. If there is an inconsistency which is not agreed in writing by the parties, these General Terms and Conditions shall prevail. However, for the avoidance of doubt and notwithstanding any other provision in these General Terms and Conditions, a Purchase Order may vary the provisions of these General Terms and Conditions in relation to that Purchase Order where the variation is agreed by both parties and set out in the Purchase Order.

3. GENERAL RESPONSIBILITIES OF THE PARTIES

3.1 The Supplier

The Supplier agrees to:

- (a) supply Products to CMI free from encumbrances and otherwise in accordance with these General Terms and Conditions and each Contract; and
- (b) license the Software to CMI in accordance with these General Terms and Conditions including the Licence Conditions and each Contract.

3.2 No Contract without Purchase Order

The Supplier acknowledges that CMI:

- (a) is not obliged to purchase any Product from the Supplier unless and until it places a Purchase Order with the Supplier under these General Terms and Conditions; and
- (b) may purchase products similar, equivalent or identical to the Products from other suppliers.

4. ORDERING

4.1 Purchase Orders

A Purchase Order is required to order any Product.

4.2 Requirements for Purchase Order

A Purchase Order must specify:

- (a) a description of the Product to be supplied;
- (b) the quantity of the Product required;
- (c) the Contract Price;
- (d) date for Delivery;
- (e) the Place of Delivery;
- (f) a contact person and phone number at the Place of Delivery;
- (g) a contact person for any queries regarding the Purchase Order (if different, from the person in **clause 4.2(f)**);
- (h) an address to which the Supplier's invoice is to be sent; and
- (i) an address to which the Supplier's notices are to be sent;
- (j) (optional) additional requirement(s) with respect to the Product, including but not limited to:
 - (i) Acceptance Period and Acceptance Test Plan;
 - (ii) Installation and Integration Requirements;
 - (iii) Licence Conditions;
 - (iv) Liquidated Damages and Liquidated Damages Maximum;
 - (v) terms of Maintenance and Support Services, including but not limited to service levels, response and rectification times, availability and rebates, if applicable;
 - (vi) Warranty Period.

4.3 Delivery Lead Time

CMI must not specify a date for Delivery in any Purchase Order which would require the Supplier to deliver the Product within a period less than the Delivery Lead Time unless otherwise agreed in writing by the parties under **clause 6.2(b)**.

4.4 Notification to CMI

The Supplier must, within five (5) days after the date on which CMI places a Purchase Order with the Supplier, provide CMI with a confirmation of the Purchase Order by means of an email notification (or such other form of notification as the parties may agree) to CMI.

4.5 Cancelled Purchase Orders

If the Supplier has received an Purchase Order from CMI for any Products, and CMI cancels the Purchase Order, the Supplier agrees to use reasonable endeavours to mitigate any loss it may

suffer in connection with that cancellation, which may include not proceeding further with any manufacturing process or, if already manufactured, selling the Products which are the subject of the cancelled Purchase Order to another customer.

5. TRADE TERMS

- 5.1 Unless otherwise specified in a Purchase Order, the Supplier shall deliver the Products and other goods or services provided by the Supplier to CMI under these General Terms and Conditions on INCOTERMS 2000 Delivery Duty Paid as issued by the International Chamber of Commerce.
- 5.2 In the event of any inconsistency between a party's obligations under a relevant trade term and these General Terms and Conditions, the trade term will prevail.

6. DELIVERY AND ACCEPTANCE

6.1 Time of and Place for Delivery

The Supplier must ensure the Product is delivered in accordance with its obligations under these General Terms and Conditions and each Contract:

- (a) on the date; and
- (b) to the Place of Delivery, specified in the relevant Purchase Order.

