

General Terms and Conditions
for the Procurement of Erection & Installation

swisslog

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1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

The following terms when being used in the Contract or in documents or communications between the parties relating to the Contract, shall have the following definitions:

"Additional Work" shall mean any Work to be executed by the Subcontractor in accordance with Clause 5.7 (Changes in the Work).

"Change in Work Notice" shall mean a notice as set forth in Clause 5.7 (b).

"Contract" shall mean the agreement between Purchaser and the Subcontractor for the performance of the Work encompassing all the documents listed on the Purchase Order and in the order of precedence given therein and possibly encompassing Additional Work/Changes in the Work

"Contract Price" shall mean the total sum to be paid by the Purchaser to the Subcontractor for the due and timely performance of the Work and is (i) initially the price stated in the Purchase Order, and as the case may be, (ii) subject to any Additional Work agreed between the parties, at any later time after the date of the Purchase Order, said initial price adjusted for the value for any such Additional Work.

"Distribution Centre" shall mean the facility to be designed, built and commissioned under the contract available between the Owner and the Purchaser and in relation to which the Subcontractor is to perform the Work under this Contract.

"Lump Sum Portion" or sometimes referred to as fixed price contract portion shall mean the price of that part and scope of the Work agreed to be performed by the Subcontractor for a fixed price ("the Lump Sum") as defined in the Contract.

"Milestone" shall mean the completion of an activity or the occurrence of an event as identified in the Project and Work Time Schedule. Where the context so requires, Milestone shall also refer to the date when such activity must be completed or such event must have occurred.

"Owner" shall mean employer for the work to design and build the Distribution Centre, including the Owner's representatives, legal successors in title and any assignees.

"Plant" shall mean the materials, computer hardware and software, information and documentation, apparatus, materials, articles and things of all kinds to be provided by the Purchaser - decision as to provision of which things is in the absolute discretion of the Purchaser - for the installation by the Subcontractor including (i) any installation material, (ii) consumables of any kind and/ or (iii) facilities and equipment for temporary use by the Subcontractor.

"Project and Work Time Schedule" shall mean the schedule as set forth in Clause 5.1.

"Purchaser" shall mean the legal entity issuing the Purchase Order and identified thereon including the Purchaser's personal representatives, successors and permitted assigns.

"Purchase Order" shall mean the document of that name issued by the Purchaser, by which the Purchaser awards the Work to the Subcontractor.

"Request for Payment of Additional Work" shall mean a notice as set forth in Clause 5.7 (a).

"Site" shall mean the actual place or places, provided or made available by the Purchaser, to which the Plant is delivered and where the Work is to be performed by the Subcontractor, together with so much of the area surrounding the same as the Subcontractor shall with the consent in writing of the Purchaser actually use in connection with the Work otherwise than merely for the purposes of access.

"Subcontractor" shall mean the company entering into the Contract and where the context so admits includes the suppliers to and sub-contractors of the Subcontractor.

"Swisslog" or **"SLOG"** shall have the same meaning as Purchaser.

"Work" shall mean all services to be provided and all work to be performed and undertaken under the Contract including, without limitation, consumables, the tests on completion and the provision of all information and documentation required to be provided by the Subcontractor under the Contract and shall include, where the context so requires, the temporary provision of Subcontractor's equipment required for erection, installation and testing.

1.2 Interpretation

- (i) Words importing persons or parties shall include firms, corporations and any organisation having legal capacity.
- (ii) Words importing the singular also include the plural and vice versa where the context requires. Words importing one gender also include other genders.
- (iii) All periods are relating to calendar periods.
- (iv) Wherever provision is made for the giving or issue of any notice, instruction, consent, approval, certificate or determination by any person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this shall include any hand-written, typewritten or printed communication and/or any agreed systems of electronic transmission.
- (v) References to the word "include" or "including" are to be construed without limitation.
- (vi) US Dollars amounts stated herein shall, except as otherwise agreed, be applicable in the currency of the Contract Price after conversion into said currency using the relevant exchange rate published by the UBC Pacific Exchange Rate Service on <http://fx.sauder.ubc.ca/> for the date of the Purchase Order.

2. CONTRACT COMING INTO FORCE

The Contract is coming into force only after the following is cumulatively fulfilled:

- (i) the parties have signed the appropriate Purchase Order and accordingly concluded the Contract; and,
- (ii) the Owner has approved the Subcontractor for executing the Work; and,
- (iii) the performance security in accordance with Clause 8.4 has been received and accepted by the Purchaser.

3. WORK

3.1 Scope of the Work

The scope of the Work is specified in the Contract provided, however, that such scope shall be deemed to include also those supplies and services not expressly specified, but which may be inferred to be within the scope of the Work, e.g. because such supplies or services are necessary for the prescribed, safe, or economic performance of the Work or any parts thereof, or for compliance with the requirements of the Contract, or due to any other legal or statutory requirement. The Subcontractor warrants that he performs his Contract obligations including his obligations under the Project and Work Time Schedule and the agreed Milestone dates thereby exercising the degree of skill, care, diligence and prudence which would reasonably be expected from a skilled, experienced and competent contractor carrying out the Work or any part thereof and that the Work will be in compliance with the specifications. The Subcontractor acknowledges the fact that the Plant and the Distribution Centre is required to meet state-of-the-art availability and reliability. This includes the observation of health and safety requirements and of Safe Work Method Statements applicable at the location of the Site and state-of-the-art quality management requirements by leading companies in the respective industry.

3.2 Prevailing Circumstances

The Subcontractor shall be responsible for acquainting himself in time with all data, circumstances and facts which may affect the performance of the Contract, as well as with the intended purpose of the Work, and for ensuring that any and all technical and financial means necessary for the proper performance of the Contract, including, without limitation, the necessary personnel, are available to the Subcontractor.

