

General Terms and Conditions

ARTICLE 1 - DEFINITIONS AND INTERPRETATIONS

The following definitions shall apply to this PURCHASE ORDER except where the context otherwise requires:

- 1.1 **"Affiliates"** means any company or other entity that directly or indirectly through one or more intermediary controls or is controlled by or is under common control with a Party to this PURCHASE ORDER. "Control" in this context means ownership of more than fifty percent (50%) of the voting stock of the controlled company or the direct or indirect right to determine its actions by contract or otherwise.
- 1.2 **"BWTMS"** means BUMI WANGSA TMS SDN. BHD., its consultants, agents, officers, and employees.
- 1.3 **"Change Order"** means a document to be issued by BWTMS which sets forth changes to this PURCHASE ORDER and the basis on which the SUPPLIER will be compensated for the change, if applicable.
- 1.4 **"Co-venturers"** means any parties having a legal interest in the operation of BWTMS to which the WORKS or part thereof relates.
- 1.5 **"Delivery Term"** means the term as described in - **SCHEDULE OF COMPENSATIONS**.
- 1.6 **"GOODS"** means the materials or products to be purchased by BWTMS and supplied by SUPPLIER as specified herein.
- 1.9 **"PURCHASE ORDER"** means this PURCHASE ORDER, Exhibits and any other documents attached hereto or incorporated by reference including any subsequent amendments to them.
- 1.10 **"Purchase Price"** means the agreed compensation to be paid to the SUPPLIER in a prescribed method as specified and qualified.
- 1.11 **"Specification"** means a collection of technical documents, codes, and standards to which the GOODS must conform.
- 1.12 **"SUB-SUPPLIER"** means any third party, as approved in writing by BWTMS, having an agreement with the SUPPLIER for the performance of any part of the work in this PURCHASE ORDER.
- 1.13 **"SUPPLIER"** means Vendor and includes its personnel, representatives, successors and such other persons or body of persons to whom the SUPPLIER has properly assigned this PURCHASE ORDER.
- 1.14 All headings, indexes, titles, subtitles, subheadings, words that are bold, italic, capitalized or otherwise emphasized are for ease of reference only and such emphasis should not be taken into consideration in the interpretation or construction of this PURCHASE ORDER.
- 1.15 Words importing the singular only also include the plural and vice versa where the context so requires.

ARTICLE 2 - FORM OF PURCHASE ORDER AND AMENDMENTS

- 2.1 BWTMS shall not be liable for any orders or amendments other than those issued or confirmed on BWTMS's official printed PURCHASE ORDER or any amendment thereto.
- 2.2 BWTMS may make changes in the specification or drawings, including additions to or deletions from the quantities of the GOODS originally ordered. If any such changes affect the amount due and/or the time of performance hereunder, an equitable adjustment shall be made as mutually agreed by SUPPLIER and BWTMS, to the amount due and/or the time of performance, as the case may be by the issuance of BWTMS's Change Order.
- 2.3 Authorised Change Order requests made after placement of order shall be priced, properly justified, and immediately submitted to BWTMS for approval. BWTMS reserves the right to accept or reject the requests.

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ARTICLE 3 - PURCHASE PRICE

The agreed Purchase Price shall be stated in the Purchase Order. The prices shall remain firm and valid throughout the duration of this PURCHASE ORDER. Prices shall not be subjected to change for any reason whatsoever including, but not limited to, cost escalation, currency fluctuations, or minimum order size/tonnage.

ARTICLE 4 - MUTUAL OBLIGATIONS

Upon receipt of a Purchase Order from BWTMS, the SUPPLIER shall sell and deliver the GOODS to BWTMS and BWTMS shall receive and inspect such GOODS, all subject to and in accordance with the provisions of this PURCHASE ORDER.

ARTICLE 5 - TAXES AND DUTIES

5.1 Supplier shall be responsible for and pay at its own expense when due all taxes and duties relating to the WORKS including:

- (a) All sales, service, excise, storage, consumption and use taxes, licenses, permit and registration fees, income, turnover profit, excess profit, franchise and personal property taxes.
- (b) All employment taxes and contributions imposed by law, or trade union contracts, or regulations with respect to or measured by the compensation (wages, salaries or others) paid to employees of Supplier including, without limitation, taxes and contributions for unemployment and compensation insurance, old age benefits, welfare funds, pensions and annuities and disability insurance and similar items.
- (c) All import licenses, duties, surtax, sales tax and all other statutory imposts levied (hereinafter referred to as "Customs duties") on materials and equipment for construction and commissioning of WORKS, tools, equipment, and machinery used in accomplishing the WORKS

5.2 In order to qualify for import tax exemption, materials and equipment imported into Malaysia shall be in the name of BWTMS. For this purposes Supplier shall submit a complete List of:

- (a) Equipment for the WORKS three (3) months after award of CONTRACT. BWTMS shall apply for exemption of import duties and taxes to Malaysian Federal Government Treasury Department. All credit from import duties and taxes shall be refunded by SUPPLIER to BWTMS. SUPPLIER shall adhere to all of BWTMS's Instructions relating to such matters.
- (b) SUPPLIER shall be responsible to prepare and submit to local customs all import declarations for materials and equipment imported into Malaysia. SUPPLIER shall ensure description of materials and equipment match the description of those provided in the List of Equipment and are consigned to BWTMS.
- (c) SUPPLIER shall be responsible for all costs incurred by BWTMS if SUPPLIER negligently or willfully omits to advise BWTMS on the above mentioned information. The cost in respect of the refund of import duties and sales tax, on the equipment and materials that have been denied to BWTMS shall be deducted from SUPPLIER's progress payment.
- (d) SUPPLIER shall be responsible for all the shipping documents to be submitted to BWTMS upon payment of duties and taxes imposed on the imported equipment and materials imported by SUPPLIER for the WORKS.

