

1. Interpretation

- 1.1 In these Conditions: „Buyer“ means the person who accepts a quotation of the Supplier for the supply of Goods and/or Services, whose order for Goods and/or Services is accepted by the Supplier or who otherwise enters into a Contract in Writing for the supply of Goods and/or Services with the Supplier;
„Conditions“ means the general terms and conditions set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in Writing between the Buyer and the Supplier;
„Contract“ means the contract for the purchase and sale of Goods and/or supply of Services, howsoever formed or concluded, whether pursuant to a written order of the Buyer or a quotation of the Supplier or otherwise, to which these Conditions apply;
„Goods“ means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with a Contract;
„Incoterms“ means the international terms of trade for the sale of goods of the International Chamber of Commerce as in force at the date when the Contract is made;
„Services“ means the services (including any part thereof) which the Supplier is to supply in accordance with a Contract;
„Supplier“ means Faulhaber Malaysia Sdn. Bhd. (Company No. 201601014402) having its registered office at Unit C-12-4, Level 12, Block C, Megan Avenue II, 12 Jalan Yap Kwan Seng, 50450 Kuala Lumpur and its business address at 1A-2-01 & 02, One Precinct, Lengkok Mayang Pasir, 11950 Bayan Baru, Penang, Malaysia;
„Writing“ includes electrical mail facsimile transmission and any comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute or regulation shall be construed as a reference to that provision as amended, reenacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the Contract

- 2.1 The supply of Goods and/or Services by the Supplier to the Buyer under any Contract shall be subject to these Conditions which shall govern all and any Contract between the Supplier and the Buyer to the exclusion of any other terms and conditions contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom practice or course of dealing.
- 2.2 If a license or consent of any third party (including without limitation any governmental or other authority) is required in connection with (a) the Buyer's purchase or use of the Goods or (b) the performance of Services at the Buyer's premises, the Buyer shall obtain the licence or consent at its own expense and produce evidence of it to the Supplier on demand. Failure to obtain any licence or consent does not entitle the Buyer to withhold or delay payment of the price for Goods or Services ordered. Any additional expenses or charges incurred by the Supplier resulting from such failure shall be paid by the Buyer.
- 2.3 The Supplier's employees or agents are not authorised to make any representations concerning any Goods or Services unless confirmed by the Supplier in Writing. Any information made available in connection with any offer for the supply of Goods or Services, including photographs, drawings, data about the extent of the delivery, appearance, performance, dimensions, weight, consumption of operating materials, operating costs, is not binding unless expressly designated as binding by the Supplier in Writing, and subject to Condition 3.7. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim based on any such representations or information not so confirmed.
- 2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Buyer or its employees or agents which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Buyer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Supplier.
- 2.6 Any typographical clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3. Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorised representative.
- 3.2 The Buyer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Supplier any necessary information relating to the Goods and/or Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods and/or the description of the Services shall be those set out in the Supplier's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Supplier) or as otherwise set out in any Contract.
- 3.4 If any process is to be applied to the Goods or in the performance of the Services by the Supplier in accordance with a specification submitted by the Buyer, the Buyer shall defend, indemnify, and hold the Supplier harmless against any and all losses, damages, costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any patent, copyright, design, trade mark, or other industrial or intellectual property rights (whether registered or unregistered) of any other person which results from the Supplier's use of the Buyer's specification. If any allegation of infringement is made by a third party, the Supplier is not obliged to enquire into the merits of the allegation but is entitled to terminate the Contract forthwith and claim compensation for all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier up to the time of termination.
- 3.5 The Supplier reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable statutory or regulatory requirements or where the Goods or Services are to be supplied to the Supplier's specification which do not materially affect their quality or performance.
- 3.6 No concluded Contract may be modified or cancelled by the Buyer except with the agreement in Writing of the Supplier and on terms that the Buyer shall indemnify the Supplier in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of the modification or cancellation, as the case may be.
- 3.7 Unless agreed in Writing by the Supplier all drawings, designs, specifications and particulars submitted by the Supplier are approximate and only for information purposes so the Buyer cannot rely on the accuracy of the same.