The Subcontractor shall familiarise himself with all characteristics and details of the special organisational, operational, logistical and administrative requirements of the Work, in particular with respect to any other contractor's adjacent work which may be affected by or affect the Work, and the Subcontractor shall request from the Purchaser all documents and information necessary for a proper coordination with such work. The Subcontractor shall be fully responsible for its own interpretation of any such documentation and information received and gathered by him.

3.3 Full Responsibility for the Work

No document or information obtained by the Subcontractor from the Purchaser in connection with the Contract shall in any way release the Subcontractor from his obligation to review any such document and information and to obtain any additional information and data in order to ensure prompt and proper performance of the Work. In case of any doubts on the part of the Subcontractor in respect thereof, the Subcontractor shall immediately inform the Purchaser in writing.

3.4 Compliance with Laws and Regulations

The Subcontractor shall perform the Work that it complies with any and all applicable national municipal or state statute, ordinance or other law, regulation or bye-law or any rule, code or direction or any licence, consent, permit, authorisation or other approval including any conditions attached thereto (whether relating to the environment or otherwise) of any public body or authority, local or national agency, department, inspector, ministry, official or public or statutory person, (whether autonomous or not) which has appropriate jurisdiction and other regulations applicable at the Site. The Subcontractor shall be responsible for obtaining at his costs and risk the respective information relating thereto.

3.5 Licences and Permits

The Subcontractor shall be fully responsible for obtaining in due time all permits, licences and approvals and information necessary in connection with the performance of the Work and shall bear all costs and expenses related thereto.

3.6 Industrial Relations

The Subcontractor acknowledges that the Purchaser may have responsibility for managing all aspects of industrial relations in relation to the work contracted between the Owner and the Purchaser and that the Subcontractor must in carrying out the Work ensure that the relevant rates of pay and conditions of employment are always observed and keep the Purchaser fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Work.

4. AUTHORISED REPRESENTATIVES AND SUBCONTRACTOR'S STAFF

4.1 General

Before starting to perform any Work, the Subcontractor shall have submitted his organisation chart and designated the Subcontractor's key management persons. Such chart shall be identifying all persons and their field of specialisation in the performance of the Work or any specific parts thereof as well as any other information considered necessary by the Purchaser in relation to such staff.

Within three (3) weeks after award of the Contract, the Subcontractor shall have designated all staff requested in accordance with the Contract documents.

4.2 Subcontractor's Key Staff

The Subcontractor shall designate in writing a Subcontractor's Representative and the Erection / Installation Manager. These persons and the required number of deputies shall at all time, when Work is being performed, represent the Subcontractor's staff on Site and shall be fully entitled to receive directives and instructions from the Purchaser on the Subcontractor's behalf and to control, command and supervise the Subcontractor's work force.

Where required, the Subcontractor shall also nominate a Safety and Security Officer and an Industrial Relation Officer.

4.3 Availability of Key Staff

The Subcontractor's Representative shall be available at Site at least during normal working hours and at times specifically agreed between the parties for meetings, attendance of specific Work, such as but not limited to the supervision of special performances of the Subcontractor, the inspection and acceptance procedures for any part of the Work completed by the Subcontractor, etc. Notwithstanding the forgoing, the representatives may be absent from Site during normal working hours subject to the Purchaser's Site Management being informed prior to the absence and the deputy or deputies being nominated for the time of their absence.

4.4 Subcontractor's Workforce

The Subcontractor shall provide, at his responsibility and expense the necessary personnel to fulfil his obligations under the Contract, and shall be responsible for all the actions and/or omissions of said personnel.

The personnel employed by Subcontractor for the performance of the Work, irrespective of specialisation, shall be skilful, sufficient, qualified and meet the requirements to secure the timely, proper and complete performance of the Work.

The Subcontractor, upon his establishment at Site, shall deliver to the Purchaser a list with his personnel to be occupied at Site, stating categories and numbers as well as any information the Purchaser may consider necessary in this respect.

The Purchaser must be informed by the Subcontractor well in advance, prior to any essential increase or decrease in the number of personnel employed by Subcontractor at the Site any time during the performance of the Work.

If, in the Purchaser's opinion, a person of the Subcontractor is found not to be sufficiently qualified or found to misbehave or be in conflict with any communicated instruction or with any applicable law, etc., the Purchaser shall be entitled to request, by written notice, the removal of said person in Subcontractor's service. If the said person is found to lack sufficient qualification for a certain work, then the Subcontractor shall be obliged to allocate other work to the person, which the person is able to professionally execute, or if such other work is not available or if the request of the Purchaser is not based on the person's qualification, remove and replace the person from the Site at his expense and without objection. The Subcontractor shall not be entitled to time extension or claim for compensation due to such removals of persons.

The Subcontractor acknowledges that the Owner may also exercise its right to remove persons from the Site and such exercise of right shall not entitle the Subcontractor to any claim for compensation or extension of time.

4.5 Language Used on Site

The Subcontractor's employees working on Site, down to the level of foremen, shall be fluent in English, to the extent that they are able to follow the instruction and advice given by the Purchaser.

5. PERFORMANCE AND SUPERVISION OF THE WORK

5.1 Scheduling

Time is of the essence in the performance of the Work. For the purpose of securing a systematic project control the Subcontractor shall within ten (10) days after award of the Contract submit to the Purchaser for approval a detailed time schedule for the performance of the Work. Such schedule shall show the time limits specified in the Contract (beginning of erection and/or installation or of commissioning and integration, performance testing, trial operation, etc.). In addition thereto, a graphic illustration shall be prepared showing the number and qualifications of the personnel to be engaged for the performance of the respective parts of the Work. Such graphic illustration shall be in alignment with the time schedule. Upon approval by the Purchaser such time schedule shall become part of the Contract and shall then for the purpose of this Contract be the Project and Work Time Schedule.