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- 5.3 SUPPLIER's attention is drawn to the withholding tax provisions applicable to a non-resident Company under the Laws of Malaysia. SUPPLIER is advised to seek clarification through its tax adviser on the applicability of those provisions prior to submitting quotations. SUPPLIER must ensure all provisions relating to withholding taxes have been included in the quotations.
- 5.4 In order for BWTMS to comply with the provisions of the Income Tax Act, SUPPLIER is requested to submit to BWTMS a written assurance from its External Company Auditor; or Tax Consultant; or Legal Counsel; that the company is presently a tax resident in Malaysia under the Income Tax Act. This assurance must be substantiated by submitting a letter from the Inland Revenue Department of Malaysia (IRD) confirming that SUPPLIER's company is tax resident in Malaysia, failing which SUPPLIER's company shall be considered a non-resident in Malaysia for tax purposes. As such, BWTMS will withhold not more than twenty percent (20%) from all payments due to SUPPLIER for services falling within the withholding tax provisions. BWTMS will remit the amount withheld to the Inland Revenue Department of Malaysia.
- 5.5 BWTMS will not and cannot apply for duty exemption for the suppliers.
- 5.6 All applicable local taxes at country of origin shall be borne by SUPPLIER.

ARTICLE 6 - DELIVERY

- 6.1 The time stipulated for delivery of GOODS is the essence of the PURCHASE ORDER. The SUPPLIER shall deliver the GOODS on or before the scheduled delivery date as stated in the PURCHASE ORDER. The SUPPLIER shall give notice to BWTMS of any anticipated delay. SUPPLIER shall be responsible for any incremental installation cost or airfreight cost resulting from late delivery.
- 6.2 The Delivery Term of this PURCHASE ORDER shall be read in accordance with the provisions of the "Incoterms 2000"
- 6.3 All GOODS supplied against the PURCHASE ORDER shall be delivered on **DDU ("Delivered Duty Unpaid")** basis unless otherwise stipulated. GOODS shall be adequately packed and protected as per specification and instruction.

ARTICLE 7 - LIQUIDATED DAMAGES

- 7.1 The time stipulated for delivery of the GOODS is the essence of this PURCHASE ORDER and Release Order. The SUPPLIER agrees to effect delivery of GOODS on or before the stipulated delivery date. If delivery shall be delayed, the SUPPLIER shall without prejudice to Article 7.2 hereunder immediately notify BWTMS in writing, giving reason for such delay. The SUPPLIER shall be responsible for any incremental costs, including air freight cost, resulting from late delivery.
- 7.2 Such delay may result in payment to BWTMS by way of pre-estimated and Liquidated Damages and not as a penalty as follows:
- "1% of the total price for each agreed delivery for each calendar day by which the delivery date is exceeded up to maximum of 10% of the purchase order"**
- 7.3 BWTMS may, without prejudice to any other method of recovery or its rights including as provided under Article 28 entitled Termination herein, deduct the amount of such damages from any payment due or that may become due to the SUPPLIER. The payment or deduction of such damages shall not relieve the SUPPLIER from its obligations and liabilities under this PURCHASE ORDER.

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ARTICLE 8 - TRANSFER OF TITLE AND RISK OF LOSS

- 8.1 The title of the GOODS shall pass to BWTMS on delivery of GOODS in accordance with this PURCHASE ORDER and in particular Delivery Term, which shall be without prejudice to right of rejection under Article 9 entitled Acceptance of GOODS herein.
- 8.2 The risk of loss shall pass to BWTMS in accordance with the Delivery Term. GOODS rejected shall become SUPPLIER's risk as soon as lifted for collection by the SUPPLIER in accordance to Article 9 entitled Acceptance of GOODS herein.
- 8.3 The SUPPLIER shall transfer unencumbered title to the GOODS. The SUPPLIER shall indemnify BWTMS against all liens and claims, attachments, charges or encumbrances with respect to the GOODS delivered.

ARTICLE 9 - ACCEPTANCE OF GOODS

- 9.1 The receipt of GOODS by BWTMS shall signify a provisional acceptance by BWTMS of the GOODS. Such acceptance shall not prejudice BWTMS's right to reject the GOODS if the GOODS are not in accordance with this PURCHASE ORDER including but not limited to, whether by reason of not being of the quality or not in the quantity or measurement stipulated or being unfit for the purpose for which they are required. The SUPPLIER shall collect the rejected GOODS from BWTMS and replace the rejected GOODS within thirty (30) days after notification by BWTMS, all at SUPPLIER's own cost. An acceptance by BWTMS shall be considered final acceptance only when the GOODS fully satisfy the requirements of this PURCHASE ORDER.
- 9.2 Where BWTMS makes an inspection of a sample of the GOODS on receipt of the consignment and if it is found that there are defective GOODS or GOODS in the sample are not in accordance with this PURCHASE ORDER, the SUPPLIER shall bear the additional cost of inspecting the whole consignment of the GOODS supplied to ascertain their compliance with this PURCHASE ORDER.
- 9.3 The making of any prior payments by BWTMS shall not prejudice BWTMS rights of rejection.