- 3.8 Unless expressly licensed or assigned under these Conditions or any Contract, all intellectual property rights and without prejudice to the generality of the foregoing to include copyright, design right, patents, trademarks, and know-how whether registered or not in drawing, designs, specifications, samples, tools, and the Goods and Services remain the absolute property of the Supplier and the Supplier's ownership shall not be affected by any contribution and/or payment towards the costs of the Goods, Services, samples and/or tools by the Buyer whether in full or in part.

4. Price

- 4.1 The price of the Goods and/or Services shall be the price stated in the Supplier's offer which has been accepted by the Buyer or the price stated in the Buyer's offer which has been accepted by the Supplier, or where the price has not been explicitly mentioned, the price listed in the Supplier's published price list current at the date of conclusion of the Contract.
- 4.2 The Supplier reserves the right by giving notice to the Buyer at any time after four (4) months have elapsed since the conclusion of the Contract and before delivery/ performance, to increase the price of the Goods and/or Services in case of:
 - 4.2.1 any increase in the cost to the Supplier (such as without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture);
 - 4.2.2 any change in delivery/performance dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer; or
 - 4.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate information or instructions.
- 4.3 Unless otherwise agreed in Writing between the Buyer and the Supplier:
 - 4.3.1 all prices for Goods are given by the Supplier on the basis of delivery ex works Germany, Switzerland or any other location identified in the Supplier's order confirmation ("Collection Premises") according to Incoterms 2020;
 - 4.3.2 prices for Services, in particular engineering work, installation and commissioning services, shall be charged separately, at the Supplier's option, at either a flat rate or according to actual expenditure, plus travel costs, subsistence allowance and overnight expenses, overtime, surcharges for Sundays and public holidays.
- 4.4 The price of the Goods and/or Services is exclusive of any applicable goods and services tax, value added tax or similar tax which the Buyer shall be additionally liable to pay to the Supplier. The Supplier shall be entitled to receive the price net of all bank charges, taxes and similar expenses.
- 4.6 The Buyer shall bear the cost of any special packaging of the Goods which it may request or which may be necessitated by delivery by any means other than the Supplier's normal means of delivery. The Buyer shall unless otherwise agreed be solely responsible for the disposal of all packaging in accordance with all regulations whether statutory or otherwise relating to protection of the environment.
- 4.7 The Buyer may not set off any part of the price of the Goods against any claims the Buyer may have against the Supplier unless such claims have been adjudged to be due under a final and non-appealable judgment entered by a court of competent jurisdiction.

5. Terms of payment

- 5.1 If no other specific terms have been agreed in Writing between the Buyer and the Supplier, the following terms shall apply:
 - 5.1.1 The Supplier shall be entitled to invoice the Buyer for 100% of the total purchase price upon the Buyer having accepted the Suppliers offer or the Supplier having accepted the Buyer's offer as the case may.
 - 5.1.2 The Buyer shall pay the price within 30 days of the invoice date unless the Buyer has entered into a contract for the onward sale of the Goods, in which the price shall be payable on the date on which such contract has been entered into.
- 5.2 The Supplier shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 The Supplier is entitled in its absolute discretion from time to time to require full or partial payment of the price of the Goods prior to delivery. Without prejudice to the foregoing, if in the Supplier's opinion the Buyer's creditworthiness deteriorates before delivery of the Goods, the Supplier may require full or partial payment of the price prior to delivery or the provision of security by the Buyer in a form acceptable to the Supplier.
- 5.4 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
 - 5.4.1 cancel the Contract or suspend any further deliveries of the Goods and/or suspend further performance of the Services; and/or
 - 5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Buyer); and/or
 - 5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of one per cent (1.0%) per month until payment in full is made (a part of a month being treated as a full month for the purposes of calculating interest).
- 5.5 In the event of Buyer and Supplier having agreed on a payment plan, any delay in paying an installment under such plan shall render the total amount owed under the payment plan due and payable at once.

6. Delivery/Performance

- 6.1 Unless otherwise agreed, delivery of the Goods shall be made by the Buyer collecting the Goods at the Collection Premises at any time after the Supplier has notified the Buyer that the Goods are ready for collection. If the parties agree on some other mode of delivery per Incoterms, the Supplier's delivery obligations shall be determined according to the applicable Incoterm. Save for obligations according to the applicable Incoterm or obligations expressly undertaken by the Supplier in Writing, the Supplier shall have no other obligations, in particular obligations which it might otherwise have according to the provisions of the Sale of Goods Act 1957.