5.2 Reports and Information

The Subcontractor shall continuously, and not less than monthly, inform the Purchaser, by comparing with the Project and Work Time Schedule, of the actual progress made in the performance of the Work. Such information shall be in writing and shall be given to such extent as agreed upon by the Purchaser and the Subcontractor.

In the event that compliance with the Project and Work Time Schedule may be endangered for any reason, the Subcontractor shall immediately inform the Purchaser in writing thereof, stating also the duration of the imminent delay. Any failure by the Purchaser to react to such information shall not be deemed to be an acknowledgement or acceptance by the Purchaser of the delay.

5.3 Co-operation with Other's

The Subcontractor shall co-operate with all other contractors, suppliers, institutions and persons engaged in particular on the Site in the performance of any part of the Works and shall take due consideration of the work performed or to be performed by such contractors, suppliers, institutions and persons. In dealing with any such contractors, suppliers, institutions, or persons the Subcontractor shall safeguard the interests of the Purchaser.

5.4 Difficulties in Compliance with the Project and Work Time Schedule

In the event of compliance with the Project and Work Time Schedule being endangered, the Subcontractor shall speed up the performance of the Work. Without prejudice to Clause 6.2, measures for speeding up shall include, without limitation, the use of additional manpower and material, shift work, working on weekends and on public holidays.

The costs incurred for the measures for speeding up, for the temporary measures and for the correction of the defects and/or deficiencies and/or delays shall be borne by the Subcontractor to the extent that the Subcontractor is responsible for such defects and delays.

5.5 Actions by the Purchaser

The Subcontractor shall request the Purchaser to take the decisions and to undertake such other actions which are reserved to be taken or undertaken by the Purchaser or which for other reasons should be taken or undertaken by the Purchaser. Such request shall be made expressly and at such time as is required to avoid any difficulties in the performance of the Contract, failing which the Subcontractor will not be entitled to make any claims due to the Purchaser's omission to take such decisions or undertake such other actions.

5.6 Changes in the Project and Work Time Schedule

If any changes in the Project and Work Time Schedule being considered necessary by the Purchaser, regardless of who is responsible for such changes, the Purchaser shall be entitled to require that the agreed dates, in particular those for payments, liquidated damages and warranty period, will be adjusted accordingly. Any

amendments to the Contract being necessary for such adjustments shall be governed by Clause 5.7.

5.7 Changes in the Work

(a) Subcontractor's Variations

The Subcontractor shall not make any variations, by alteration, amendment, addition to or omission from any of the Works without prior written approval by the Purchaser. If the Subcontractor considers it necessary that such variations are required to enable him to satisfy the requirements of the Contract, he shall give the Purchaser prior notice in writing of the proposed variation and shall provide the Purchaser with such information as the Purchaser may request. If the variation requests the authorisation for new portions of Work increasing the Contract Price then the Subcontractor shall be under a duty to prove that such variation does not contain portions of Work which are part of the Lump Sum Portion.

Any such variations shall be controlled by a Request for Payment of Additional Work according to Attachment 1, detailing the extent of the change, the effect on Project and Work Time Schedule, the performance and guarantees, the Contract Price and any other matter being of importance thereto. Such variations of Work shall only become effective after the Purchaser's written approval and the Subcontractor shall not undertake any variations of Works prior to receipt of such approval.

(b) Purchaser's Variations

The Purchaser shall have the power by notice in writing to the Subcontractor to alter, amend, omit, add to or otherwise vary any of the Work if the Purchaser considers such variations is required in connection with the Work. For this purpose, the Purchaser will use the Change in Work Notice form according Attachment 2, unless the type of variation requires another format.

(c) Purchaser's Variations in respect to Main Contract

If the contract between the Owner and the Purchaser is suspended or determined for reason whatsoever (other than default of the Subcontractor) then the Purchaser shall be entitled to equally suspend and/or terminate the Contract with the Subcontractor. In the event of suspension, the Subcontractor shall be paid any reasonable costs incurred and demonstrated by him to bridge the suspension of the Contract, provided however that any suspension of less than thirty days shall not entitle the Subcontractor for any additional payment.

In the event of termination, the Subcontractor shall be entitled to be paid in respect of the Work performed until termination. As to the Lump Sum Portion, payment shall be assessed and occur accordingly on a good faith basis using the bill of quantities, rates and prices which the Subcontractor used to calculate the contract price of the Lump Sum Portion. Such payment shall be without prejudice to the rights of either party in respect of any breach of the Contract committed by the other prior to such termination.

(d) The Purchaser May Act

The Purchaser may, either itself or by a third party, carry out an obligation under the Contract which the Subcontractor was obliged to carry out but which he has failed to carry out within the time or within the required quality, degree of skill, care, diligence and prudence or in compliance with applicable laws and standards of safety and health all as required in accordance with the Contract. The cost thereof shall be born by the Subcontractor and the Purchaser shall be entitled to deduct the cost from any outstanding payment of the Contract Price.

6. WORK AT SITE

6.1 Access to and Possession of Site

(a) Subject to (c) below, access to and use of so much of the Site as is available to enable the Subcontractor to proceed

with the performance of the Works shall be afforded to the Subcontractor by the Purchaser.

- (b) In the performance of the Work, the Subcontractor shall not authorise or purport to authorise any person other than his employees and any of his subcontractor's employees to enter upon the Site, except by the permission in writing of the Purchaser, but facilities to inspect the Works at reasonable times shall be afforded to the Purchaser.
- (c) Access to and use of the Site shall not be exclusive to the Subcontractor and the Subcontractor shall afford to the Purchaser and to other contractors every reasonable facility for the performance of work concurrently with his own.