ARTICLE 10 - WARRANTY

- 10.1 The SUPPLIER warrants that GOODS supplied under this PURCHASE ORDER are new, unused, comply with the specifications requested, free from defects in materials and workmanship, fit and suitable for the purpose for which they are intended for and of which the SUPPLIER is made known under this PURCHASE ORDER, for a period of eighteen (18) months from the date of receipt of the GOODS by BWTMS or twelve (12) months after the GOODS have been put into commercial operation or proper use, whichever comes later. The SUPPLIER's scope of warranty shall cover all expenses to replace all GOODS found to be defective during the warranty period and all services provided for making good any defective GOODS.
- 10.2 Any new GOODS replacing the defective GOODS during the warranty period shall be warranted under the same terms and conditions for a period of time as stipulated in Article 10.1 or for another period of twelve (12) months from the date of replacement whichever is later.
- 10.3 The SUPPLIER shall obtain from its SUB-SUPPLIERS, for assignment to BWTMS, the best possible warranties and guarantees with respect to materials, goods and workmanship incorporated or installed into the GOODS by the SUPPLIER. In the event that the SUPPLIER obtains more favourable warranties and guarantees from its SUB-SUPPLIERS than those in this Article, such warranties and guarantees shall be assigned to BWTMS.

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ARTICLE 11 - INVOICING AND PAYMENTS

11.1 SUPPLIER's invoice shall not be submitted until the GOODS are delivered to BWTMS. SUPPLIER's invoices shall be verified and signed by SUPPLIER's authorized signatory prior to submission to BWTMS. All invoices submitted shall comply with the invoicing and payment requirements.

11.2 SUPPLIER's invoices shall be submitted in one (1) original and one (1) copy each complete with the necessary supporting documents required by BWTMS and shall be sent to:

BUMI WANGSA TMS SDN BHD;
112, Jalan Damai
55000 Kuala Lumpur
Attn.: Manager, Finance & Accounts Department

11.3 Payments of undisputed invoiced items shall be made on or before the sixtieth (60th) day after receipt of the invoice by BWTMS. If the sixtieth (60th) day falls on Saturday, Sunday or a gazetted Kuala Lumpur public holiday, the next working day shall be deemed to be the due date for payment. 11.4 BWTMS reserves the right to dispute any invoice in whole or in part and BWTMS shall inform the SUPPLIER thereof in writing of the dispute within thirty (30) days after receipt by BWTMS of the particular invoice. BWTMS shall be entitled to withhold any sum disputed until settlement of the dispute by mutual agreement.

11.5 Payment due to the SUPPLIER may be withheld by BWTMS on account of no supporting documents, unsatisfactory performance of this PURCHASE ORDER whether by reason of not being of the quality or not in the quantity or measurement stipulated or being unfit for the purpose for which they are required. BWTMS shall have the right to deduct and withhold any monies due or that may become due to the SUPPLIER under this PURCHASE ORDER including for not having supporting documents as well as for unsatisfactory performance of this PURCHASE ORDER, until settlement to BWTMS's satisfaction. When the cause or causes for withholding any such payment has or has been remedied by the SUPPLIER and satisfactory evidence of such remedy as been presented to BWTMS, the payments withheld shall be made forthwith by BWTMS. Any payments withheld shall be without prejudice to any other rights or remedies available to BWTMS.

11.6 All payments to the SUPPLIER by BWTMS under the terms of this PURCHASE ORDER shall be in Ringgit Malaysia. Malaysian laws and regulations established by Bank Negara Malaysia place restrictions on payments in other currencies. If Purchase Price is expressed in other currency and the SUPPLIER makes written request to BWTMS to be paid in such other currency, BWTMS may at its sole discretion pay the SUPPLIER in such other currency subject to :-

(a) The SUPPLIER furnishing documentary evidence to BWTMS that the SUPPLIER is duly authorised by Bank Negara Malaysia to accept payment in that other currency, or

(b) Bank Negara Malaysia regulations permit, or

(c) The SUPPLIER agreeing to pay BWTMS all direct costs incurred or may be incurred by BWTMS. For the purpose of converting the other currency to enable payment to be made in Ringgit Malaysia, the rate of exchange to be used shall be the average of the selling and buying rates of Telegraphic Transfer published in the opening of business rate sheet by Malayan Banking Berhad Kuala Lumpur on the day of payment. If such day falls on a day where the rate is not available, the rate quoted immediately before such day shall be used. All bank charges pertaining to the payment shall be borne by the SUPPLIER.

11.7 Payment made by BWTMS under this PURCHASE ORDER shall not preclude the right of BWTMS to thereafter dispute any of the items invoiced and shall not be construed as an acceptance by BWTMS of the GOODS delivered.

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ARTICLE 12 - SPARES SUPPORT

This PURCHASE ORDER is placed on the understanding that component parts, or identical replacement of the GOODS will be available to BWTMS for a period of at least five (5) years from the date of this PURCHASE ORDER, or prior to these parts being made obsolete, at least nine (9) months notice shall be given to BWTMS in writing.

ARTICLE 13 - ENGINEERING CODES AND STANDARDS

The codes and standards which apply to the GOODS covered by this PURCHASE ORDER are listed in the Specification. These codes and standards may be revised from time to time and it shall be the SUPPLIER's responsibility to ensure that the latest revisions to these codes and standards are being adhered to. Any difference in these codes and standards and revisions shall be immediately notified in writing to BWTMS.

ARTICLE 14 - VENDOR DATA REQUIREMENTS AND SUBMITTAL

Drawings and vendor data are to be submitted in strict compliance with the Specification. If for any reason, the transmission of drawings and vendor data shall be delayed, BWTMS is to be informed immediately in writing, giving reason for such delay. All drawings and vendor data shall be delivered to BWTMS by hand or through courier service. All preliminary, intermediate and final drawings and vendor data to be furnished shall be subject to expediting by BWTMS or its appointed Supplier.