- 6.2 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.3 The Supplier has the right at any time to subcontract all or any of its obligations for the sale of the Goods or supply of the Services to any other party as it may from time to time decide without giving notice of the same to the Buyer.
- 6.4 Any dates quoted for delivery of the Goods or performance of the Services are approximate only. Where a time of delivery to be calculated by lapse of a period of time (e.g. within 30 days) has been agreed on, such period of time shall only run from the date on which Supplier issues an order confirmation or the date on which the Buyer has provided such documents and permits as may be required for Supplier to process the order, whichever is the later. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Buyer. Unless previously agreed by the Supplier in Writing, the time for delivery/ performance shall not be of the essence, and the Supplier shall not be liable for any delay in delivery or performance howsoever caused. Where time of performance has been agreed in Writing by the Supplier to be of the essence of the Contract, and the Supplier fails to comply with its obligations in due time, the Buyer shall be entitled to compensation for actual loss and expense sustained as a result of the Supplier's delay in performance, which was foreseeable at the time of conclusion of the Contract and resulting from the usual course of events, for any delay amounting to more than five (5) working days after the quoted delivery date, subject always to the limitations set out in Condition 14.
- 6.5 If the Supplier has failed to deliver the Goods or perform the Services in accordance with the Contract, the Buyer shall be entitled, by serving written notice on the Supplier, to demand performance within a specified period thereafter, such period

- being not less than three (3) months, and if the Supplier fails to do so within the specified time, the Buyer shall be entitled to terminate the Contract in respect of the undelivered Goods or unperformed Services and claim compensation for actual loss and expense sustained as a result of the Supplier's non-performance, which was foreseeable at the time of conclusion of the Contract and resulting from the usual course of events, subject always to the limitations set out in Condition 14.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Supplier's fault) then without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract provided the price has been paid in cleared funds in full or charge the Buyer for any shortfall below the price under the Contract; or
- 6.6.2 terminate the Contract and claim damages.
- 6.7 If the Supplier, being ready willing and able to perform the Services, is prevented by the Buyer from doing so, then the Supplier shall be entitled to declare itself released from the performance of such Services, by notice in Writing to the Buyer, and to claim compensation for all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier up to the time of the giving of such notice.
- 7. Risk and property in the Goods**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Collection Premises, at the time when the Supplier notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at the Collection Premises, at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Supplier to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Supplier's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Supplier for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties, and in the case of tangible proceeds properly stored, protected and insured. Where Buyer obtains a claim against a third party in the course of having on-sold the Goods, Buyer hereby assigns such claim to Supplier by way of security.
- 7.4 The Buyer agrees with the Supplier that the Buyer shall immediately notify the Supplier of any matter from time to time affecting the Supplier's title to the Goods and the Buyer shall provide the Supplier with any information relating to the Goods as the Supplier may require from time to time. Where a third party seeks to enforce any claim on the Goods, Buyer will immediately notify such third party that the Goods are the property of Supplier.
- 7.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Supplier shall be entitled at any time to require the Buyer to deliver up the Goods to the Supplier and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier but if the Buyer does so all monies owing by the Buyer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 7.7 The Buyer hereby irrevocably appoints the Supplier and its servants as its duly authorised agent for the purpose of entering upon any premises where the Goods are stored for the purpose of examination and/or recovery of the same at any time without notice.
- 7.8 Where the Goods have been incorporated by the Buyer into any product or article in such a way that the substance and identity of the Goods have been irrevocably altered or destroyed, then property in such new product(s) or article(s) shall immediately upon its or their creation vest wholly in the Seller, and the provisions of the preceding sub conditions shall apply mutatis mutandis to such products or articles as if they were Goods remaining the property of the Seller; provided that this sub condition shall not apply if the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due. For the avoidance of doubt, it is hereby declared that the provisions of the preceding sub conditions shall continue to apply to Goods which have been incorporated by the Buyer into any product or article in such a way that the substance and identity of the Goods have not been irrevocably altered or destroyed.
