

General Terms and Conditions of Goods and Services

Flender K.K.

1. Definitions

"Confidential Information" means all non-public proprietary or confidential information, including but not limited to any trade secrets or know-how of Purchaser or Flender in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked or designated as "confidential".

"Contract" means the conclusion of an agreement between Flender and Purchaser, whereby Flender submits an Offer to the Purchaser and the Purchaser sends the purchase order to Flender that refers to the Offer or the conclusion of an Individual Contract between Flender and Purchaser.

"Defect", subject to the exclusions in Article 11.2, shall mean any non-conformity of the Supplies with the express terms of this Contract resulting from circumstances existing in the Supplies at the time of the transfer of risk to the Purchaser.

"Delivery" shall mean the Delivery of Goods or the performance and / or completion of the Services to the location prescribed in Individual Contracts or Offer.

"Delivery Date" is the date agreed by the Parties to deliver the Goods to the Delivery point or the date when the Service performed have been completed.

"Force Majeure Event" means any event beyond the reasonable control of a party including but not limited to the following events:

- a) acts of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, revolution, insurrection, military or usurped power or terrorism;
- b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- c) contamination caused by any hazardous or toxic materials or waste (including asbestos) existing on the site or brought onto the site by or on behalf of the Purchaser (other than contamination caused by Flender or Flender's Personnel);
- d) shipping congestion at port of loading/unloading, blockades, embargos, shortage of transport, import restrictions or currency restrictions;
- e) act (or failure to act) of authorities (unless such act is the requirement of authorities to either party to comply with any mandatory Law in force at the time of the conclusion of the Contract), non-approval of export license for the work, or epidemic, Change of Law;
- f) sabotage, strikes, lockouts, go-slow or any other industrial dispute or disturbance;
- g) Acts of God including all severe weather conditions, natural disasters, earthquakes, volcanic activity, hurricanes, cyclones, floods, fires, tsunamis, and lightning strikes; and
- h) epidemics, pandemics, quarantines, and any events or impacts that flows from these events

"Goods" shall mean products, hardware, and software, which Flender sells to Purchaser, and any auxiliary item related thereto, as far as it is described in the Offer or the Individual Contract.

"Insolvency Event" shall mean insolvency, bankruptcy, reorganization, winding up, or any other similar procedures.

"Offer" shall refer to the document issued at the request of Purchaser with Flender binding commitment of delivery and its conditions for the Sale and Purchase in case the Purchaser accepts the offering from Flender.

"Individual Contract" means an individually executed agreement between Flender and Purchaser which is executed in writing (including email) or signed electronically or via a web-based tool for electronic signatures and based on these General Terms & Conditions.

"Services" means the Services to be provided by Flender to the Purchaser, as specified in the Offer (including any Additional Services) as may be varied by the parties in writing from time to time;

"Services Materials" means material and equipment brought onto Site by Flender for use in performing the work under the Contract and includes, without limitation service manuals, schematics, diagnostics software, tools, and parts.

2. Right of Use

- 2.1. Except as expressly otherwise agreed between the parties, all Intellectual Property Rights (as defined in Article 15.1) in the Supplies, in all documents provided by Flender in connection with this Contract (the "Documents") and in all software, hardware, knowhow ("IPR") and other things provided with or as part of the Supplies and the Documents shall be the exclusive property of and vest in Flender.
- 2.2. The Purchaser shall not be entitled to reverse engineer, to decompile, or to reproduce (or have reverse engineered, decompiled, or reproduced) the Supplies or parts thereof except to the extent that such restrictions are unenforceable under the applicable law.
- 2.3. The Purchaser may use the Documents unmodified and to the extent necessary for operation and routine maintenance of the Supplies by the Purchaser's own personnel, unless explicitly agreed otherwise in writing by Flender.
- 2.4. The rights granted in Article 2 shall be transferable to a third party only together with the transfer of ownership of all of the Supplies to that third party. Without prejudice to the Purchaser's Intellectual Property Rights and subject to compliance with applicable law, Flender and its Affiliates may for its own business purposes collect, use, modify, and copy any data received under this Contract. Any legal obligations regarding personal data shall remain unaffected.