ARTICLE 15 - CHANGES

BWTMS shall have the right, at any time, to make any change but such change shall in no way affect the rights or obligations of the Parties hereto except as provided in a written Change Order. All provisions of this PURCHASE ORDER shall apply to all changes. Such changes may include, but are not limited to, additions, deletions, and substitutions, change of specifications, alterations, and modifications to this PURCHASE ORDER. BWTMS will issue to the SUPPLIER a Change Order in duplicate originals. The SUPPLIER shall not proceed with any change prior to receipt of a Change Order.

ARTICLE 16 - ASSIGNMENT

The SUPPLIER shall not assign or subcontract this PURCHASE ORDER or any part thereof or any benefit or interest hereunder without obtaining BWTMS's prior written approval. BWTMS shall be entitled, at its absolute discretion, to approve or disapprove any assignment or sub-contract. Any purported assignment or sub-contract without the written approval of BWTMS shall be absolutely void against BWTMS and BWTMS in such event shall have no obligation whatsoever to the purported assignee or SUB-SUPPLIERS. Any assignment or sub-contract approved by BWTMS shall not release or relieve the SUPPLIER of any of its obligations hereunder. BWTMS may assign this CONTRACT, including all rights and obligations hereunder, to any of its associated companies, performing work in Malaysia under any of its Production Sharing Contracts at any time without approval by SUPPLIER but prior written notification of the assignment must first be given to SUPPLIER.

ARTICLE 17 - WAIVERS

The failure of BWTMS, at any time, or from time to time to enforce, or to require the strict adherence and performance of any of the terms and conditions of this PURCHASE ORDER, to exercise any option, right, or privilege hereunder, or to demand compliance as to any obligation or covenant, shall not constitute a waiver of any such terms and conditions and/or affect or impair such terms or conditions in any way, or the right, privilege, or option of BWTMS, or of the strict performance of the SUPPLIER thereof unless an express waiver is properly executed and evidenced in writing. Waivers by BWTMS of any breach or non-observance by the SUPPLIER of any of the terms and conditions of this PURCHASE ORDER shall not constitute or be construed as a waiver of any succeeding breach or non-observance of the same or any other terms or conditions.

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ARTICLE 18 - ACCESS AND AUDIT RIGHTS

- 18.1 The SUPPLIER shall permit at its work sites and at the work sites of any of its SUB-SUPPLIERS, expeditious and inspection surveillance as is considered necessary by BWTMS.
- 18.2 BWTMS shall have the right of access to audit all the SUPPLIER's and its SUB-SUPPLIERS' documents and records related to this PURCHASE ORDER. Such right and documents and records shall remain in force and be retained for a period of not less than three (3) years after the expiry of this PURCHASE ORDER or any termination thereof.

ARTICLE 19 - SAFETY

The SUPPLIER shall be responsible for the safety of all persons engaged on the work and all persons who may be affected by activities of the SUPPLIER and shall comply with all the safety law and regulations.

ARTICLE 20 - NOTICES

All notices, statements, reports and other communication to be given, submitted or made hereunder shall be in writing and made to either Party and shall be deemed to have been properly given or made to the Party it is addressed to if the notices are sent (by registered mail, courier service or facsimile) to the respective Party at the address.

ARTICLE 21 - BANK GUARANTEE AND PERFORMANCE GUARANTEE (IF APPLICABLE)

- 21.1 The SUPPLIER shall furnish to BWTMS within thirty (30) days of the award of this PURCHASE ORDER an irrevocable and unconditional first call Bank Guarantee, in the format in issued by a commercial bank operating in Malaysia and acceptable to BWTMS by way of guarantee for the due performance by the SUPPLIER of its obligations under this PURCHASE ORDER. The value of Bank Guarantee shall at any time during the currency of this PURCHASE ORDER be maintained at **10%** of the Purchase Order value. Such guarantee shall be binding on the SUPPLIER notwithstanding such variation, alterations, or extensions of time as may be made, given, conceded, or agreed under this PURCHASE ORDER. The expenses incurred in preparing, completing and stamping such instrument shall be borne by the SUPPLIER.
- 21.2 The Bank Guarantee shall remain valid until thirty (30) days after the expiry of PURCHASE ORDER or thirty (30) days after the expiry of any warranty of the GOODS supplied, whichever comes later. Should the expiry date of the Bank Guarantee occurs before this period, the SUPPLIER shall provide, at least fourteen (14) days before the expiry of the Bank Guarantee, a fresh Bank Guarantee in the form similar to and in the same amount of that previously provided, except for a revised date of expiry which shall be no earlier than thirty (30) days after the expiry of PURCHASE ORDER or thirty (30) days after the expiry of any warranty of the GOODS supplied, whichever comes later. Should the SUPPLIER fail to provide the fresh Bank Guarantee as required, BWTMS shall without prejudice to all its other right under this PURCHASE ORDER or the law invokes the Bank Guarantee or otherwise has the right to withhold any payments due or that may become due to the SUPPLIER after the date of such failure.
- 21.3 If the Bank Guarantee to be furnished pursuant to Articles 21.1 and 21.2 is not duly furnished by the SUPPLIER within the above prescribed period, BWTMS may, at its own option and without prejudice to any rights or claims it may have against the SUPPLIER, by reason of SUPPLIER's non-compliance with the provisions of this Article, withhold from payment due to or that may become due to the SUPPLIER an amount equivalent to the Bank Guarantee value as required under this ARTICLE until such time the Bank Guarantee is furnished by the SUPPLIER whereupon BWTMS will immediately release such sums withheld to the SUPPLIER, or BWTMS may terminate this PURCHASE ORDER by notice in writing to the SUPPLIER. In the event of termination, BWTMS shall thereupon not be liable for any claim or demand from the SUPPLIER under the provisions of this PURCHASE ORDER in respect of anything then done or furnished, or in respect of any matter or thing whatsoever in connection with or relating to this PURCHASE ORDER.