6.2 Delivery Lead Time

- (a) Delivery will be effected within the Delivery Lead Time (or such other period agreed by CMI and the Supplier in writing). If the Products or any portion of the Products are not delivered within this time, CMI will be entitled to payment of Liquidated Damages as specified in a Purchase Order (without limiting any other rights or remedies CMI may have). Liquidated Damages are payable for each complete week of delay up to the Liquidated Damages Maximum for the undelivered Product. Both parties acknowledge that liquidated damages in this clause are a genuine pre-estimate of CMI's loss and not imposed on the Supplier as a penalty. For the avoidance of doubt, a Product is not considered delivered for the purpose of this **clause 6.2(a)** if it is delivered incomplete, faulty, defective or damaged in any way.
- (b) If CMI wishes to specify a date for Delivery in any Purchase Order which would require the Supplier to deliver the Product within a period less than the Delivery Lead Time, CMI and the Supplier must agree to this shorter period in writing before CMI submits the Purchase Order to the Supplier.
- (c) If a Purchase Order for Products has not been fulfilled by the date for Delivery specified in the Purchase Order (and an extension of time has not been approved in writing by CMI), CMI may cancel the Purchase Order. If CMI cancels a Purchase Order under this clause, Liquidated Damages under **clause 6.2(a)** will not apply to that Purchase Order to the extent of the

cancellation (although CMI will be entitled to pursue all other rights and remedies that would otherwise be available to it in respect of the late Delivery, including the right to seek damages at law).

6.3 Customs Clearance

- (a) Subject to any contrary express provision contained in a Contract, the Supplier will arrange all customs clearance and pay any applicable export/import tariffs, duties or taxes.
- (b) CMI will provide its full co-operation to assist the Supplier to fulfil its obligations under **clause 6.3(a)**.

6.4 Requirements for Delivery and Acceptance

The provision of a Product by the Supplier will not constitute Acceptance of that Product unless CMI issues an Acceptance Certificate in respect of that Product.

6.5 Rejection of Products by CMI

Without limiting any other rights or remedies CMI may have, CMI may reject a Product at any time until Acceptance if the Product does not conform to the Purchase Order or Specification, is the wrong goods or is faulty, defective or damaged in any way.

6.6 Acceptance Testing

During the relevant Acceptance Period in relation to a Product, CMI and/or its third party nominee may conduct acceptance testing in accordance with the Acceptance Test Plan to verify that the Product provided by the Supplier meets the Acceptance Requirements. CMI may not unreasonably refuse to allow the Supplier to participate in any acceptance testing conducted by or on behalf of CMI.

6.7 Issue of Acceptance Certificate

By the end of the relevant Acceptance Period, CMI will, acting fairly and reasonably, either:

- (a) issue an Acceptance Certificate to the Supplier in respect of the Product; or
- (b) notify the Supplier that CMI does not accept the Product because it fails to meet all of the Acceptance Requirements (specifying which of those requirements the Product fails to meet).

6.8 Non-acceptance of Product

If CMI notifies the Supplier under **clause 6.7** that it does not accept a Product, the Supplier must:

- (a) promptly and in any event within seven (7) days, address the concerns raised in that notice; and
- (b) rectify all or any part of the Product to ensure that it meets all of the Acceptance Requirements within:
 - (i) fourteen (14) days;
 - (ii) such other time as may be specified in the Acceptance Test Plan; or

(iii) such other time as the Supplier and CMI may agree in writing;

of such notice, and

(c) then re-submit the rectified Product for acceptance by CMI, and the procedure set out in **clause 6.6** will apply for re-testing of that Product.

6.9 Scope of Acceptance Certificates

Acceptance Certificates issued by CMI only constitute Acceptance of Products to the extent to which express reference is made to those Products in the Acceptance Certificate.

7. PASSING OF PROPERTY, TITLE AND RISK

7.1 Title and risk

Title and risk of loss in any Hardware will pass from the Supplier to CMI and/or its customer upon Delivery to CMI and/or its customer. Title to Software remains with the Supplier at all times and is licensed to CMI and/or its customer in accordance with **clause 16**.

7.2 Replacement of damaged Product

Notwithstanding **clause 7.1**, the Supplier must promptly replace Product which is lost or damaged while in the possession of the carrier and before being delivered to the named Place of Delivery in the Purchase Order.

8. PACKAGING, MARKING AND LABELLING

8.1 Packing of Product

- (a) The Product must be suitably packed to prevent damage during Delivery. The Supplier is responsible for ensuring the safe Delivery of Product to the address specified in the Purchase Order.
- (b) Where possible, each item will be packed in a single case or carton. Where it is necessary to remove components from the main unit to prevent damage during Delivery, such components will be packed and enclosed in the same case or carton as the main unit.
- (c) Where it is not possible for components so removed from a unit to be packed in the same case or carton as the main unit, all such components will be packed together. The cases or cartons containing such components will be suitably identified and cross referenced to the cases or cartons containing the main unit for which they are required.