3. Offer and Acceptance

- 3.1. These General Terms and Conditions apply to transactions based on an Offer by Flender or an Individual Contract. These General Terms and Conditions form part of the Flender Offer in which they are referred to or to which they are attached. Notwithstanding any acceptance by Flender of any order from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these General Terms and Conditions, any Contract arising from any such acceptance shall be subject to these General Terms and Conditions unless Flender expressly agrees in writing to any variation.
- 3.2. Unless previously revoked by written notification to the Purchaser, Flender's Offer shall remain valid for the period stated in the Offer or, if no period is stated, for thirty (30) days from its date.

4. Price and Supply Scope

- 4.1. Unless otherwise prescribed, the price of Goods stated in the Offer includes standard packaging and shipping expenses for the Goods; provided, however, if the delivery site or delivery schedule is changed upon Purchaser's request, the additional fees may be charged.
- 4.2. Unless specifically stated in the Offer the following items are not included in the Offer amount.
 - a) Replacement and repair work
 - b) Application development and update work
 - c) Software update work
 - d) Accompanied inspections
 - e) Quality inspections other than defined by Flender
 - f) Other goods and services not specified in the Offer
- 4.3. Delivery shall be performed according to Flender's catalogue relating to standard products or technical specifications included in Individual Contracts.
- 4.4. If the Goods can be divided into smaller items, Flender retain the right to deliver the Goods in installments at any time.
- 4.5. Flender's price may be subject to change due to foreign exchange rate variations, rise, and fall or any other circumstance where adjustments are required after the order has been accepted
- 4.6. Prices do not include Consumption Tax nor any other applicable tax, which unless otherwise stipulated by law shall be borne by Purchaser.

5. Services

- 5.1. Flender will perform the Services as indicated in its offer which will include a schedule of rates.
- 5.2. Hours of service are as described in the Offer or are otherwise Flender normal working hours. If Flender performs Services outside its normal working hours, then it may charge the Purchaser for any additional costs in accordance with the schedule of rates or, if no schedule of rates applies then at reasonable rates and prices.
- 5.3. Flender will perform all Services under the Contract in accordance with Flender occupational, health, safety and environment policies and procedures. Any costs associated with specialist safety equipment or requirements shall be paid by the Purchaser.
- 5.4. The Purchaser may request Flender to provide additional Goods and Services and if Flender agrees to

perform them, the Contract will also govern those additional Goods and Services.

- 5.5. Flender will use reasonable endeavours to provide the Services within the agreed response time (if any).
- 5.6. The following are not included in the Services to be performed and additional charges may apply for the following:
 - a) correction of faults caused by lightning damage or electro- magnetic interference;
 - b) correction of faults caused by misuse, negligence, or failure to observe the instructions for the Goods or by unauthorized modifications or alterations to the Goods;
 - c) correction of faults caused by matters external to the Goods such as those resulting from any failure or fluctuation of the electricity supply and any other fault which is not the result of fair wear and tear;
 - d) the provision of more than one specialist engineer who, due to the circumstances, are required to attend the Site, diagnose the fault and perform repair Services;
 - e) replacement of consumable materials such as batteries for the Goods;
 - f) any alterations or extensions to the Goods requested by the Purchaser; and
 - g) civil or structural defects or faults in the Goods or catastrophic failure including catastrophic failure of large rotating plant.
- 5.7. The Purchaser shall apply for and obtain all necessary licenses, permits and approvals required for commissioning, acceptance and use of the Services.
- 5.8. Flender shall comply with the Purchaser's site rules and regulations when performing Services on the Purchaser's premises, provided that the Purchaser informs Flender, in writing, of all relevant site rules and regulations in force at the premises within a reasonable period prior to performance of the Services.