Unless specifically otherwise agreed between the parties, the Subcontractor shall install, maintain and operate at his own expense, facilities and other installations, for use as offices, workshops, storehouses, first aids trailer, etc., lodging for personnel and necessary for the performance of the Work. The facilities and installations shall be sufficient in number, space and category in relation to the Subcontractor's personnel and the material or other criteria applicable thereto. Such facilities and installations, even if they are temporary, shall comply with all applicable laws, codes and standards and with the sanitation rules and they shall be equipped with reasonable comforts and water supply, electricity supply installations, sewage and fire protection facilities.

6.2 Hours of Work

Without any prejudice to the Subcontractor's obligation to meet the time for completion of the Work within the time specified in the Contract, the Subcontractor shall not carry out any work on Site during the night or on locally recognised days of rest without the consent of the Purchaser, unless the work is unavoidable or necessary for the protection of life or property or of the safety of the Plant and/or Distribution Centre, in which case the Subcontractor shall immediately advise the Purchaser. If work at night or rest days is considered necessary by the Subcontractor to meet the time for completion and such work can be performed in accordance with all statutory requirements, consents and licences, and without the inconvenience of third parties, the Purchaser shall endeavour to obtain from the Owner the permission to carry out such work during hours of night and/or of rest days.

The Subcontractor shall when preparing the schedule for the Work have due regard to any such limitations.

The Subcontractor shall notify the Purchaser in writing not less than forty-eight (48) hours prior to start working overtime, overnight or on working on Sunday or public holidays.

The Subcontractor is to perform night or overtime work and work during Sunday and public holiday in accordance with the provisions of the applicable law and regulation, after having obtained the permission of the appropriate authorities and obtaining the Purchaser's consent thereto. Obtaining the permission of the authorities in due time and paying the applicable taxes and fees shall be the obligation of the Subcontractor.

The Subcontractor shall not be granted any extension of time and postponement of the Milestones by the Purchaser due to refusal of any such permission to work during the night, overtime or to work on Sunday and public holidays by the authorities.

The Subcontractor is not entitled for additional compensation due to overtime worked unless such work is instructed by the Purchaser, which provision does not apply to overtime in relation to Work for which payment by virtue of a Lump Sum Portion has been agreed. If night work or overtime work or work during Sunday and public holiday are instructed by the Purchaser, the Subcontractor shall adhere to all legal requirements, including the observation of the maximum time and recreation periods which have to be observed in relation to each person of the Subcontractor's work force.

6.3 Clearance of the Site

At all times during the progress of the Work the Subcontractor shall clear away and remove from the Site all surplus materials and rubbish and, on completion or when no longer required for the performance of the Work and/or all Subcontractor's equipment and facilities. The Subcontractor shall at all times leave the Site and the Plant and the afforded part of the Site clean and in a safe and workmanlike condition to the Purchaser's reasonable satisfaction.

6.4 Equipment, Machinery and Tools

The Subcontractor is forbidden to remove from the Site Subcontractor's equipment before performance of the Work or any other part required for the performance of the Work, without prior having obtained and received the Purchaser's written approval therefore.

7. CATEGORIES OF WORK AND THEIR PAYMENT

7.1 Lump Sum Portion

The description of the work packages and the scope of work in the technical specification shall not be deemed to depict the finest level of detail. The Subcontractor accordingly warrants that he is sufficiently skilled and has appropriate experience and knowledge to understand the Purchaser's requirements based on the Contract. The Subcontractor shall have included in the Lump Sum Portion sufficient and adequate allowances to cover any and all act or omissions and/or ambiguities as any well-experienced contractor might detect within the Contract documents.

7.2 Additional Work

Whenever the Subcontractor regards any part of work not to be included in the Lump Sum Portion, then the Subcontractor shall immediately but not later than seven (7) days upon discovery issue a Request for Payment of Additional Work. Any delay in serving a Request for Payment of Additional Work to the Purchaser shall entitle the Purchaser to reject the request.

If the Purchaser considers the part of the Work as a part, which a well-experienced contractor could not have assumed to be part of the Work (including Plant) for which a Lump Sum Portion is payable, then the Purchaser shall sign the request, after the parties have agreed on the price and delivery dates and other specific issues to this particular part of the Work.

7.3 Prices

The Subcontractor warrants that the Contract Price for the Work and the unit prices agreed for the goods and/or services under this Contract are as low as the lowest prices charged by the Subcontractor to any other purchaser purchasing like goods and/or services in the same or smaller quantities and under like circumstances. The rates, unit prices, Contract Price and the Lump Sum Portion specified in this Contract are firm and not subject to change except as expressly provided herein.

7.4 Request for Payment of Additional Work issued by Subcontractor

Prior to the commencement of any Additional Work, a Request for Payment of Additional Work shall be submitted to the Purchaser. In case the Purchaser requires the Subcontractor to execute such Additional Work, the Purchaser shall make his decision and instructions known to the Subcontractor and sign the Request for Payment of Additional Work at the foreseen location of the form. Performance of any work not instructed by the Purchaser shall not entitle the Subcontractor for claiming an extension of time, postponement of any Milestone or compensation. Notwithstanding the foregoing, the Subcontractor shall continuously perform any work with due diligence and care.

7.5 Additional Work instructed by Purchaser

The Subcontractor is obliged to execute Additional Work throughout the term of the Contract.

Additional Work ordered by the Purchaser with a Change in Work Notice - up to fifteen percent of the Contract Price - neither entitles the Subcontractor to claim for an extension of time nor to fail in meeting any Milestone. The Subcontractor must be capable to mobilise and dispose sufficient resources on short notice; such as qualified manpower, equipment, tools, but not limited thereto, to absorb the required changes, additions, modification and/or alteration.