8.2 Pre-shipment inspection

The Supplier must undertake sufficient factory tests and inspections to ensure that the Product complies with the Specification.

9. PRICES

9.1 Contract Prices for Product

The Contract Price for Products is that specified in the Price List, less any discount, and inclusive of all applicable taxes, tariff surcharges or other like

amounts assessed by any governmental or regulatory body and/or department arising from or as a result of the Services under the Contract. However, if CMI is required by any Applicable Laws to make any withholding in respect of any taxes from payments made or due to the Supplier under these General Terms and Conditions or any Purchase Order, CMI will make that withholding from the total Contract Price in the Purchase Order and pay the net balance to the Supplier.

9.2 Validity of Contract Prices

Unless the Price List specifies that particular prices are fixed for a certain period, the Price List will be valid until the Supplier provides to CMI a new Price List.

9.3 Negotiated Contract Prices

Notwithstanding **clauses 9.1** and **9.2**, the Supplier may offer lower Contract Prices for individual Purchase Orders, for example, where special conditions exist (including Purchase Orders for large quantities of Product).

9.4 Contract Price includes customs duty

The Contract Price includes all customs duty on the Product and on the components of the Product applicable at the time.

9.5 Contract Price includes costs of delivery

The Contract Price includes all costs associated with Delivery of the Product to the Place of Delivery.

9.6 New products

The Supplier and CMI must negotiate in good faith to agree Purchase Orders for products not contained in the Price List which the Supplier has included in any quote or proposal to CMI. The Supplier must ensure that prices offered or quoted to CMI for such products are calculated in a manner consistent with the cost and pricing principles on which prices in the Supplier's then current Price List for similar or equivalent items were calculated.

10. INVOICES

10.1 Invoicing information

The Supplier must ensure that any invoice to CMI specifies the following details:

- (a) Purchase Order numbers;
- (b) the Purchase Order line item number (in sequential order);
- (c) the Product ordered;
- (d) the quantity of the Products;
- (e) the Place of Delivery and the date of Delivery;
- (f) the Contract Price;
- (g) any applicable taxes;
- (h) settlement discount (if any);
- (i) payment period (which, for the avoidance of doubt, is subject to **clause 10.5(a)**); and

- (j) address or account to which payment is to be sent.

10.2 Invoices to include Acceptance Certificate

Any invoice submitted to CMI in accordance with this **clause 10** must be accompanied by a copy of the Acceptance Certificate in respect of the Products that are the subject of the invoice.

10.3 Delivery of invoices

The Supplier must deliver invoices for payment to the address specified in the Purchase Order. The Supplier must not submit an invoice to CMI in respect of a Product unless it has been delivered by the Supplier and Accepted by CMI in accordance with the terms of the Purchase Order and these General Terms and Conditions.

10.4 Assessment of invoices

- (a) CMI must within fourteen (14) days of the date the invoice is received by CMI determine the amount payable to the Supplier in respect of the invoice.
- (b) If CMI determines that any part of the invoice is not properly due and payable:
 - (i) CMI is under no obligation to pay that amount so determined as not due and payable (however, CMI may pay that amount determined as not due and payable and such payment will not constitute a waiver of CMI's right of action in relation to that amount); and
 - (ii) the Supplier:
 - (A) must promptly address CMI's reasons for withholding payment of part (or all) of the amount claimed in the invoice; and
 - (B) may either:
 - (I) issue a revised invoice to CMI; or
 - (II) subject to the Supplier's rights under Applicable Laws, have the matter resolved in accordance with the dispute resolution process set out in **clause 23** if the Supplier disagrees with CMI's reasons for withholding payment of part (or all) of the amount claimed in the invoice.

10.5 Payment

- (a) Subject to the Supplier's compliance with **clauses 10.1, 10.2 and 10.3**, CMI must pay the Supplier the amount determined as payable by CMI under **clause 10.4(a)** within thirty (30) days of the date the invoice is received by CMI at the address specified in the Purchase Order or such other period as is agreed by the Supplier and CMI.
- (b) CMI may pay invoices by cheque, money order or by telegraphic transfer.

- (c) Each party shall bear its own bank charges imposed by the party's bank(s) and the intermediate bank charges shall be borne by the account payee.