- 7.9 If the provisions in this Condition 7 are not effective according to the law of the country in which the Goods are located, the legal concept closest in nature to retention of title in that country shall be deemed to apply mutatis mutandis to give effect to the underlying intent expressed in this condition, and the Buyer shall take all steps necessary to give effect to the same.
- 7.10 The Buyer shall indemnify the Supplier against all loss, damages, costs, expenses and legal fees incurred by the Buyer in connection with the assertion and enforcement of the Supplier's rights under this condition.
- 8. Warranties and remedies**
- 8.1 Unless as expressly provided in these Conditions, all other warranties conditions or terms, including those implied by statute or common law, are excluded to the fullest extent permitted by law.
- 8.2 Subject to this Condition 8, the Supplier warrants that the Goods will correspond with their specification at the time of delivery, and agrees to remedy any non-conformity therein for period of 12 months commencing from the date on which the Goods are delivered or deemed to be delivered („Warranty Period“). Where the Buyer is dealing as a consumer (within the meaning of the Consumer Protection Act 1999), the Supplier further gives to the Buyer such implied warranties as cannot be excluded by law.
- 8.2.1 To the maximum extent permitted by applicable laws, the Supplier's above warranty concerning the Goods is given subject to the following conditions:
- (a) No condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the Goods supplied or that they will be suitable for any particular purpose or use under any specific conditions, notwithstanding that such purpose or conditions may be known or made known to the Supplier.
- (b) Any description given of the Goods is given by way of identification only and the use of such description shall not constitute a sale by description.
- (c) Notwithstanding that a sample of the Goods has been exhibited to and inspected

- by the Buyer, it is hereby declared that such sample was not so exhibited and inspected as to constitute a sale by sample under the Contract.
- (d) The Supplier binds itself only to deliver Goods in accordance with the general description under which they were sold, whether or not any special or particular description shall have been given or shall be implied by law. Any such special or particular description shall be taken only as the expression of the Supplier's opinion in that behalf. The Supplier does not give any warranty as to the quality state condition or fitness of the Goods.
- (e) The above warranty does not extend to parts materials or equipment not manufactured by the Supplier in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.
- (f) The Supplier shall be under no liability for the following measures and actions taken by the Buyer or third parties and the consequences thereof: improper remedy of defects, alteration of the Goods without the prior agreement of the Supplier, addition and insertion of parts, in particular of spare parts which do not come from the Supplier.
- (g) The above warranty does not extend to used Goods.
- (h) The Supplier shall be under no liability in respect of any defect in the Goods or any other claim arising from any drawing design or specification supplied by the Buyer.
- (i) The Supplier shall be under no liability in respect of any defect arising from unsuitable or improper use, defective installation or commissioning by the Buyer or third parties, fair wear and tear, willful damage, negligence, abnormal working conditions, defective or negligent handling, improper maintenance, excessive load, unsuitable operating materials and replacement materials, poor work, unsuitable foundation, chemical, electrotechnical/electronic or electric influences, failure to follow the Supplier's instructions (whether oral or in Writing) misuse or alteration or repair of the Goods without the Supplier's approval.
- (j) The Supplier is not liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without the Supplier's prior written approval and the Buyer shall indemnify the Supplier against each loss liability and cost arising out of such claims.
- (k) The Supplier shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods and/or Services has not been paid in cleared funds by the due date for payment.
- (l) The Supplier shall be under no liability whatsoever in respect of any defect in the Goods arising after the expiry of the Warranty Period.
- (m) Where a warranty claim arises it shall be at the Supplier's entire discretion whether to repair or replace the Goods.
- 8.2.2 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified to the Supplier within seven days from the date of receipt of the Goods or (where the defect or failure was not apparent on reasonable inspection) within seven days after discovery of the defect or failure. The Buyer shall also examine the Goods for defects before every commissioning, in particular regarding safety and suitability for use. During use, the Goods shall be monitored constantly with regard to safety and defects. If there are even slight reservations concerning the suitability for use or the slightest reservations concerning safety, the Goods must not be used or the operation must be shut down immediately. The Supplier shall be given written notification immediately, specifying the reservations or the defect. However in no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure, except where the failure is such that the Goods delivered are of a fundamentally different nature than those which the Supplier had contracted to deliver.