If such a Change in Work Notice is issued for Additional Work and a duly acting contractor could accordingly not achieve a Milestone by the corresponding Milestone despite his utmost efforts, then it is the Subcontractor's obligation to make the Purchaser aware thereof and such extension shall only become effective upon agreement with the Purchaser on further term of time of performance and/or impacts on other Milestones effected by the Change in Work Notice.

7.6 Hourly Paid Work

The Subcontractor shall not be entitled for payment on an hourly or daily rate basis for any services unless:

- (a) a written order has been issued by the Purchaser prior to the beginning of the performance of such supplies or services which also specifies the applicable hourly or daily rates, if applicable pursuant to Attachment 3; and
- (b) the Purchaser's site management has, on the Purchaser's special forms, acknowledged the daily man hours spent in performance of the Work and the hours or days in which special tools or other facilities were used, as well as bill of quantity of materials consumed.

The Subcontractor shall for the performance of any such supplies and services primarily engage the personnel already present on the Site, so that no additional travelling expenses will be incurred. Costs incurred by the Subcontractor for tools or other facilities shall not be reimbursed by the Purchaser if such tools or other facilities are already available on the Site.

8. TERMS OF PAYMENTS

8.1 Terms of Payment for the Lump Sum Portion

Payments for the Work ordered for a Lump Sum Portion shall be made as set forth below and after the Purchaser has received all documents in compliance with the Contract as set out below and including the Subcontractor's commercial invoice documenting the progress and completion of the Work being part of the Lump Sum Portion.

In particular, except otherwise agreed upon between the parties, the following terms of payment shall apply:

- 10% (ten per cent) of the Lump Sum Portion shall be paid upon Purchaser's receipt of Subcontractor's commercial invoice with the following attached documents:
- (i) Acceptance of the Purchase Order; and
 - (ii) Original of the performance security according to Clause 8.4; and
 - (iii) All documents due at time of Contract signature according to the document submittal schedule (e.g. Subcontractor's time schedule for the Work according to contract milestones, organisation chart, etc.); and
 - (iv) Subcontractor's insurance confirmation required under Clause 11.
- 40% (forty per cent) of the Lump Sum Portion shall be paid after achievement of Milestone No. ____*, and upon Purchaser's

receipt of Subcontractor's commercial invoice with the following attached documents:

- (i) Copy of Purchaser's written confirmation of achievement of relevant Milestone; and
- (ii) Signed document "Partial Release of Material and Waiver of Liens" in the amount of the Contract Portion paid until the date of invoice (including any payment for time and material work).

40% (forty per cent) of the Lump Sum Portion shall be paid after achievement of Milestone No. ____* (provisional acceptance of the Work), and upon Purchaser's receipt of Subcontractor's commercial invoice with the following attached documents:

- (i) Copy of Purchaser's written confirmation of achievement of relevant Milestone; and
- (ii) Signed document "Partial Release of Material and Waiver of Liens" in the amount of the Contract Portion paid until the date of invoice (including any payment for time and material work).

10% (ten per cent) of the Lump Sum Portion shall be paid after Purchaser has finally accepted the Work, and upon Purchaser's receipt of Subcontractor's commercial invoice with the following attached documents:

- (i) Copy of final acceptance certificate issued by the Purchaser;
- (ii) Copy of confirmation by Purchaser that all quality management documentation has been received by Purchaser; and
- (iii) Signed document "Final Release of Material and Waiver of Liens" in the amount of the final Contract Price (including any payment for Additional Work).

* Reference appropriate Milestone No. in the Purchase Order.

8.2 Terms of Payment for Additional Work

(a) Additional Work for a fix and firm price
Additional Work for a fix and firm price shall be paid by the Purchaser after the appropriate Work is completed, and after the Purchaser has received the following documents:

- (i) Reference number of the Change Order Notice; and
- (ii) Report of the appropriate Additional Work, duly signed by the Purchaser's site representative, verifying the completion of the appropriate work; and
- (iii) Appropriate quality assurance / quality management documents, if required; and
- (iv) Subcontractor's appropriate invoice referring to the corresponding Change in Work Notice; and
- (v) Provided this has been expressly provided for in Purchase Order that such items are not part of the fix and firm price, any invoice for installation material or third party performed services paid by the Subcontractor.

(b) Additional Work on a time & material or remeasure basis
Additional Work explicitly ordered on a time and material basis or on remeasure basis shall be paid based on the bill of quantities and the applicable unit rates stated in the document "Unit Rates for Material and Services of the Lump Sum Portion". The Subcontractor shall provide the rates for labour and specialists according to the Attachment 3 unless the rates and employment conditions pursuant to Clause 3.6 are applicable.

Agreed time based Additional Work requires the Subcontractor to have time sheets signed by the Purchaser's Site representative. At completion of Additional Work to be paid on the basis of remeasure, the Subcontractor shall measure the extra quantities in material used and have this bill of quantities signed by the Purchaser's Site representative.

The Subcontractor shall be entitled to invoice such Additional Work once per month and the Purchaser shall pay such Additional Work upon presentation of the following documents:

- (i) Reference number of the Change Order Notice; and
- (ii) Time sheets and bill-of-quantity reports of the appropriate Additional Work, duly signed by the Purchaser's site representative, and
- (iii) Appropriate quality assurance / quality management documents, if required; and
- (iv) Subcontractor's appropriate invoice referring to the corresponding Change in Work Notice; and
- (v) Where such sum of Additional Work is not included in the waiver of liens statement as part of the payment pursuant to Clause 8.1, a signed document "Partial Release of Material and Waiver of Liens" for the amount of this Additional Work.