10.6 Invoice or payment disputes

Notwithstanding any payment made under these General Terms and Conditions or a Contract, either party may, on reasonable grounds, dispute any amount paid to or invoiced by the other party. Subject to a party's rights under Applicable Laws, any such dispute must be resolved in accordance with the dispute resolution process in **clause 23**.

10.7 Set off

CMI may deduct from amounts otherwise payable to the Supplier any amount due from the Supplier to CMI or any claim to money which CMI may have against the Supplier (whether for damages or otherwise) in connection with these General Terms and Conditions or a Contract.

11. QUALITY ASSURANCE

The Supplier must ensure that the quality of all Products delivered complies with:

- (a) these General Terms and Conditions and any relevant Contract;
- (b) the Acceptance Requirements;
- (c) all relevant standards and industry codes of conduct in the country of the Place of Delivery; and
- (d) the requirements of the manufacturers of the Products.

12. TRAINING

12.1 Supply of Training

If specified in the Purchase Order, the Supplier will provide the training at the prices mutually agreed and at the location nominated by CMI.

12.2 Test equipment and manuals

The Supplier will provide all necessary test equipment and materials including user manuals used to conduct, or are part of, the training.

12.3 Training courses

If required by CMI, the Supplier will assist CMI to establish training courses for CMI's employees to be conducted by CMI. The content of the training course and their cost will be subject to mutual agreement.

13. DOCUMENTS

13.1 Full documentation

The Supplier will provide CMI with Documentation (the price for which is included in the Contract Price) including and covering relevant shipping and import/export documentation, technical description, specification, equipment planning, ordering, dimensioning and application engineering, installation and testing, operation and maintenance, hardware diagrams and circuit description, and

operational testing. The Documentation must be sufficient to allow CMI employees to understand and operate the Product and, where applicable, to install and maintain the Product. The Supplier will use reasonable endeavours to provide the Documentation in the format requested by CMI (including hardcopy, CD-ROM or internet-based).

13.2 Reproduction

CMI will be entitled to reproduce the Documentation for its internal use only. Copyright in the documents provided remains with the Supplier or manufacturer.

14. INSTALLATION AND MAINTENANCE

- (a) If specified in a Purchase Order, the Supplier must install and/or integrate the Product or Products in accordance with the Installation and Integration Requirements set out in the Purchase Order (which may, specify, for example, testing procedures, sites and due dates for installation).
- (b) If specified in a Purchase Order, the Supplier will provide Maintenance and Support Services for the Product in accordance with the Purchase Order, or, if requested by CMI, enter into a separate agreement for the ongoing maintenance and support of the Product, which schedule or separate agreement may include service levels and response times for fault rectification agreed by the parties.

15. WARRANTY

15.1 Compliance with the Specification

The Supplier warrants to CMI and must ensure that the Product complies with the Specification for the Product in every respect.

15.2 Defects within the Warranty Period

The Supplier must, at no cost to CMI, promptly repair, replace or rectify any Defect in any Product which occurs within the Warranty Period. The repaired Product must meet the same performance specifications as a new Product. Parts provided for warranty repair by the Supplier will be furnished on an exchange basis and will be new parts or parts equivalent to new in normal performance. The replaced parts will become CMI's exclusive property.

15.3 Type Approval

The Supplier warrants that it shall perform and bear all costs related to type approvals for the Products, if such are required by competent public authorities.

16. INTELLECTUAL PROPERTY

16.1 Licence to use Software

The Supplier grants CMI the right to use Software and Documentation on the terms of the Licence Conditions.

16.2 Intellectual property rights warranty

The Supplier warrants that it has the rights in the Software to enable it to license the Software to CMI under clause 16.1.

16.3 Supplier indemnity

The Supplier hereby indemnifies CMI against any actions, claims, demands or proceedings brought by any person, firm or company against CMI in respect of any infringement of any Intellectual Property Rights including any letters patent, copyright, registered design or trademark in relation to the Product and against all losses, damages, costs, and expenses paid, incurred or suffered by CMI as a result of such claims, actions or proceedings as the case may be.