- 8.2.3 If the Buyer does not give due notification to the Supplier in accordance with the Condition 8.2.2, the Supplier shall have no liability for any defect or failure or for any consequences resulting therefrom. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet a specification is notified to the Supplier in accordance with Condition 8.2.2, the non-conforming Goods (or part thereof) will be repaired or replaced free of charge as originally ordered. The Supplier shall only be obliged to repair the Goods at the Buyer's premises and the Buyer shall make any Good available for inspection by Supplier within seven (7) days of Supplier so requesting. If Buyer fails to make to goods available at its premises as aforesaid, Supplier is irrevocably released from all warranty claims. Where the Goods have not been so repaired or replaced within a reasonable time, despite a written warning from the Buyer, the Buyer shall be entitled to a reduction of the price in proportion to the reduced value of the Goods, provided that under no circumstance shall such reduction exceed 15% of the price of the affected Goods. In lieu of repair or replacement, the Supplier may, at its sole discretion, grant such a reduction to the Buyer. Upon a repair, replacement or price reduction being made as aforesaid, the Buyer shall have no further claim against the Supplier.
- 8.2.4 When the Supplier has provided replacement Goods or given the Buyer a refund, the non-conforming Goods or parts thereof shall become the Supplier's property.
- 8.3 Subject to this Condition 8, the Supplier warrants that the Services will be provided using reasonable care and skill. Any claim by the Buyer that Services have not been undertaken or completed in accordance with the Contract, shall be notified to the Supplier within seven days after performance of the Services was completed. If the Buyer does not give due notification to the Supplier as aforesaid, the Supplier shall have no further liability to the Buyer. Where any valid claim in respect of improperly performed Services has been notified to the Supplier, the Supplier shall repeat, rectify or remedy the Services at the Supplier's risk and expense within a reasonable time. Where the Services have not been so reformed within a reasonable time, despite a written warning from the Buyer, the Buyer shall be entitled to claim compensation for actual loss and expense sustained as a result of the Supplier's non-performance, which was foreseeable at the time of conclusion of the Contract and resulting from the usual course of events, up to a maximum cumulative amount of 15% of the value of the unperformed Services.
- 8.4 Where the Buyer raises an unjustified warranty claim against the Supplier and the Supplier incurs costs for the investigation of such claim, the Buyer shall reimburse the Supplier for any and all such costs, including without limitation travelling expenses for the employees of the Supplier. In addition, the Supplier shall be entitled to charge Buyer for the investigative work done at the Supplier's usual hourly rates.
- 9. Force Majeure**
- 9.1 The Supplier shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Supplier's reasonable control:
- 9.1.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.1.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
- 9.1.4 import or export regulations or embargoes;
- 9.1.5 interruption of traffic, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);
- 9.1.6 interruption of production or operation, difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.1.7 power failure or breakdown in machinery.

- 9.2 Upon the happening of any one of the events set out in Condition 9.1 the Supplier may at its option:
- 9.2.1 fully or partially suspend delivery/performance while such event or circumstances continues;
- 9.2.2 terminate any Contract so affected with immediate effect by written notice to the Buyer and the Supplier shall not be liable for any loss or damage suffered by the Buyer as a result thereof;
- 9.2.3 unilaterally alter the terms of the Contract in its reasonable discretion to accommodate the change of circumstances resulting from the event set out in Condition 9.1. Where Supplier unilaterally alters the terms of the Contract it shall give notice of the altered terms ("Force Majeure Alteration Notice") to the Buyer.
- 9.3 Upon the Buyer receiving a Force Majeure Alteration Notice, Buyer shall be entitled to terminate the Contract within five (5) days from receipt of such notice. Where Buyer does not terminate the Contract within such period of time, the Contract shall thereafter continue in force as varied by the terms contained in the Force Majeure Alteration Notice, and the Buyer is deemed to have accepted such altered or varied terms.
- 9.4 Where an event set out in Condition 9.1 continues in effect for a period of longer than three (3) months, the Contract may be terminated by either party upon service of written notice of termination to the other party.