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21.4 Notwithstanding the above, as a condition precedent to the award of this PURCHASE ORDER and if requested by BWTMS, the SUPPLIER shall furnish BWTMS Performance Guarantee(s) duly executed by its principal technical partner(s) and/or its ultimate holding company.

ARTICLE 22 - PROPRIETARY RIGHTS INDEMNITY

The SUPPLIER shall indemnify and hold BWTMS and its Co-ventures harmless against all losses, claims, demands, proceedings, costs, damages, charges, and expenses that may arise by reason of any alleged or actual infringement of any patent, registered design, copyright, trademark or violation of process or other protected rights of any person or entity arising out of the SUPPLIER performing its obligations in this PURCHASE ORDER or by reason of the manner in which the same is performed, or through the use by the SUPPLIER of any patented device.

ARTICLE 23 - LIABILITIES AND INDEMNITIES

23.1 Without prejudice to the generality of this Article, the SUPPLIER undertakes to protect, indemnify and save BWTMS GROUP harmless from and against any claims, demands and causes of action for damage to the SUPPLIER's property, injury or death to any person and damage or destruction to the property of any person including any third party arising out of or connected to the execution of this PURCHASE ORDER. The SUPPLIER shall carry and maintain adequate insurance to insure this indemnity. The SUPPLIER shall notify BWTMS immediately of any incident, claim, or litigation affecting the provisions of this Article.

23.2 SUPPLIER shall be liable for and shall indemnify BWTMS GROUP against any damage to or destruction or loss of property arising during, and/or as a result of the performance of this PURCHASE ORDER, without regard to whether any act or omission of BWTMS contributed to the loss.

23.3 For the purposes of this Article 23, BWTMS GROUP shall mean, BWTMS, its Co-Ventures, its and their respective Affiliates, its and their respective directors, officers, and employees of the aforesaid.

ARTICLE 24 - LIMITATION OF LIABILITY

Neither Party shall be responsible to the other for any indirect or remote losses of any kind including but not limited to loss of revenue or anticipated profits, loss of production, loss of business opportunity or business interruption, regardless of cause and even if caused by negligence or breach of contract resulting from the carrying out of the operations or the exercise of rights by the Parties under this CONTRACT.

Further, neither Party shall be liable for the other Party's gross negligence and/or willful misconduct.

ARTICLE 25 - INSURANCE

25.1 Without prejudice to the Supplier's liability and responsibility as contained elsewhere in this PURCHASE ORDER, the SUPPLIER shall procure and maintain at its own cost and expense during the performance of this PURCHASE ORDER any insurance(s) which may be relevant and/or which is required by law which the SUPPLIER is subject to.

25.2 The SUPPLIER shall cause the insurers thereof to waive any and all rights of subrogation against BWTMS and/or its Co-ventures, their parent companies, subsidiaries, affiliates, consultants and their respective agents, officers and employees.

25.3 The SUPPLIER shall furnish to BWTMS upon request Certificates of Insurance evidencing the insurance coverage's required in Article 25.1 including certified copies of official receipts evidencing payment of full premium thereof.

ARTICLE 26 - DEFAULT

26.1 Not by way of limitation, the occurrence of any of the following events shall be deemed a default by the SUPPLIER under this PURCHASE ORDER: -

- a) Any attempted transfer or assignment by the SUPPLIER of its right or duties under this PURCHASE ORDER without the prior written approval of BWTMS; or
- b) The making by the SUPPLIER of an assignment for the benefits of creditors, the filing by or

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- against the SUPPLIER of a petition in bankruptcy or for corporate reorganization, or the appointment of a receiver or trustee for the SUPPLIER or the properties of the SUPPLIER; or
- c) The failure of the SUPPLIER to satisfy within thirty (30) days of its entry any final judgment upon which execution is possible or the attachment of any general liens against the real or personal property of the SUPPLIER and the continued existence thereof for more than thirty (30) days; or
 - d) If the SUPPLIER has, in the opinion of BWTMS, failed to comply with this PURCHASE ORDER, is incompetent, have acted in a manner prejudicial to BWTMS's best interest, have failed to comply with BWTMS's safety or other rules or regulations, have produced substandard work (in particular, when the GOODS supplied are defective or not of merchantable quality) or for any other reasons justifiable by BWTMS.
 - e) The failure by the SUPPLIER to deliver the GOODS by the due date or failure to replace defective GOODS to BWTMS's satisfaction.
- 26.2 BWTMS shall notify the SUPPLIER in writing of any default and the SUPPLIER shall within a period of seven (7) days after receipt of the notice, take appropriate corrective action to remedy the default. Such notice and/or termination however shall not prejudice any of BWTMS's rights hereunder or in law or equity.
- 26.3 Notwithstanding the foregoing, in the event of default by the SUPPLIER, BWTMS shall, at BWTMS's sole discretion, enforce the Bank Guarantee and/or Performance Guarantee.