6. Delivery

- 6.1. The Delivery date for Goods and the Delivery location shall be subject to the Individual Contracts or Offer
- 6.2. Purchaser shall make adequate prior preparations and arrangements with regard to acceptance at the Delivery location necessary for the Delivery of Goods.
- 6.3. Risk of damage to or loss of any part of the Goods shall pass to the Purchaser upon delivery in accordance with the agreed incoterms
- 6.4. Flender shall be exempt from responsibility for such delays if it is difficult for Flender to perform its obligations provided for in Individual Contracts due to the Purchaser's delay in the performance of its obligations (such as the submission of plans, or the provisions of parts contained in Goods) or if Flender is delayed or impeded in the performance by any third party or by any Force Majeure event.
- 6.5. If after a period of 7 days from the date of notification that the Goods are ready for delivery, delivery is delayed for any reason beyond Flender's reasonable control, Flender may arrange for storage of the Goods at Flender's premises or elsewhere. The Purchaser shall pay all associated costs including all applicable storage, insurance, demurrage and handling costs. Flender may change the delivery date of Goods, in whole or part, upon consultations between Purchaser and Flender.
- 6.6. If Flender is delayed from performing the Services or delivering the Goods by the Delivery Date; due to circumstances that are caused solely by Flender (and the Purchaser suffers loss as a result of the delay), the Purchaser may, for each complete week of delay claim a refund of the price payable for the delayed Goods and Services at the rate of 0.5% per week, but not more in aggregate than a total of 5.0% of the price payable for the undelivered portion of the Goods and Services.
- 6.7. Such payment shall be the Purchaser's sole and exclusive remedy and shall be in full satisfaction of any loss suffered by the Purchaser due to any delay in the Goods and Services and shall be in lieu of any other right the Purchaser may have against Flender.
- 6.8. Except as provided in this Article, Flender shall not be held liable for any delay of the Goods.

7. Purchaser's Obligation

- 7.1. The Purchaser must:
 - a) give reasonable prior notice of the time when Flender is required to be on Site;
 - b) promptly answer all queries and provide to Flender complete and accurate information and documents that are necessary to enable it to provide the Goods and Services;
 - c) provide customs clearance and obtain and maintain any approvals, licenses or permits that are necessary for the Goods and Services;
 - d) provide Flender with access to Site and take all necessary measures (including scheduling of planned Services) to ensure that Flender personnel are able to safely commence the work under the Contract immediately upon their arrival at the customer's site;
 - e) ensure that Flender personnel have sufficient access to perform the work under the Contract in an uninterrupted manner;

- f) supply all necessary information with regard to the location of underground cables and pipes together with static data for structures;
 - g) whilst the Goods are operating, to maintain the environmental conditions specified by the manufacturer;
 - h) ensure that the personnel operating the Goods are properly trained in its operation;
 - i) make no attempt to modify, alter or repair the Goods unless otherwise agreed in writing by Flender;
 - j) ensure that Flender is provided with adequate secure storage space, free from condensation, dust and heat, for the storage of any Goods and tools;
 - k) maintain the Site in a safe secure condition to ensure compliance with the requirement of all applicable Laws, and Japan Standards for occupational, health, safety, environment and to properly induct all Flender personnel to the Site;
 - l) provide adequate power supply lighting of work areas and ventilation for the performance of the work under the Contract;
 - m) provide Flender with details of the Purchaser representative; and
 - n) ensure the Purchaser representative issues Flender purchase orders confirming any verbal directions to proceed in respect of any Additional Services.
- 7.2. If the Purchaser does not comply with its obligations under this article, then the Delivery Date and the time for performing the Services shall be extended until such time as the Purchaser's obligations are fulfilled and the Purchaser shall pay Flender the reasonable costs incurred by Flender due to such delays.

8. Acceptance

- 8.1. The Goods shall be deemed to have been formally delivered and handed over if no notification of any complaint, etc. is received from the Purchaser within three (3) business days following Delivery.
- 8.2. Any minor Defects not affecting functions of the Goods or non-essential deviations from the specification of the Goods shall be excluded in the reason for acceptance rejection.
- 8.3. If during any such inspections or acceptance tests, goods are found to have any Defects, Flender shall make good such Defect (as if it had occurred during the Defects Liability Period). Flender's liability, if any, shall be limited as provided for in Article 13.
- 8.4. Goods will be deemed to be accepted and passing all inspections and acceptance tests when the Goods are put into commercial use.