(c) Additional Work from other sub-contractors and suppliers

If the Subcontractor is providing Additional Work (including but not limited to additional services and/or material, equipment, tools, etc), which he procures and supplies from any sub-contractor, vendor or supplier, such sub-contractor, vendor or supplier invoice amount is subject to a mark-up as agreed upon during the Contract negotiations, failing an agreement to a mark-up of eight per cent.

8.3 Commercial Invoices & related Information thereto

Commercial invoices that shall be submitted by the Subcontractor shall include following information, such as but not limited to:

- (i) Purchase Order No.
- (ii) Responsible Person of Purchaser
- (iii) Project Name "_____ " and Project Number
- (iv) Scope of Work (relevant status and progress including other supporting documentation, etc.)
- (v) Accrued contract price due in accordance with specified Purchaser's terms of payment
- (vi) The documentation and confirmations as requested for the relevant payment
- (vii) Due date for payment

8.4 Performance Security

At the date of execution of the Contract, the Subcontractor shall cause a first class bank or security company, reasonably acceptable to the Purchaser, to issue a bank guarantee or other form of security acceptable to the Purchaser in the amount of twenty percent (20%) of the Contract Price to serve as the Subcontractor's performance security. Such guarantee shall be irrevocable, unconditional (if necessary revolving) and payable on first demand by the issuer to the Purchaser without cavil or argument. The bank guarantee or other form of security shall not expire earlier than sixty (60) days after the scheduled final acceptance date of the Work by the Purchaser. The costs of issuing and maintaining of such security shall be borne by the Subcontractor.

8.5 Other Reservation of Payment

- (a) Payment of the relevant amounts into the bank account nominated by the Subcontractor shall discharge Purchaser's payment obligation.
- (b) Notwithstanding any other provision to the contrary contained herein, Purchaser shall be under no obligation to make any payment to Subcontractor during any period when the Subcontractor is in breach of the Contract and, Purchaser shall be under no obligation to effect such payment until and unless such breach is remedied.
- (c) Any payment made by Purchaser shall not be construed as a waiver of the right of Purchaser to object to any invoice so paid and Purchaser shall have the right to recover any overpayment, notwithstanding the issuance of final acceptance certificate by the Owner.
- (d) Payments by the Purchaser are due within sixty (60) days upon receipt of the fully justified invoice.

(e) Any late payment under this Contract shall attract interest at a rate of 2% (two per cent) above the then applicable 1-month LIBOR, with monthly compounding using ACT/360 method. For the avoidance of doubt, should the Purchaser wrongfully withhold a payment, the Subcontractor, by way of a sole and exclusive remedy, shall be entitled to interest at the rate set forth herein.

(f) Payments made for the Work prior to inspection, testing and acceptance at Site shall not be deemed to constitute an acceptance of the Work or a waiver of Purchaser's right to reject them later.

(g) Purchaser may withhold from payments to Subcontractor any amounts determined by the Purchaser necessary to satisfy any claims or any liens or threatened liens or claims arising from Subcontractor's performance of the Contract.

9. REMEDIES FOR DELAYS

9.1 Liquidated damages for late completion

The Subcontractor shall complete the Work or parts thereof by the Milestone dates stipulated in the Project and Work Time Schedule.

All parts of the Work identified in section ____* of the Project and Work Time Schedule shall be completed on or before the corresponding Milestone dates and shall in case of non-completion at the relevant dates be subject to the following liquidated damages applicable for each individual Milestone:

- a) 1st through the 5th day of delay: USD 1'000.00*
- b) 6th through the 10th day of delay: USD 1'400.00*
- c) 11th and further days of delay: USD 2'000.00*

For the completion of all of the Works, the Milestone No. ____* is applicable and in case of non-completion at the relevant date be subject to the following liquidated:

- d) Any day of delay USD 4'000.00*

The maximum aggregate liquidated damages payable for delay in delivery shall not exceed twenty percent (20%) of the final Contract Price.

* Insert Section and, if applicable and otherwise agreed, appropriate currency and amounts into the Purchase Order in the following form (for example):

Clause 9.1, Section 5.6, Milestone No. 14

Clause 9.1 a) - Amount is EUR 1'700.--

Clause 9.1 b) - Amount is EUR 2'000.-- (etc.)

9.2 Prolonged Delay

If the Purchaser has become entitled to the maximum amount of liquidated damages for delay in completion of the Work, he may by notice require the Subcontractor to complete the Work. Such notice shall fix a final time for completion. If the Subcontractor fails to complete the Work within such time, and the delay is due to a cause attributable to the Subcontractor, the Purchaser may by further notice to the Subcontractor either:

- (i) may himself complete the remaining Work or part thereof at the Subcontractor's cost, or
- (ii) have a third party completing the remaining Work or part thereof at the Subcontractor's cost, or
- (iii) terminate the Contract or part thereof.

If the Purchaser chooses to terminate the Contract, he shall be entitled to recover from the Subcontractor, apart from the maximum liquidated damages for delay, any losses he has suffered because of such prolonged delay.

9.3 Liquidated Damages are not Penalties

The Subcontractor and Purchaser agree that:

- (i) the terms, conditions and amounts fixed as liquidated damages do not constitute a penalty and are reasonable in light of the damages that the Purchaser might sustain due to the Subcontractor's failure to meet agreed delivery dates and promised warranties and guarantees, and
- (ii) these amounts have been fixed as liquidated damages because of the difficulty in ascertaining the exact amount of damages that may be sustained by the Purchaser and shall be applicable regardless of the actual amount of damages sustained.

10. ACCEPTANCE OF WORK, CARE OF WORKS AND PASSING OF TITLE

10.1 Acceptance of Work

Acceptance and deemed completion of the Work shall occur only when all of the following has been fulfilled:

- (i) The Work complies with the Contract and has successfully passed all acceptance tests;
- (ii) all documents of any kind requested as part of the Work have been delivered to the Purchaser; and
- (iii) the Subcontractor has provided the signed document "Final Release of Material and Waiver of Liens".