16.4 Defence of claims

The Supplier will defend any claim, suit or proceeding brought against CMI, so far as it is based on a claim that any Product supplied under these General Terms and Conditions or any Contract, infringes the Intellectual Property Rights of a third person. CMI will notify the Supplier of the claim and will provide all reasonable assistance to the Supplier with the defence and settlement of the claim. Further, the Supplier will at its option either:

- (a) at its own cost procure for CMI the right to continue use and sales of the Product free from such actions, claims, demands or proceedings; or
- (b) at its own cost replace or modify the Product so that they do not infringe the Intellectual Property Rights provided always that such modified Product will comply with the Specification.

If neither option is possible, the Supplier will repurchase the Product at a price equal to that paid by CMI together with cost of carriage, insurance, duty and charges.

17. CONFIDENTIAL INFORMATION

17.1 Acknowledgment and obligations in relation to Confidential Information

Each party:

- (a) acknowledges and agrees that all Confidential Information is confidential and that all Confidential Information disclosed by one party to the other is disclosed only for the purposes of enabling the party to perform its obligations under these General Terms and Conditions (and any relevant Contract) and in reliance on, and pursuant to, these General Terms and Conditions (and any relevant Contract);
- (b) agrees to keep the Confidential Information confidential at all times; and
- (c) must not, without the prior written approval of the other party, use, disclose, divulge or deal with any Confidential Information, nor cause, permit or allow any act, matter or thing to be done, omitted or occur whereby any Confidential Information may become known or be used by, or be disclosed or

communicated to, any other person, except strictly in accordance with these General Terms and Conditions and any Contract.

17.2 Obligations to protect Confidential Information

Each party must:

- (a) immediately notify the other if it becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (b) not use, copy or reproduce, nor cause, permit or allow any other person to use, copy or reproduce, any document, material, medium or any other thing, recording, containing, setting out or making reference to any Confidential Information otherwise than for the purpose of enabling it to perform its obligations under these General Terms and Conditions and any relevant Contract;
- (c) take all steps necessary to ensure that the Confidential Information and all documents, materials, media and all other things on or in which the Confidential Information may be recorded, contained, set out or referred to are kept secure and protected at all times from any unauthorised use or access; and
- (d) immediately upon:
 - (i) expiry or termination of a Contract; or
 - (ii) receipt by it of written notice from the other party to do so,

deliver up to the other party, or at the option of the other party destroy, everything recording, containing, setting out or making reference to any Confidential Information, including all documents, notes, reports, memoranda, materials, software, disks, and all other media, articles or things (but, in the case of termination of a Contract only, only to the extent to which those things relate to the Contract and the Products provided under it).

17.3 Obligations of Supplier Personnel

The Supplier must procure that all Supplier's Personnel comply with the obligations imposed by this **clause 17**.

17.4 Further documentation

If requested by CMI, the Supplier must procure the execution of a confidentiality document in a form acceptable to CMI by each of the Supplier's Personnel.

17.5 Survival of obligations

The obligations imposed by this clause survive expiry or termination of any Contract.

18. TERMINATION

18.1 Termination by the Supplier for breach

The Supplier may terminate a Contract by written notice if:

- (a) CMI is in breach of any of its obligations under the relevant Contract and does not

remedy that breach within thirty (30) days' written notice by the Supplier;

- (b) an Insolvency Event happens to CMI; or
- (c) in the reasonable opinion of the Supplier, a material change in ownership or control of CMI occurs which adversely affects the Supplier's rights or CMI's ability to perform its obligations under these General Terms and Conditions or any Contract.

18.2 Consequences of termination by the Supplier

Upon termination of a Contract under **clause 18.1**, the Supplier may:

- (a) cease to deliver any Product under that Contract; and
- (b) recover from CMI all outstanding money owed at the effective date of termination for any delivered Products provided under that Contract.

18.3 Termination on notice by CMI

CMI may terminate a Contract in whole or in part on thirty (30) days' written notice at any time. If CMI terminates a Contract under this clause, the Supplier must complete all of its obligations under any Purchase Order existing as at the effective date of termination, unless otherwise specified in writing by CMI.