ARTICLE 27 - SUSPENSION

BWTMS shall have the right to suspend the PURCHASE ORDER for the following reasons:

- (a) force majeure (as per Article herein)
- (b) in the event of any complete or partial stoppage of BWTMS projects.
- (c) failure on part of SUPPLIER to perform obligations as per PURCHASE ORDER

ARTICLE 28 - TERMINATION

28.1 Termination without Cause

- a) BWTMS may at any time, terminate without cause this PURCHASE ORDER by giving fourteen (14) days prior written notice to the SUPPLIER that BWTMS intends to terminate this PURCHASE ORDER, specifying this PURCHASE ORDER to be terminated and the effective date of termination.
- b) Should BWTMS terminate this PURCHASE ORDER without cause, the SUPPLIER shall stop performing all work related to the supply of GOODS on the effective date of termination
- c) Upon receipt and verification of the SUPPLIER's invoice, BWTMS shall pay the SUPPLIER all amounts properly due for the work performed prior to the date of termination and all reasonable and auditable expenses resulting directly from the termination to the extent it is authorised in advance by BWTMS.

28.2 Termination For Cause

- a) Subject to provision provided under Article 26 entitled Default herein, BWTMS shall have the right to terminate for cause this PURCHASE ORDER by giving notice in writing. In either event, BWTMS shall have available to it all rights and remedies provided in law or equity.
- b) On the date on which the written notice of termination for cause given pursuant to provision of Article 26 entitled Default herein becomes effective, the SUPPLIER shall stop the performance of this PURCHASE ORDER and BWTMS may return any GOODS previously supplied under this PURCHASE ORDER for full credit by the SUPPLIER.

28.3 Except as provided above, in the event of termination hereunder, the Parties shall each be released and discharged from any claims by one against the other in connection with the termination. Neither Party shall be liable to the other for loss of anticipated profits sustained on account of such termination.

28.4 If in the performance of this PURCHASE ORDER, the SUPPLIER causes this PURCHASE ORDER to be terminated, BWTMS shall have the option to thereafter enforce the Bank Guarantee and/or Performance Guarantee.

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ARTICLE 29 - FORCE MAJEURE

- 29.1 Where any Force Majeure event renders impossible or hinders or delays the performance of any obligation under this PURCHASE ORDER, then the failure or omission of BWTMS or the SUPPLIER to perform such obligation shall not be treated as failure or omission to comply with this PURCHASE ORDER.
- 29.2 Upon the occurrence of any Force Majeure event, the Party so affected in the discharge of its obligation shall promptly give written notice of such event to the other Party. The affected Party shall make every reasonable effort to remove or remedy the cause of such Force Majeure or mitigate its effect as quickly as may be possible. If such occurrence results in the suspension of work under this PURCHASE ORDER for fourteen (14) days, the Parties shall meet and determine the appropriate measures to be taken.
- 29.3 The events falling within Force Majeure include but are not limited to acts of God or force of nature, landslide, lightning, earthquake, flood, fire, explosion, storm or storm warning, tidal wave, shipwreck and perils to navigation, act of war (declared or undeclared) or public enemy, strike (excluding strikes, lockouts or other industrial disputes or action solely amongst employees of the SUPPLIER or its Sub Suppliers), act or omission of sovereign or those purporting to represent sovereign states, blockade, embargo, quarantine, public disorder, sabotage, accident, or similar events beyond the control of the Parties or either of them.
- However, Force Majeure shall not include occurrence as follows: -
- (a) late performance by the SUPPLIER and/or its SUB-SUPPLIERS
unavailability of equipment, supervisors, or labour, inefficiencies or similar occurrence;
 - (b) late delivery of GOODS caused by congestion at SUPPLIERS plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences; mechanical breakdown of any item of SUPPLIER's or its SUB-SUPPLIERS' equipment, plant, or machinery;
 - (c) financial distress of the SUPPLIER or its SUB-SUPPLIERS.
- 29.4 Upon the occurrence of any Force Majeure event and, if in the opinion of BWTMS, the SUPPLIER cannot deliver the GOODS on the Delivery Date or should any act of Force Majeure causes suspension of work under this PURCHASE ORDER for a continuous period of at least fourteen (14) days and continuation of this PURCHASE ORDER will adversely affect BWTMS's works, then BWTMS shall have the option either to terminate this PURCHASE ORDER, in which case neither Party shall have any further obligation or liability hereunder or specify a later Delivery Date in lieu of that specified in any Release Order.
- 29.5 Any delay or failure in performance by either Party thereto shall not constitute default hereunder or give rise to any claims for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure.
- 29.6 In the event of Force Majeure, the SUPPLIER shall not be entitled to any compensation for suspension caused by Force Majeure

ARTICLE 30 - PROCUREMENT OF EQUIPMENT, MATERIALS AND SERVICES IN MALAYSIA

To the extent that it is technically and economically practicable, the SUPPLIER shall procure all equipment, materials and services for the performance of this PURCHASE ORDER directly from companies in the PETRONAS' Vendor Development Programme (VDP) and from Malaysian suppliers and manufacturers licensed and registered by PETRONAS. The SUPPLIER shall make use of services and research facilities which are rendered by Malaysians or firms or companies incorporated or licensed in Malaysia.

ARTICLE 31 - LIENS AND CLAIMS

SUPPLIER shall indemnify and hold BWTMS harmless from all liens, claims, assessments, fines and levies created, caused or committed by SUPPLIER or by its SUB-SUPPLIER and all costs, damages and expenses incidental thereto, including without limitation all court and arbitration costs, attorney's fees and other reasonable expenses.

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ARTICLE 32 - SAFETY

SUPPLIER shall be responsible for the safety of all persons engaged on the work and all persons who may be affected by activities of SUPPLIER and shall comply with all the safety regulations and procedures.