9. Payment

- 9.1. Unless otherwise agreed between the parties in writing, the Purchaser shall pay all amounts invoiced by Flender within 30 days from the date of invoice.
- 9.2. Flender may provide credit facilities in its discretion and reserves the right to withdraw credit facilities at any time prior to delivery.
- 9.3. Payment shall become due immediately upon the Purchaser suffering an Insolvency Event.
- 9.4. The Purchaser shall make payments by bank transfer into Flender's designated account by the payment due date stated in the invoice issued by Flender.
- 9.5. Except when longer payment terms have been agreed in Individual Contracts provided for in the preceding paragraph, the payment deadline, if a payment due date is not stated in an invoice, shall be within one (1) week after an invoice is submitted upon notification of completion of shipping preparations. Flender has the right to request advance payments of up to 100% of the amount provided for in the Individual Contracts prior to Delivery of the Goods.
- 9.6. The title of the Goods shall transfer from Flender to the Purchaser upon completion of all payments.
- 9.7. If delivery of any Goods is delayed by the Purchaser or the Purchaser's agents, consultants, employees, officers, representatives or other contractors, then payment of the full Contract Price for the delayed Goods shall be made by the Purchaser to Flender within 30 days after notification by Flender that the work under the Contract was ready to be performed.
- 9.8. Flender shall be entitled to claim from the Purchaser interest calculated on a pro-rata basis of 14.3% per annum.
- 9.9. Flender may request the cancellation of Individual Contracts with the Purchaser and request the return of Goods if payments are not made by the payment due date or if interest corresponding to the delayed payment period is not paid. In such case, the Purchaser shall be responsible for all expenses required for removal and restitution. Furthermore, the Purchaser shall fully compensate for all such damage if Flender suffers damage as a result of the withdrawal or removal, etc. of Goods.

10. Software

- 10.1. Rights (such as intellectual property rights) relating to software installed in the Goods (hereinafter referred to as the "Software") shall be attributed to the Goods or the Software manufacturer or developer even after

ownership of the Goods has transferred from Flender to the Purchaser; provided, however, that the Purchaser shall have the right to use the Software within a scope that does not infringe rights relating to the Software, limited to the period during which the Purchaser has ownership of the Goods or the right to use or other legal rights to the Goods.

- 10.2. The Purchaser must not duplicate, analyze, disclose, distribute, divert, resell, or transfer, etc. the Software in whole or in part.
- 10.3. Flender may at any time collect or remove from the Goods or alter Software retained by the Purchaser, copies thereof, and materials relating to the Software if the manufacturer or developer of the Goods or the Software deems that intellectual property rights or other rights relating to the Software are likely to be infringed.
- 10.4. The Purchaser may transfer the right to use the Goods to a third party within the scope of the right to use the Goods granted to the Purchaser in paragraph 1 of this Article only when transferring or reselling the Goods. In such case, the Purchaser shall impose on such third party the same obligations as the Purchaser has towards Flender.
- 10.5. The Purchaser shall compensate for such damage if the Purchaser or a third party that has purchased Goods from the Purchaser causes damage to Flender or the manufacturer or developer of the Goods or the Software due to engaging in acts.