18.4 Termination for cause by CMI

CMI may, without prejudice to any other rights and remedies it may have under these General Terms and Conditions, a Contract or at law, terminate a Contract in whole or in part (at CMI's discretion) by notice in writing, if:

- (a) the Supplier fails to deliver any Product within the Delivery Lead Time and has failed to rectify that failure within twenty-one (21) days after receipt of written notice from CMI or any further time allowed by CMI in writing;
- (b) the Supplier is in breach of any term of any Contract or these General Terms and Conditions and such breach has not been remedied for thirty (30) days after receipt of written notice;
- (c) an Insolvency Event happens to the Supplier; or
- (d) in the reasonable opinion of CMI, a material change in ownership or control of the Supplier occurs which adversely affects CMI's rights or the Supplier's ability to perform its obligations under these General Terms and Conditions or any Contract or which are otherwise contrary to CMI's interests.

18.5 Consequences of termination by CMI

Upon termination of a Contract under **clause 18.4** CMI may:

- (a) cease making any payment due under these General Terms and Conditions or the Contract;

- (b) recover from the Supplier all money paid for any undelivered Product or works or services not completed or provided under these General Terms and Conditions or the Contract, as the case requires;
- (c) recover from the Supplier the amount of any direct or indirect loss or damage sustained as a result of the termination;
- (d) be regarded as discharged from any further obligations under these General Terms and Conditions or the relevant Contract; and
- (e) pursue any additional or alternative remedies provided by law or equity.

18.6 Delivery of documentation

Without limitation to any other right of CMI, upon termination of a Contract, the Supplier must deliver up to CMI all documents made or compiled by the Supplier or the Supplier's Personnel in the course of providing the services concerning the business or affairs of CMI or CMI's Personnel.

18.7 Indemnity by the Supplier

The Supplier will indemnify and keep indemnified CMI and each of its Personnel in respect of any loss suffered or expense incurred as a result of the Supplier failing to comply with **clause 18.6**.

19. INDEMNITY AND CONSEQUENTIAL LOSS

19.1 Indemnity

In addition to **clause 16.3**, the Supplier must indemnify and keep indemnified CMI and each of its Personnel ("those indemnified") in respect of all claims, demands, actions, liability, loss, costs (including legal costs and expenses on an indemnity basis) made against or incurred or suffered by any of those indemnified (directly or indirectly) in respect of:

- (a) any breach of these General Terms and Conditions or any Contract by the Supplier or any of its Personnel;
- (b) any wilful misconduct, negligence, breach of duty, breach of statute or failure to act or omission on the part of the Supplier or any of its Personnel;
- (c) any claim or proceedings by any third party arising from an act or omission of the Supplier or any of its Personnel in connection with these General Terms and Conditions or any Contract whether negligent or not; and
- (d) any act or omission of the Supplier or its Personnel in connection with these General Terms and Conditions or any Contract resulting in or contributing to loss of or damage to physical property of any of those indemnified or a third party's physical property.

19.2 Exclusion of Consequential Damages

In no event will either party or its suppliers be liable for any incidental or consequential damages, lost profits or any other indirect damages even if the relevant party or its suppliers have been informed

of the possibility of such loss. This clause will survive termination of any Contract.

19.3 No liability of CMI

The Supplier must perform its obligations under these General Terms and Conditions and all Contracts at its sole risk and CMI will not be liable to the Supplier or any other person for any loss, damage, injury or death sustained by any person or to any property however caused whether as a result of or arising from any negligence, breach of duty or breach of statute by any of CMI's Personnel, to the extent permitted by Applicable Laws.

19.4 CMI as agent or trustee

For the purposes of this **clause 19**, CMI will be or be deemed to be acting as agent or trustee for and on behalf of and for the benefit of all persons who are or might be its officers, employees or agents from time to time (and any other CMI's Personnel) and all such persons will to this extent be or be deemed to be parties to these General Terms and Conditions.

20. INSURANCE

20.1 Obligation to maintain insurance

In addition to any obligation under a Contract to provide maritime or transit insurance, the Supplier must in respect of each Purchase Order effect and maintain current insurances specified in **clauses 20.2 to 20.3** inclusive. If CMI and the Supplier wish to vary these insurance requirements in relation to a particular Purchase Order, CMI and the Supplier must agree to this variation in writing before CMI submits the Purchase Order to the Supplier and specify the agreed insurance requirements in the Purchase Order.

20.2 Workers' compensation

The Supplier must insure itself for an unlimited amount against any and all liability to its officers, employees or agents, for workers' compensation and at common law, however arising. This insurance must comply with the laws of each place in which the Supplier is required to execute or perform any services under these General Terms and Conditions and with such other laws as are properly applicable in respect of this insurance.