- 10. Intellectual Property Rights**
- 10.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person then unless the claim arises from the use of any drawing or specification supplied by the Buyer or use or resale of Goods by the Buyer in ways not contemplated by these Conditions or the relevant Contract, the Supplier shall indemnify the Buyer against all losses, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim, up to a maximum cumulative amount of 15 % of the value of the infringing Goods, provided that:
- 10.1.1 the Supplier is given full control of any proceedings or negotiations in connection with any such claim;
- 10.1.2 the Buyer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Supplier;
- 10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 10.1.5 the Supplier shall be entitled to the benefit of and the Buyer shall accordingly account to the Supplier for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 10.1.6 without prejudice to any duty of the Buyer at common law, the Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under this condition.
- 10.2 Any copyright (including without limitation any copyright relating to drawings, models and tools and any other equipment), design right or other intellectual property in the Goods or any such rights related directly or indirectly to their supply under the terms of the Contract shall vest in the Supplier and the Buyer agrees that it shall do any and all acts and execute any and all documentation required by the Supplier to secure the vesting of such rights in the Supplier.
- 10.3 To the extent that software is included in the scope of the delivery, the Buyer shall be granted a non-exclusive, non-transferable, limited right to use the supplied software, including its documentation. It is released for use on the object of the delivery intended for this purpose. The use or installation of the software on more than one system is prohibited. The Buyer may not reproduce, rework, reverse engineer, decompile or translate the software or convert it from the object code into the source code except to the extent that this happens on a transient basis as a necessary or incidental step to enable the Buyer to make use of such software. The Buyer shall not remove manufacturer's information – in particular copyright notices – or change them without the prior express permission of the Supplier. All other rights to the software and the documentation, including the copies, remains with the Supplier or the software Supplier. The granting of sublicenses is not permissible.
- 11. Insolvency of buyer**
- 11.1 This Condition 11 applies if:
- 11.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
- 11.1.3 the Buyer ceases or threatens to cease to carry on business; or
- 11.1.4 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this Condition 11 applies then without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further delivery/performance under the Contract without any liability to the Buyer and if Goods have been delivered and/or Services have been performed, but not paid for the price, such price for the delivered Goods and/or performed Services shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12. Notices**
- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13. Confidential Information**
- 13.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) (and without prejudice to include all promotional items and samples and such like unless agreed otherwise) concerning the business and affairs of the other that it shall have obtained as a result of the discussions leading up to or the entering into of the Contract or which it may have learned during the term of the Contract.
- 13.2 All information data, designs, drawings, specifications and other documents provided, revealed or disclosed in any form or manner by the Supplier to the Buyer for the purposes of the Contract, in particular when marked "confidential", shall remain the property of Supplier and shall be treated and protected by Buyer as strictly confidential. The Buyer shall immediately return to the Supplier any such material provided, upon the Supplier's demand.
- 13.3 Each of the parties hereto undertakes with the other to take all such steps as shall be necessary from time to time to ensure compliance with the provisions of this condition by its employees, agents and sub-contractors as well as other companies within the group of companies to which it belongs.
- 13.4 Supplier is allowed to make reference to Goods supplied and Services provided for Buyer as a credential for Supplier's activities in an area of expertise.
- 14. Liability**
- 14.1 The Supplier shall accept liability to the Buyer for death or injury resulting from its own or that of its employees' negligence. Save as aforesaid, the Supplier's liability under or in connection with the Contract shall be subject to the limitations set out in this Condition 14.
- 14.2 The Supplier shall be under no liability whatsoever where this arises from a reason beyond its reasonable control as provided in Condition 9 or from an act or default of the Buyer.
- 14.3 In no event shall the Supplier be liable for loss of profit or goodwill, loss of production or revenue or any type of special indirect or consequential loss whatsoever (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such loss were reasonably foreseeable or the Supplier had been advised of the possibility of the Buyer incurring the same.
- 14.4 Where time of performance has been agreed by the Supplier to be of the essence of the Contract, and the Supplier fails to comply with its obligations in due time, so that the Buyer becomes entitled to compensation in accordance with Condition 6.4, the Supplier's liability shall be limited to an amount of ½% for each full week of delay, in total to a maximum cumulative amount of 2%, of the value of the delayed Goods or Services.