11. Warranty

- 11.1. The warranty period for the Goods shall be 12 months from the date of transfer of risk. For Services, the warranty provided is 12 months from the completion and acceptance of the Services.
- 11.2. In case Purchaser finds any Defects during the warranty period, Purchaser must notify such Defects to Flender in writing and without undue delay. Flender shall be obligated at its sole discretion to repair, replace, or to re-perform within a reasonable period of time. For this purpose, the Purchaser shall grant Flender working access to the non-conforming Goods, shall undertake any necessary dis-assembly and re-assembly, and shall provide access to operation and maintenance data, all at no charge to Flender. Upon Flender's request, the Purchaser shall ensure that the title to the replaced parts/items shall pass to Flender. The warranty associated with any parts or items replaced during this period will extend to a period no greater than three months beyond the original period. Under no circumstances will the original warranty period restart.
- 11.3. The disassembly and removal of the defective Goods and the return transport to the place of performance, as well as the return transport from the place of performance to the place of installation including the return transportation shall be carried out by the Purchaser in case of warranty. Flender will contribute to the costs of removal, installation and transport incurred in the event of a Defect up to a maximum of 10% of the original Purchase order of the Goods and/or Services.
- 11.4. Flender shall be exempt from responsibility if Defects are attributable to the following acts or events:
 - a) damage or failures caused by any Force Majeure event;
 - b) damage caused by overload conditions, incorrect maintenance, installation or repair by the Purchaser, or a third party not instructed by Flender;
 - c) non-conformity resulting from faulty or negligent handling; non-compliance with instructions or recommendations in operation or maintenance manuals and other documents;
 - d) damage caused from the Goods or parts of the Goods have been combined with or in connection with the installation of the Goods or parts in any other products or modules, if the damage would not have arisen if the Goods or parts of the Goods had not been combined in such a way or installed in such a way;
 - e) unauthorized or improper modifications, changes, or repairs by the Purchaser or a third party not instructed by Flender unless such modifications, alterations or repairs are expressly allowed either in the Documentation;
 - f) defects which arise due to materials supplied by the Purchaser or specifications or designs laid down or predefined by the Purchaser;
 - g) Defects caused by the failure to provide a suitable installation environment, incorrect installation, inadequate storage (prior to installation) or a departure or failure to following warnings contained in the respective Goods manual;
 - h) normal wear and tear or deterioration or any consumable component; or
 - i) those types of design flaws and characteristics of the gearboxes of which the Purchaser is already aware of due to their experience in operating such gearboxes or other Supplier gearboxes of the same type unless the Purchaser explicitly requests to change such design flaw or characteristics and Flender confirms in its inspection report that such change is possible and will be performed by Flender as part of the Field Service;
 - j) defects which do not significantly impair the use of the respective Goods.

- 11.5. Except when otherwise prescribed in Individual Contracts, warranties provided by third parties shall apply to products procured by Flender from such third parties.
- 11.6. The Purchaser may make requests to Flender for reductions to the price of the Goods or the cancellation of Individual Contracts (limited to when the non-defective parts are not required by the Purchaser) if Flender is unable to respond to the Goods or if Flender deems it not possible to respond to such Defects, despite the time and opportunities necessary to respond to Defects in the Goods being adequately granted to Flender.
- 11.7. Flender shall not assume warranty against defects, responsibility for non- performance of obligations, or other responsibilities to compensate for damage with regard to Goods other than that prescribed in this Article. Consequently, Flender shall not pay any compensation whatsoever even if the Purchaser or some other third party incurs damage due to it not being possible to use the Goods or grounds not provided for in any of the preceding paragraphs of this Article.
- 11.8. The claims and rights listed in this Article are final. All further claims and rights due to material defects are excluded.

12. Force Majeure

- 12.1. If a Force Majeure Event prevents a party from partially or wholly complying with its obligations under the Contract (other than payment obligations) then that party shall not be obliged to perform those obligations until it is no longer prevented from doing so and the time for performance of those obligations shall be extended by a period of time equal to the period of the delay.
- 12.2. If a party is prevented by the Force Majeure Event or suspension from carrying out its obligations for more than 180 days, either party may terminate the Contract by giving written notice to the other party.
- 12.3. If a party terminates the Contract under this article, the rights and obligations of the parties will cease; and the accrued rights or remedies of each party will not be affected. Upon such termination, the Purchaser shall pay to Flender, except to the extent that liability is legally limited or excluded:
 - a) all amounts due to Flender for work carried out under the Contract;
 - b) the cost of materials and equipment reasonably ordered by Flender for the work under the Contract and which Flender is liable to accept (including profit and overheads);
 - c) Flender's reasonable demobilisation costs including profits and overheads (if any); and
 - d) 30% of the balance of the Contract Price payable.
- 12.4. If an act or omission of the Purchaser (or the Purchaser's agents, consultants, employees, officers, representatives, or other contractors), a change of law, restricted access to the site or any other Force Majeure Event causes delay to Flender,
 - a) the time for performance of Flender obligations shall be extended for a period of time equal to the period of delay; and
 - b) the Purchaser shall pay to Flender all additional costs including profits and expenses incurred by Flender as a result of such delay including expenditure resulting from Flender's Personnel being idle or standing by, Flender's Personnel having to be retrenched or re-employed and Flender's Personnel being required to perform work under the Contract outside of Flender's normal working hours or undertake additional travel, except to the extent that liability is legally limited or excluded.