20.3 Public liability

Subject to **clause 20.1**, the Supplier must insure itself for a sum of not less than the amount specified in the Purchase Order against any and all public liability. This insurance must cover all sums which the Supplier becomes legally liable to pay in respect of or arising from:

- (a) death of or bodily injury (including disease or illness) to any person including (but not limited to) any officer, employee or agent of the Supplier, and
- (b) loss of or damage to property (including consequential loss),

however caused whether as a result of or arising from negligence, breach of duty or breach of statute by the Supplier or any officer, employee or agent of the Supplier or otherwise.

20.4 Insurances do not effect obligations of the Supplier

The effecting of the insurances will not in any way affect the liability or obligations of CMI or the Supplier under these General Terms and Conditions or at common law or otherwise.

20.5 Proof of insurance

CMI may at any time require the Supplier to prove to the satisfaction of CMI that the Supplier has effected the insurances required by this **clause 20** and that such insurances are current.

21. FORCE MAJEURE

21.1 Notice and suspension of obligations

If a party's performance of its obligations under a Contract is affected by an event of Force Majeure:

- (a) that party must immediately give the other prompt notice of that fact including:
 - (i) full particulars of the Force Majeure event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it;
- (b) the party giving notice must request an extension of time in which that party may comply with its obligations under the Contract; and
- (c) the obligations under the Contract of the party giving the notice are suspended for the period of time requested in the notice to the extent to which that party's performance of its obligations are affected by the relevant Force Majeure event as long as the event of Force Majeure continues.

21.2 Effort to overcome

Except for adversely settling an industrial dispute, a party claiming Force Majeure must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure as quickly as possible.

21.3 Termination

If Force Majeure continues for more than three (3) months, either party may terminate the relevant Contract by giving at least thirty (30) days' written notice to the other party.

22. NOTICES

22.1 Method of giving notice

A notice, consent, approval or other communication under these General Terms and Conditions or a Contract must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered by hand to that Party's Address;
- (b) sent by pre-paid mail to that Party's Address;

- (c) transmitted by facsimile to that Party's Address; or

- (d) transmitted by email to that Party's Address (provided the party giving the notice uses a recognised form of electronic certificate).

22.2 Time of receipt of notice

A notice given by a party in accordance with **clause 22.1** will be treated as having been given and received:

- (a) if delivered by hand, upon receipt of acknowledgment of receipt;
- (b) if sent by pre-paid mail, upon receipt of acknowledgment of receipt;
- (c) if transmitted by facsimile, at the time of acknowledgment of correct transmission received by the party sending the transmission; and
- (d) if transmitted by email, at the time the sender's server receives acknowledgment from the recipient's server, or the recipient itself, that the recipient has received and opened the email.

23. RESOLUTION OF DISPUTES

23.1 Disputes and dispute notices

If a dispute or disagreement arises between CMI and the Supplier in relation to these General Terms and Conditions or any Purchase Order ("Dispute"), either party may by notice in writing to the other party specifying reasonable details of the Dispute ("Dispute Notice"), refer the Dispute for resolution in accordance with this **clause 23**. For the avoidance of doubt, except for seeking urgent interlocutory or ex parte relief, a party must not seek any external dispute resolution in relation to a Dispute unless it has first referred the Dispute for resolution in accordance with this **clause 23**.

23.2 Persons to whom notice is given

- (a) Where a Dispute Notice is given by one party to the other party, then the parties shall arrange a meeting to consider the Dispute and attempt to resolve the Dispute.
- (b) If either party determines that the process has been unsuccessful, then the parties will refer the Dispute to their respective senior executive officers or their nominees who will then attempt to resolve the Dispute.
- (c) If after a period of fourteen (14) days (or such other period as may be agreed) from the date on which the meeting between the senior executive officers or their nominees took place, the parties have not been able to resolve the Dispute or agree on a process to resolve (whether by mediation, arbitration, expert determination or otherwise) the Dispute, either party may then (but no earlier) terminate the operation of the Dispute resolution procedure set out in this **clause 23** in relation to that Dispute by giving written notice to the other party.