ARTICLE 33 - EXPEDITING

- 33.1 BWTMS or its appointed Supplier shall have the right to visit SUPPLIER's plants and those of SUB-SUPPLIERS for expediting purposes at any time prior to shipment of the goods. SUPPLIER and its SUB-SUPPLIERS shall provide access to their works at all times to BWTMS or its appointed Supplier. SUPPLIER's Sub-orders must carry a note to this effect.
- 33.2 SUPPLIER shall send two (2) copies of correspondence regarding expediting and scheduling to BWTMS and/or its appointed Supplier. Immediately after placing Sub-orders for major components of this PURCHASE ORDER, SUPPLIER shall furnish to BWTMS and/or its appointed Supplier four (4) unpriced copies of the Sub-orders showing SUB-SUPPLIERS' name, Sub-order number, manufacture location and promised shipping date.
- 33.3 SUPPLIER shall furnish to BWTMS, no later than four (4) weeks from Purchase Order date a complete schedule forecasting the engineering work, procurement, sub-orders delivery, manufacturing or construction, inspection and testing, final assembly and shipping date(s).
- 33.4 SUPPLIER shall submit a fortnightly progress report prior to start of manufacturing and thereafter on a weekly basis, in sufficient detail to allow a realistic evaluation of all phases of progress toward PURCHASE ORDER completion. This report shall contain a detailed status of engineering, procurement, manufacturing, inspection and testing, final assembly and delivery. This report shall also be accompanied by an updated Sub-order status, problem areas and measures taken by SUPPLIER to resolve problems. The progress report shall be submitted irrespective of any expediting and inspection visits made by BWTMS or its appointed Supplier.
- 33.5 Expediting of the PURCHASE ORDER and SUPPLIER's Sub-orders by BWTMS or its appointed Supplier does not relieve SUB-SUPPLIERS from their responsibilities to ensure that all Sub-orders are delivered to SUPPLIER's works or plant by the due date.

ARTICLE 34 - INSPECTION

- 34.1 BWTMS or its appointed Supplier shall have the right to inspect, witness tests and survey the quality of GOODS at SUPPLIER's and its SUB-SUPPLIERS' plants at any time during manufacture. SUPPLIER is required to provide every facility for such right to BWTMS or its appointed Supplier. SUPPLIER's Sub-orders to its SUB-SUPPLIERS shall carry a note to this effect. SUPPLIER's failure to instruct SUB-SUPPLIERS of the right to BWTMS or its appointed Supplier to make plant visit for quality assurance purposes at any time prior to delivery of the GOODS may result in rejection of the GOODS manufactured at SUB-SUPPLIERS' plants.
- 34.2 SUPPLIER shall include in all orders to SUB-SUPPLIERS those specifications included in this PURCHASE ORDER, which govern the manufacturing or testing of GOODS produced by each SUB-SUPPLIER. Such specifications, data or other technical description shall be available for review by BWTMS or its appointed Supplier at the SUB-SUPPLIERS' facility.
- 34.3 BWTMS or its appointed Supplier shall be given seven (7) working days written notice prior to inspection points agreed upon. Where progressive inspection will be carried out during manufacturing, notification shall be given on the date when actual manufacturing or assembly starts in the shop. Inspection records shall be submitted in accordance with the Vendor Data requirement.
- 34.4 Listed below are various stages of inspection that may be required to be carried out by BWTMS or its appointed Supplier for the purpose of quality assurance: -
- (a) Material check
 - (b) Dimensional check
 - (c) Procedure/performance qualification check
 - (d) Final packing check

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34.5 BWTMS and/or its appointed Supplier will carry out receiving inspection upon arrival of equipment and materials at site. SUPPLIER's presence may be required for a joint inspection. However, due to schedule requirements, the equipment and material may be installed immediately without carrying out the joint inspection. Therefore, in such cases, SUPPLIER's presence at start up and commissioning may be requested. In the event of equipment and materials failure, SUPPLIER shall be requested to make good, repair and rectify the problems at SUPPLIER's costs. Equipment and materials are expected to have been preserved for shipping and storage purposes.

ARTICLE 35 - SHIPPING DOCUMENTATION

35.1 For goods supplied on FOB basis:

One (1) week prior to delivery to FOB points, SUPPLIER shall prepare three (3) advance copies of the Performa Invoice, Packing List and Certificate of Origin to form a complete set of shipping documents required for importation by BWTMS. The documents shall be transmitted to the appointed freight forwarding Supplier of BWTMS.

35.2 For goods supplied on DDU ("Delivered Duty Unpaid") basis:

The original Bill of Lading and three (3) copies each of SUPPLIER's Performa Invoice, Certificate of Origin and Export Packing list must be submitted to BWTMS three (3) weeks prior to the scheduled arrival of the nominated vessel at port of destination (discharge). Failure to adhere to the above requirement may result in SUPPLIER having to pay any incurred storage and demurrage charges.

ARTICLE 36 - COMMISSIONING/START-UP AND MAINTENANCE SERVICES

SUPPLIER is required to commission the GOODS after it has been successfully delivered to the port of destination (discharge) as stated in the Purchase Order. After commissioning, SUPPLIER shall provide assistance to BWTMS during start-up and initial operations of the GOODS. In the event that the GOODS or any part thereof experienced malfunction (including, but without limitation to equipment failure, deficiencies in design or workmanship) during start-up and initial operations, SUPPLIER shall take immediate steps to rectify such deficiencies at its own expense and risks.