13. Limitation of Liabilities

- 13.1. Notwithstanding any other provision of the Contract and except to the extent that liability cannot be legally limited or excluded:
 - a) Flender's total aggregate liability arising out of or in connection with the Contract, shall be limited to 50% of the Contract Price per event and shall, under any circumstances, be limited in aggregate to 100% of the Contract Price, and
 - b) Flender shall under no circumstances be liable for economic loss; loss of contract; loss of profit or revenue; business interruption; loss of production; production stoppage; loss of information or data; loss of power, replacement power; cost of capital; loss of interest, damages based on the Purchaser's third party contracts; indirect or consequential loss or damage.
- 13.2. This limitation and exclusion of liability shall apply whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or indemnity, under statute, in equity or otherwise, except to the extent that liability cannot be legally limited or excluded. Any and all liability of Flender under or in connection with this Contract shall cease with the expiry of the warranty period, except to the extent that liability cannot be legally limited. However, such liability is reduced to the extent of any act or omissions caused by or contributed by the Purchaser.

- 13.3. Flender shall be liable for bodily injuries and for intentional acts or omissions pursuant to the applicable law.
- 13.4. If a third party becomes the owner of or acquires any other right in the Goods or part thereof, or if Flender performs Work on third party's parts, or if Work is to be performed at or delivered to any location owned or operated by a third party, Purchaser shall obtain written assurances from such third party providing that Flender's and its subcontractors, sub-suppliers', agents', advisors', directors' and employees' total liability towards these third parties and the Purchaser resulting from the Work shall not in aggregate exceed the limits of liability as agreed under this Article 13. In any event, Purchaser hereby holds Flender harmless and indemnifies Flender from any claims in excess of said limitations of liability, except to the extent that liability cannot be legally limited or excluded.

14. Confidentiality

- 14.1. Each party acknowledges that the Confidential Information of the other party is valuable and undertakes to keep such Confidential Information secret, to procure that its representatives keep such Confidential Information secret and to preserve the confidential nature and secrecy of such Confidential Information in its possession.
- 14.2. The parties shall use any Confidential information provided by the other party exclusively for the purpose of the Contract between the parties and keep the same confidential.
- 14.3. Subject to the above, the parties:
- a) may disclose the Confidential Information to its affiliates, and the officers, directors, employees, representatives, contractors, sub-contractors, attorneys or other advisers of the receiving party and its affiliates (collectively "Representatives") who reasonably need to know such Confidential Information for the purpose of the Contract provided such Representatives are bound by equivalent confidentiality obligations. The party disclosing the Confidential Information shall be held liable for a breach of such obligations by the Representatives.
 - b) may disclose the Confidential Information which
 - (i) is or becomes part of the public domain other than by fault of the receiving party;
 - (ii) is disclosed to the receiving party in good faith by a third party who is entitled to make such disclosure;
 - (iii) is developed independently by the receiving party without reliance on the Confidential Information;
 - (iv) was known to the receiving party prior to its disclosure by the other party; or
 - (v) is required to be disclosed by law (subject to the receiving party's obligation to notify the disclosing party in a timely manner of such requirement), or a rule or an order by a court of competent jurisdiction or any governmental or regulatory authority.
- 14.4. This confidentiality obligation shall survive 3 (three) years of the expiration or termination of this Contract.