The Warranty Period shall be twenty-four (24) months starting at the date of acceptance of the Work by the Purchaser.

10.2 Delay in Acceptance

If acceptance of the Work is delayed, for which the Subcontractor is responsible and such delay is not excused under the Contract, then Clause 9 shall apply.

10.3 Use before Taking-Over

The Purchaser shall have the right to use the Plant and Work or any part thereof prior to the acceptance of the Plant or Work or any part thereof. Any taking into operation for the purpose of commissioning, integration checking proper functioning, training, demonstration of Plant or Work to Owner and authorities, meeting of guarantees, verification of reliability and availability and executing the tests for completion shall not be deemed use before acceptance. The Purchaser shall bear the costs for making good any damage to such parts due to improper use thereof by the Purchaser and for normal wear and tear.

10.4 Risk of loss of and damage to Plant and Distribution Centre

The Subcontractor shall take full responsibility for the custody and care of any Plant and any part of the Distribution Centre entrusted to him during the performance of the Work, and shall without prejudice to the generality of the foregoing, use reasonable skill, care and due diligence to avoid any loss or damage to the said Plant and/or any part of the Distribution Centre.

If any damage or loss occurs to any part of the Plant and/or the Distribution Centre while the Subcontractor is responsible for the custody and care thereof, the Subcontractor shall, subject to the insurance provisions, bear the cost to reinstate, replace or repair the same but the Subcontractor shall have no liability for that part of the damage resulting from a negligent act or omission of the Purchaser or any person for whom the Purchaser is responsible or from circumstances beyond the reasonable control of the Subcontractor.

Any repair or reinstatement or replacement of such damaged or lost material shall be to the sole and exclusive discretion of the Purchaser. The costs incurred by the Purchaser for such repair or reinstatement or replacement of such loss or damage shall be reimbursed by the Subcontractor to the Purchaser.

The Subcontractor is released of his responsibility for custody and care upon completion of the Work.

10.5 Risk of loss of and damage to Work

The risk of loss of and damage to the Work or any part thereof shall pass over from the Subcontractor to the Purchaser at the date of final acceptance of the Work by the Purchaser.

10.6 Passing of Title

It is agreed by the Parties that the title to the Work or any parts thereof (which shall include Work in progress) shall pass to the Purchaser at the date when payment for such Work is affected by the Purchaser.

10.7 Liens and Claims

The Subcontractor shall indemnify, defend and hold harmless the Purchaser and/or the Owner from and against:

- (i) all claims, demands, suits, liens or charges or encumbrance upon the Work;
- (ii) any other claims and damages arising from any defect in title;

and

- (i) any loss of or damage to the Purchaser's or Owner's property; and
- (ii) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons

caused by, or arising out of, or in any way in connection with the Subcontractor's performance of the Work, including in each case all expenses and attorneys' fees.

11. INSURANCE

11.1 General

Notwithstanding the provisions on insurance, the Subcontractor shall take out any other insurance that he considers necessary.

The Subcontractor is obliged to notify the Purchaser about any incident and/or occurrence of loss or damage, whether it is resulting later in a claim under the above-mentioned insurance cover or not. The Subcontractor shall give such notice not later than twenty-four (24) hours after the occurrence or its discovery thereof. Any notice received after the above mentioned period will be submitted by the Purchaser to the insurer, the Purchaser shall however not be liable, if the insurer rejects such a claim due to late notification.

Any notification made by the Subcontractor shall contain appropriate detailed information. Notwithstanding the foregoing, the Subcontractor is obliged to reveal any other information and/or document that are required by the Purchaser.

The Purchaser shall not be liable and addressed for any recourse, by which the Subcontractor intends to recover costs, other than recourse against the Purchaser.

In the event the Subcontractor is responsible for a delay, which results in an extension of the insurance period, or in any increase of risks, any additional costs for premiums then those shall be born by the Subcontractor.

11.2 Construction / Erection all Risk Insurance

If explicitly stated in the Purchase Order, the Subcontractor is included in the cover under the Purchaser's Construction / Erection all Risk Insurance policy subject to full compliance by the Subcontractor with applicable terms and conditions. This insurance policy can be viewed at the Purchaser's Site office upon Subcontractor's request.

If this insurance is taken out according the Purchase Order, it has the following deductibles for appropriate occurrence:

- (a) Losses due to fire, explosion, act of god:
USD 5'000.00* per occurrence

- (b) Losses in respect of Plant and Work:
USD 10'000.00* per occurrence
- (c) all others:
USD 20'000.00* per occurrence

* If other amounts are applicable, insert appropriate amounts into the Purchase Order.

In respect of occurrences of loss and damage, where more than one of the above items of plant or equipment is lost or damaged, only the highest deductible shall be deducted for such a certain occurrence.

11.3 Subcontractor's Public Liability Insurance

Within ten days of the execution of the Contract, the Contractor shall submit to the Purchaser a certificate issued by the Subcontractor's insurer certifying that the Subcontractor has indemnity cover for public and third party liability and in particular for Subcontractor's liability for death, bodily injury, disease and damage to property to third parties in connection with performance of the Work and that such cover is in place during the validity of the Contract. The sum insured shall be a minimum of two million US Dollars (or such other amount which may be determined by the Purchaser in the Purchase Order) for any one occurrence.

11.4 Subcontractor's Other Insurance Obligations

The Subcontractor must effect and have in place the Workers Compensation Insurance and the Comprehensive Automobile Liability Insurance latter with cover for bodily injury and property damage to third parties as well as insured, in particular as well for any vehicle, lifting equipment etc. used on Site.