- 14.5 If the Buyer becomes entitled to compensation arising out of the Supplier's non-delivery of Goods or non-performance of Services as specified in Condition 6.5, the Supplier's liability shall be limited in total to a maximum cumulative amount of 15%, of the value of the undelivered Goods or unperformed Services.
- 14.6 The remedies set out in Condition 8 are the Buyer's sole and exclusive remedies for non-conformity of or defects in the Goods or Services and the Supplier's liability for the same shall be limited in the manner specified in Condition 8.
- 14.7 Without prejudice to the sublimits of liability applicable under this Condition 14 or elsewhere in these Conditions, the Supplier's maximum and cumulative total liability (including any liability for acts and omissions of its employees, agents and sub-contractors) in respect of any and all claims for defective performance, breach of contract, compensation, indemnity, tort, misrepresentation, negligence at law or equity and any other damages or losses which may arise in connection with its performance or non-performance under the Contract shall not exceed 20% of the total Contract price.
- 14.8 If a number of events give rise substantially to the same loss they shall be regarded as giving rise to only one claim under these Conditions.
- 14.9 No action shall be brought by the Supplier later than 12 months after the date it became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become aware, and in any event, no later than 12 months after the end of the Warranty Period.
- 14.10 The Supplier may from time to time by written agreement agree to extend its liability within this Condition 14 to higher limits of liability provided insurance can be obtained by the Supplier for such higher limit prior to such agreement in Writing and provided that the Buyer reimburses the Supplier for the cost of the additional insurance prior to such agreement in Writing.
- 14.11 The exclusions and limitations of liability, especially but not limited to those contained in this Condition 14, shall equally apply to all affiliates of the Supplier as well as its representatives, employees and agents and the representatives, employees and agents of the affiliates of Supplier.
- 15. Termination**
- 15.1 On or at any time after the occurrence of any of the events in condition 15.2 the Supplier may stop any Goods in transit, suspend further deliveries to the Buyer, suspend performance of the Services, exercise its rights under Condition 7 and/or terminate the Contract with the Buyer with immediate effect by written notice to the Buyer.
- 15.2 The events are:
- 15.2.1 the Buyer being in breach of an obligation under the Contract or these Conditions;
- 15.2.2 the Buyer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Buyer's winding up or dissolution;
- 15.2.3 the making of an administration order in relation to the Buyer or the appointment of a receiver over or an encumbrancer taking possession of or selling any of the Buyer's assets;
- 15.2.4 the Buyer making an arrangement or composition with its creditors generally or applying to a Court of competent jurisdiction for protection from its creditors.
- 16. Personal Data Protection Act 2010**
- 16.1 The Supplier may disclose or transfer personal data of the Buyer (if applicable) (or its personnel) to the Supplier's group of companies, its service providers, financiers and/or such third parties which the Supplier deems necessary (collectively "third parties" for purposes of this Condition 16). The Supplier and the third parties:
- 16.1.1 may use, analyse and assess information about the Buyer, including the nature of the Buyer's transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing the third parties' agreement with the Seller;
- 16.1.2 may give information about the Buyer and the Buyer's indebtedness to the following:
- (a) the Supplier's or the Buyer's insurers for underwriting and claims purposes;
- (b) any guarantor or indemnifier of the Buyer's or the Supplier's obligations to enable them to assess such obligations;
- (c) the Buyer's bankers or any advisers acting on the Buyer's behalf;
- (d) any business to which the Buyer's indebtedness may be transferred or for the Supplier's corporate exercises;
- 16.2 The Buyer also has a right to receive a copy of certain information the Supplier holds about the Buyer if the Buyer applies to the Supplier in Writing, however, a fee will be payable.
- 17. General**
- 17.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 17.2 No waiver by the Supplier of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 17.4 The Contract shall be governed by the laws of Malaysia.
- 17.5 The Buyer irrevocably submits to the jurisdiction of the Malaysian courts for all and any disputes arising out of or in relation to these Conditions or the Contract, including, without limitation disputes on its conclusion, binding effect, amendment and termination, and any action to be brought by the Buyer shall be brought exclusively before the Malaysian courts. The Supplier reserves the right to bring an action before any court having jurisdiction over the Buyer, by reason of the Buyer's residence or ownership of property or otherwise.