15. Intellectual Property Rights

- 15.1. Flender remains the ownership of all the copyrights (including the rights under Article 27 and Article 28 of the Copyright Act; hereinafter the same shall apply), patent rights, trademark rights, design rights, and all other intellectual property rights (collectively, "Intellectual Property Rights") related to the Goods whether existing at the time of the Contract or created afterward.
- 15.2. Unless otherwise agreed by the parties concerned, Flender shall provide the Goods in a state that does not infringe third party's Intellectual Property Rights.
- 15.3. Flender shall take the following measures with regard to the Purchaser if the Goods infringe on some Intellectual Property Rights and the Purchaser receives complaints, demands, injunctions, or any other assertions (hereinafter collectively referred to as "Claims Concerning the Infringement of Intellectual Property Rights") by a third party:
- 15.4. Flender shall acquire the necessary rights in order to use the Goods, amend Goods so that infringements of intellectual property rights are avoided, or exchange Goods for equivalent substitutes, at its own expense; provided, however, that the Purchaser may return the Goods if such measures are not reasonably possible. If, in the opinion of Flender, none of the foregoing is reasonably possible, Flender may take back the relevant part of the Goods
- 15.5. Flender's obligations provided for in the preceding item apply only when the Purchaser has notified Flender immediately in writing of the Claim Concerning the Infringement of Intellectual Property Rights and when Flender retains the right to negotiate dispute resolution.
- 15.6. The provisions of the preceding paragraph shall not apply if Claims Concerning the Infringement of

Intellectual Property Rights fall under the following.

- a) When attributable to the Purchaser or caused by instructions from the Purchaser;
- b) When caused by a method of use by the Purchaser that was not foreseen by Flender;
- c) When caused by alterations to the Goods by the Purchaser or by being combined with non-Affiliate Goods.

15.7. Flender shall not assume responsibility for claims concerning the infringements of Intellectual Property Rights against the Purchaser other than for claims prescribed in this Article.

16. Assignment

16.1. Purchaser shall not assign any or part of rights and/or obligations arising from the Individual Contract to a third party without a prior consent by Flender in writing.

16.2. Flender may assign the Contract or any part of it to an affiliated company, being any legal entity ("Company") which directly or indirectly is controlled by Flender, controls Flender or is controlled by a Company which directly or indirectly controls Flender ("Affiliate").

16.3. Flender shall further be entitled to assign the whole Contract or a part of it to any third party, in the event of a sale or other transfer of the business or a part of the business of Flender to a third party.

17. Termination

17.1. Flender has the right to terminate Individual Contracts in whole or in part immediately without the need to give any warning if it acknowledges that the Purchaser falls under any of the following items:

- a) An Insolvency Event is alleged or filed for, when subject to a disposition for the discontinuation or suspension of business by a supervisory government agency;
- b) When dissolving or assigning or passing a resolution to assign all or an important part of operations to a third party;
- c) When Flender's reputation or credibility is damaged or likely to be damaged;
- d) When any of the material provisions of T&C or Individual Contracts have been violated;
- e) When there are other reasonable grounds in which the execution of the purpose of Individual Contracts is deemed to be difficult.

17.2. The Purchaser shall automatically forfeit benefit of time with regard to all obligations to Flender and immediately pay Flender the outstanding amount in full if circumstances falling under any of the items in the preceding paragraph occur.

17.3. The Purchaser may only terminate part or all of the Contract, where:

- a) Flender is responsible for the late completion or as the case may be late delivery of the Work provided that an adequate extension of time granted did not result in the completion and/or delivery, and
- b) In case of any other material breach of Contract by Flender, where:
 - (i) The Purchaser has notified Flender of the breach and its intention to terminate in writing, and
 - (ii) The Purchaser has granted Flender with adequate time to remedy the breach and Flender has failed to remedy the breach after receiving adequate time.

18. Exclusion of Relations with Antisocial Forces

18.1. The Purchaser manifests and warrants that it does not fall under any of the following items and that it shall not engage in acts that fall under any such items in the future.

- a) It is an organized crime group, a member of an organized crime group, a company or entity closely related to an organized crime group, a corporate racketeer, or other antisocial force (hereinafter referred to as "Antisocial Forces") or five (5) years that have elapsed since being an Antisocial Force;
- b) Its officers or persons who have substantial control over management are an Antisocial Force or five (5) years have not yet elapsed for them since being an Antisocial Force;
- c) Its parent company or subsidiaries (as defined in the Companies Act in both cases, and the same shall apply hereinafter) or a third party subcontracted in order to perform an Individual Contract corresponds to either of the preceding two items.

18.2. Flender may terminate the Contract in whole or in part immediately without the need for any separate warning if the Purchaser falls under any of the following items.