24. ASSIGNMENT

24.1 Assignment requires consent

Subject to **clause 24.2**, neither party may transfer, assign, novate, mortgage, charge or otherwise encumber or dispose of any of its rights under these General Terms and Conditions or any Contract without the prior written consent of the other party.

24.2 CMI's rights

CMI may, without the consent of the Supplier, transfer, assign, novate, mortgage, charge or otherwise encumber or dispose of any of its rights under these General Terms and Conditions.

25. Trade Compliance and Export Controls

Each Party shall, in the context of the services provided in terms of this Agreement:

- 25.1 comply with all economic, trade and financial sanctions laws, regulations, embargoes or restrictive measures administered ("Sanctions"), as well as all trade and/or export control laws and regulations ("Trade Control") enacted or enforced by United Nations, the governments of the United Kingdom, European Union, United States of America and any other relevant country;
- 25.2 not knowingly do anything which may cause the other Party or members of its group to breach Sanctions, Trade Control and/or other Applicable Law;
- 25.3 provide such assistance, documentation and information to the other Party as that Party may reasonably request, including but not limited to, end customer information, destination and intended use of goods or services;
- 25.4 notify the other Party in writing as soon as it becomes aware of an actual or potential investigation or breach in relation to the Applicable Laws or any material change in the status of the Parties in respect of:
 - (a) blacklist status e.g. the inclusion on a Sanctions, entity or other blocked lists in any applicable jurisdiction (as stated in clause 10.1 above);
 - (b) licence or authorization status e.g. a loss of licence or authorization in respect of Sanctions, Trade Control and/or under other Applicable Laws;
- 25.5 have the right to terminate this Agreement if any of the provisions of this clause are breached; or
- 25.6 have the right to seek indemnities from the Party which has breached the relevant provisions for any direct losses incurred.

26. GENERAL

26.1 No partnership

Nothing contained in these General Terms and Conditions or any Contract:

- (a) may be deemed to constitute a partnership, joint venture, agency or other legal relationship between CMI and the Supplier other than that of the Supplier and purchaser; and
- (b) authorises either party to waive any obligation for which the other party may be responsible or to incur any liability on behalf of the other party.

26.2 Amendment

The Contract may only be amended, varied, replaced or supplemented in writing executed by both parties.

26.3 Attorney

Each attorney who executes any Contract on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this document.

26.4 Further assurances

Each party must promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of these General Terms and Conditions or any Contract and any transaction contemplated by them.

26.5 Invalidity

Any provision in these General Terms and Conditions which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these General Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

26.6 Exercise of rights and no waiver

Except as expressly provided to the contrary in these General Terms and Conditions or any Contract, a party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that, or any other right, power or remedy. Unless expressly provided to the contrary, failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

26.7 Entire agreement

The Contract is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in these General Terms and Conditions and such Contract. All representations, communications and prior agreements in relation to

the subject matter are merged in and superseded by these General Terms and Conditions and such Contract.

26.8 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to these General Terms and Conditions or any Contract.

27. LAW AND JURISDICTION

27.1 Governing law

Unless otherwise specified in a Purchase Order, these General Terms and Conditions and the Contract are governed by the laws of Hong Kong Special Administrative Region.

27.2 Jurisdiction

Unless otherwise specified in a Purchase Order, the parties submit to the non-exclusive jurisdiction of the courts of Hong Kong Special Administrative Region and any courts which may hear appeals from those courts in respect of any proceedings in connection with these General Terms and Conditions and/or the Contract.

28. Anti-Bribery and Corruption

28.1 Each Party shall comply with all applicable laws, regulations and rules relating to anti-bribery and anti-corruption ("Anti-Corruption Laws"). The Parties further undertake not to pay, offer to pay, or promise to pay any money or provide anything of value to a public official or other related parties (including but not limited to customers, suppliers, agents, or relevant stakeholders), directly or indirectly through any third party, in order to obtain or retain any improper advantage.

28.2 If any of the Party becomes aware that any violation of this clause has occurred, is threatened, or has been requested by any person (including by an employee or representative of any party to this Agreement) for any undue financial or other advantage of any kind received in connection with this Agreement, such Party shall promptly report to the other Party.

28.3 The Parties agree that non-compliance or violation of this clause shall be deemed as a material breach of this Agreement and the non-breaching Party shall have the right to terminate this Agreement without prejudice to the non-breaching Party's other rights and remedies.