11.5 General Insurance Requirements

If explicitly stated in the Purchase Order, then the insurance required to be effected by the Subcontractor pursuant to Clauses 11.3 and 11.4 shall be effected with an insurer and on the terms to be approved by the Purchaser (such approval not to be unreasonably withheld) and the Subcontractor shall from time to time, when so required by the Purchaser, produce the policy and receipts for the premiums or other satisfactory evidence of insurance cover.

11.6 Right of Retention

In no event shall the Subcontractor in case of the occurrence of any damage be entitled to delay or suspend the performance of the Work or any parts thereof, irrespective of whether or not the facts related to such damage have been established, the liability has been settled, or payments have been made by the insurer.

Attachments:

- Attachment 1: Form of Request for Payment of Additional Work
- Attachment 2: Form of Change in Work Notice
- Attachment 3: Form of Rates for the Personnel and Specialists of the Subcontractor for Work and Services at Site

12. MISCELLANEOUS

12.1 Notices and Communications

Any notice and communications provided by the Subcontractor shall be served to the Purchaser's address given in the Purchase Order and in parallel to the Site address.

12.2 Applicable Law and Place of Jurisdiction

The Contract shall be governed and interpreted in accordance with the provisions and stipulations of this Contract and law applicable at the location of Site, with the exclusion of the rules of the United Nations' Convention on Contracts for the Sale of Goods and any private law conflict principles.

The place of jurisdiction is the domicile of the Purchaser, whereas the Purchaser reserves the right to sue the Subcontractor at the same place as any proceedings between the Purchaser and the Owner would take place, in the event that the Purchaser is sued because of a default by the Subcontractor. Further, the Purchaser reserves the right to institute legal proceedings against the Subcontractor at the domicile of the Subcontractor.

12.3 Severability

If at any time any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that shall not affect or impair the legality, validity or enforceability of any other provision of the Contract. Should a provision prove to be illegal, invalid or unenforceable, the parties shall by agreement in writing replace such provision by another approximating as far as possible the legal and economic result of the illegal, invalid or unenforceable provision.

12.4 Independent Contractor

The Subcontractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with Purchaser other than that of Purchaser and independent contractor, nor shall it be construed as creating any relationship whatsoever between Purchaser and independent contractor's employees. Neither the Subcontractor, nor any of its employees, are or shall be deemed to be employed by the Purchaser.

12.5 Non-discrimination in Employment & Affirmative Action

The Subcontractor shall comply with the rules, regulations and relevant governmental orders and acts of age, gender and disability non-discrimination, child work and sexual harassment and any other similar orders, acts or laws to the extent applicable to this Contract.

Attachment 1

From: Subcontractor To: Swisslog _____

Name: _____ Name: _____
Issued by: _____ Received by: _____
Date of issue: _____ Date of receipt: _____

Request for Payment of Additional Work:
(to Contract No.: _____)

No: _____

Issue:

Impact in time: _____
Impact in price: _____
Impact in quantities: _____

The Purchaser's decision / instruction:

declined: _____

ordered: [] herewith as Change in Work Notice No.: _____

Price: [] _____ USD (lump sum)

Basis: [] remeasured on the basis of time and material based on Unit Rates

Basis: [] deemed included in the Lump Sum Portion

Delivery date and/or due date &

Place: _____ (Site)

Issued by: _____ (the Purchaser's Site Manager)

Date of issue: _____

Received by Subcontractor on: _____ (date and signature)

Accepted by the Subcontractor: Name: _____ Date: _____

Signature of Subcontractor's Representative: _____

Attachment 2

From: Swisslog _____

To: Subcontractor

Name: _____

Name: _____

Issued by: _____

Received by: _____

Date of issue: _____

Date of receipt: _____

Change in Work Notice:

No: _____

(to Contract No.: _____)

Work:

Required Date of Completion: _____

Price: _____ USD (lump sum)

Basis: remeasured on the basis of time and material based on Unit Rates

Place: _____ (Site)

Issued by: _____ (the Purchaser's Site Manager)

Date of issue: _____

Issued by the Purchaser: _____
(signature)

Subcontractor's Acknowledgement:

Place: _____ (Site)

Date:

Received by: _____ (name in print)

Subcontractor's Representative: _____
(signature)

Attachment 3

Rates for the Subcontractor's Personnel for Work and Services at Site

The Subcontractor as part of his offer shall duly fill out the table below.

Daily Rates for _____ hours / week <input type="checkbox"/> at Swisslog offices <input type="checkbox"/> at the Site	Cat.	<u>Duration of uninterrupted Presence at Swisslog Offices or the Swisslog's Customer Site Premises</u>				
		Max. 1 week	Max. 2 weeks	Less than 3 weeks	More than 3 weeks	Over- time
Skill and Experience*		1	2	3	4	5
Labourer & Cleaner	1					
Electrician Fitter Technician	2					
Scaffolder or Forklift Operator	3					
Electrical Mechanic	4					
Electrician	5					
Electrical Engineer	6					
Electrical Foreman	7					
Site Manager	8					
Trouble Shooting Specialist	9					
Daily Allowance for all Categories						

* These are examples of qualifications for the purpose of illustration; fill in and use as appropriate qualifications for the type of work and services offered.

The rates above shall be all inclusive and shall for the avoidance of doubt include without limitation all travel expenses, workman compensation insurance, compensation for sickness, leave and superannuation and long service leaves, briefing and debriefing activities, any support from the Subcontractor's offices, communication and other extra expenses. The maximum amount of hours to be paid by Swisslog to the Subcontractor shall not exceed the maximum amount of hours that the local law allows an employee to work per week. Any exception hereto must be specifically agreed in writing by Swisslog.