- a) If the Purchaser falls under any of the items in the preceding paragraph;
- b) If threatening language or violence has been used with regard to Flender or acts have taken place that damage Flender's reputation or credibility;
- c) If Flender's business has been impeded using fraudulent means or force;

- d) If unreasonable demands are made to Flender that are subject to elimination in the Guidelines for How Companies Prevent Damage from Antisocial Forces;
 - e) If a third party that is an Antisocial Force has been allowed to engage in the acts provided for in the preceding three items according to the Purchaser's order;
 - f) If acts are engaged in encouraging activities such as the Purchaser, officers, or a person who has substantial control over management providing funds to Antisocial Forces;
 - g) If the parent company or subsidiaries or a third party subcontracted in order to perform an Individual Contract engages in acts that correspond to any of the preceding five items.
- 18.3. The Purchaser shall compensate for damage incurred by Flender if an Individual Contract is terminated in accordance with the preceding paragraph.

19. Export Control Rules

- 19.1. If the Purchaser transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Flender or works and services (including all kinds of technical support) performed by Flender to a third party worldwide, the Purchaser shall comply with all applicable national and international (re-) export control regulations. In any event the Purchaser shall comply with the (re-) export control regulations of Japan, the Federal Republic of Germany, of the European Union and of the United States of America, if applicable.
- 19.2. If required to conduct export control checks, the Purchaser, upon request by Flender, shall promptly provide Flender with all information pertaining to particular end purchaser, destination and intended use of goods, works and services provided by Flender, as well as any export control restrictions existing.
- 19.3. The Purchaser shall indemnify and hold harmless Flender from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Purchaser, and the Purchaser shall compensate Flender for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Purchaser. This provision does not imply a change in burden of proof.

20. Dispute Resolution

- 20.1. If any dispute or difference occurs between the Parties arising out of or in connection with the Contract ("Dispute") shall be notified to the other party by written notice of that Dispute, giving details of the subject-matter of the Dispute ("Notice of Dispute").
- 20.2. Upon the giving of a Notice of Dispute, the Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the parties (or their delegates).
- 20.3. If after twenty-one (21) days of the giving of the Notice of Dispute, the Dispute has not been resolved between the Chief Executive Officers (or their delegates) to the satisfaction of both parties, the Dispute shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association by one arbitrator.
- 20.4. The award of such arbitration shall be final and binding on both parties. The seat of arbitration shall be Tokyo, Japan. The arbitral proceedings shall be conducted in Japanese.
- 20.5. A reference to arbitration under this clause shall not relieve either party of any other obligations under the Contract, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Contract will be maintained.

21. Notices

Any notice to be given under the Contract shall be given in writing and delivered personally or by email] or sent by pre-paid post (airmail if to or from a place outside Japan) addressed to the other party at such addresses as a party notifies the other for the purposes of this article. Any notice shall be deemed to be served:

- a) in the case of delivery in person, when delivered;
- b) in the case of delivery by email, when delivered to the notified email address; and
- c) in the case of delivery by post, 3 days (7 if to or from a place outside Japan) after the date of posting

22. Applicable Law

The Contract shall be governed by and construed in accordance with the laws of Japan. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

23. General

- 23.1. Precedence

The terms stated in the Offer shall apply in precedence if there is a discrepancy between these General Terms and Conditions and the Offer, and the terms stated in an Individual Contract shall take precedence if there is a discrepancy between these General Terms and Conditions and the Individual Contract.

23.2. Primacy of application

In case of any discrepancy between the English version and the Japanese version of these Terms and Conditions, the Japanese version of these Terms and Conditions shall prevail.

23.3. Severability clause

- a) Matters not specified herein or any ambiguities in the interpretation regarding these T&C and the Individual Contract shall be resolved by discussions between Purchaser and Flender in accordance with the contents of these T&C and the Individual Contract.
- b) Even in the event of legal invalidity of any provision in these T&C or the Individual Contract, the other parts of these T&C and the Individual Contract shall remain in full force.
- c) Any amendments, changes or additions to this Contract must be made in writing in the form of a written agreement signed by authorized representatives of both parties.