ARTICLE 37 - ACTIONS ON BEHALF OF BWTMS

37.1 The SUPPLIER is an independent SUPPLIER and neither SUPPLIER nor SUPPLIER's employees are deemed to be agents or employees of BWTMS. SUPPLIER shall take no action on behalf of BWTMS which would subject either Party to liability or penalty under any laws, rules, regulations or decrees of any relevant authority.

37.2 The SUPPLIER shall have no authority to and shall not make any statements, representations or commitments of any kind or to take action which shall be binding upon BWTMS, except as provided for herein or otherwise authorised in writing by BWTMS.

ARTICLE 38 - CONFLICT OF INTEREST

The SUPPLIER shall exercise care and diligence to prevent any actions being taken or conditions from arising which could result in a conflict with BWTMS's best interest. This obligation shall apply to the activities of the employees and agents of the SUPPLIER in their relations with BWTMS's employees and their families, or with SUB-SUPPLIERS and third parties, arising from this PURCHASE ORDER or related to the performance of the work hereunder. The SUPPLIER's efforts shall include, but not be limited to, establishing precautions to prevent its employees, officers or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations for the purpose of influencing individuals to commit acts contrary to BWTMS's best interest.

ARTICLE 39 – CONFIDENTIALITY

The SUPPLIER shall obtain written approval from BWTMS prior to disclosing or making any publicity release, public statements or announcement, by way of press or other media, regarding this PURCHASE ORDER. The SUPPLIER shall at all times hold confidential all information pertaining to this PURCHASE ORDER, which is not already part (unless through the breach of SUPPLIER of its confidentiality obligations hereunder) of

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the public domain. The SUPPLIER shall ensure that the provisions of this Article are adhered to by its employees and, its SUB-SUPPLIERS' and SUB- SUPPLIERS' employees and shall promptly notify BWTMS upon discovery of any instances where any of the requirements of this Article have not been complied with. Upon delivery of GOODS or the receipt by the SUPPLIER of BWTMS's notification of termination, the SUPPLIER shall return to BWTMS all documents, drawings and data provided to the SUPPLIER by BWTMS. This Article shall continue in force notwithstanding the completion or earlier termination of this PURCHASE ORDER.

ARTICLE 40 – ARBITRATION

Any dispute between the Parties as to the performance of this PURCHASE ORDER or the rights or liabilities of the Parties herein, or any matter arising out of the same or connected therewith, which cannot be settled amicably shall be settled by arbitration in accordance with the rules of the Kuala Lumpur Regional Centre for Arbitration before a board of three (3) arbitrators. Each of the Parties hereto shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators shall agree on a third arbitrator. In the event agreement upon the third arbitrator cannot be reached, the third arbitrator shall be appointed by the High Court of Malaya. It is agreed, however, that no one who is an employee of either Party or who is in anyway financially interested in this PURCHASE ORDER shall be appointed to act as an arbitrator. Such arbitration shall be held in the English language at Kuala Lumpur, Malaysia. The award of the arbitrators shall be final and binding upon the Parties. The costs of the arbitration shall be borne by the Party whose contention was not upheld by the arbitration tribunals, unless otherwise provided in the arbitration award.

ARTICLE 41 - COMPLIANCE WITH LAW

- 41.1 In the performance of this PURCHASE ORDER, the SUPPLIER and its SUB-SUPPLIER shall be subject to all applicable laws. For the purpose of this Article, "laws" includes any laws; national, state, municipal, local or others and any requirements, ordinances, rules or regulations of any relevant authority or agency; national, state, municipal, local or other.
- 41.2 The SUPPLIER shall, at SUPPLIER's own expense, defend, indemnify and hold BWTMS harmless from all forms of penalty which may be imposed on BWTMS by reason of any alleged or violation of law by the SUPPLIER or its SUB-SUPPLIER and also from all claims, suits, or proceedings that may be brought against BWTMS arising under, growing out of, or by reason of the performance of this PURCHASE ORDER with respect to such alleged or violation of law whether brought by employees of the SUPPLIER or its SUB-SUPPLIER or by third parties or by any relevant authority.
- 41.3 SUPPLIER's obligations under this Article shall include, without limitation, obtaining all necessary or appropriate import licenses, Customs clearances, or permits wherever applicable.
- 41.4 If the SUPPLIER or its SUB-SUPPLIERS perform any part of the works hereunder in breach of the law, then the SUPPLIER shall bear any additional costs resulting from the said violation and correction thereof. The SUPPLIER shall not enter into negotiations with any relevant authority or agency to develop acceptance to exemption, composition, variation, or revision to law in connection with this PURCHASE ORDER without BWTMS's prior written approval.

ARTICLE 42 - GOVERNING LAW AND LANGUAGE

- 42.1 The validity and interpretation of this PURCHASE ORDER and the legal relations of the Parties to it shall be governed by and construed according to the laws of Malaysia and the Parties hereby submit to the jurisdiction of the court thereof.
- 42.2 All documents produced by the SUPPLIER in the performance of this PURCHASE ORDER as well as all written communications between BWTMS and the SUPPLIER shall be in the English language which is hereby designated the governing language of this PURCHASE ORDER.

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ARTICLE 43 - ENTIRE AGREEMENT

This PURCHASE ORDER constitutes the entire agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements related to this PURCHASE ORDER, either written or oral, including BWTMS's bid document and SUPPLIER's proposals except to the extent they are expressly incorporated into this PURCHASE ORDER. No changes, alterations, or modifications to this PURCHASE ORDER shall be effective unless in writing, and executed by the authorised signatories of BWTMS and the SUPPLIER.

DATE	DESCRIPTION	REMARKS
26 th January, 2010	1 st Revision : 4 th Sept, 2018	—