

STC Project ROW

Directive

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1. SUBJECT MATTER OF CONTRACT

These Conditions of Contract for Project Purchasing concerns the design, engineering, procurement, manufacture, delivery, erection, commissioning, testing, guarantee and warranty of the Goods & Services ("Deliverables") to be provided by Supplier.

All contractual documents must be complied with including any special conditions or project specific terms and conditions issued by Swisslog. If there is an ambiguity or discrepancy in the documents, Swisslog shall issue any necessary clarification or instruction to Supplier. The priority of documents shall be as set forth in Purchase Order. If no priority has been agreed elsewhere the following priority shall apply:

- (i) Purchase Order
- (ii) These Conditions of Contract
- (iii) Technical Specifications
- (iv) Swisslog's Request For Quotation ("RFQ")
- (v) Offer document of Supplier
- (vi) Other contract relevant documents

2. DEFINITIONS AND INTERPRETATIONS

2.1 Definitions

The following defined terms, when used in the Contract and/or in communications related to the Contract, shall have the following meanings:

"Applicable Law" shall mean each applicable national, federal, state, provincial, county or local law, legislation, including statutory instrument, regulation, ordinance or any rule, license, order, consent, permit or other approval having the force of law, and/or any treaty (including any supranational law such as a law of the European Union) and/or any judgement, decree, injunction, or order of any court applicable at the location of the Site and/or any country where the Work is being performed.

"Change Order" shall have the meaning given in Clause 9 hereof.

"Contract" shall mean the Purchase Order, these Conditions of Contract and all documents described therein as belonging to the Contract and shall include Change Orders and amendments thereto.

"Contract Price" shall mean the total sum set forth in the PO to be paid by Swisslog to Supplier for the due and timely execution of the Work.

"Defect" shall mean any defect, deficiency, failure, lack of conformity, deviation, reduction of availability or reliability omission, shortcoming or error of any type or kind in any part of the Deliverables including:

- (i) in design, materials, manufacture or workmanship of the Deliverables;
- (ii) in any documentation, drawings, manuals, instructions; recommendations, advisory notes supplied by Supplier;
- (iii) an increase in costs of operation or maintenance of the Deliverables, unless solely attributable to the improper manner in which the Deliverables is operated and/or maintained by Swisslog and/or Owner;
- (iv) a violation of Applicable Law or Design Code;
- (v) a health and/or safety hazard;

"Defects Liability Period" shall mean the period set forth in Clause 6.2, which shall commence Take Over, extended pursuant to Clause 6.3 and 6.4.

"Deliverables" or **"Deliverable"** shall mean the equipment,

structures and enclosures, machinery, systems, materials, articles, computer hardware and software and items of all kinds for permanent incorporation and spare parts, manuals and other documentation, to be provided by Supplier under the Contract. The term Deliverables shall also include any part thereof.

"Work", being part of the Deliverables, shall mean all services for engineering, training, consulting, transportation, erection, commissioning, translations, documentation etc. and all other work and services set forth in or to be reasonably inferred from the Contract. "Work" shall include any changes to the Work made pursuant to Clause 9. The term Work shall also include any part thereof.

"Design Codes" shall mean any and all codes of practice, regulations and standards applicable to the Deliverables (including those required to be adhered to in order to obtain any necessary license and/or certificates), such as, but not limited to, those listed in the Technical Specifications in the country where the Site is located.

"Documentation" shall mean all specifications, data sheets, plans, drawings, manuals and other information and documents required in connection with the Deliverables, including without limitation all such information and documentation set forth and/or listed in the Contract.

"Effective Date" shall mean the date when the PO is issued by the Swisslog and becomes effective.

"Execution Specifications" shall mean documents that Supplier has provided and were approved by Swisslog describing the Deliverables including all calculations, drawings and other information incorporated by reference thereto.

"Factory Acceptance Test" or **"FAT"** shall mean the test for the Deliverables that is required to take place prior to shipment and defined in the Specification. The FAT is organized by Supplier in his premises. Supplier will inform Swisslog when organizing the FAT. The FAT results are to be documented.

"Final Acceptance" shall mean the date upon which Owner issues a Final Acceptance Certificate.

"Final Acceptance Certificate" or **"FAC"** shall mean the certificate to be issued by Owner, stating it has finally accepted the Deliverables (Clause 8.3).

"Force Majeure" shall have the meaning given in Clause 13.

"Good Industry Practice" shall mean the exercise of the degree of skill, care, diligence and prudence which would reasonably and ordinarily be expected from a skilled, experienced and competent supplier carrying out the Work or any part thereof under the same or similar circumstances, having regard, inter alia, to the terms and conditions pertaining to design, engineering, procurement, manufacture, supply, erection, commissioning, testing, guarantee, warranty, safety, durability, economy, reliability Deliverables, as set forth in the Contract.

"Incoterms" shall mean the terms set forth in Incoterms 2020 or the valid version of the Incoterms at the time of ordering, provided however to the extent that such Incoterms are expressly modified herein, such modified terms shall apply.

"KUKA Group" shall mean KUKA Aktiengesellschaft and/or any companies in which KUKA Aktiengesellschaft directly or indirectly holds a majority interest or which is directly or indirectly controlled by KUKA Aktiengesellschaft.

"Latent Defect" shall mean a Defect, which could not have been discovered by an examination made with ordinary care at or after Take Over.

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"Latent Defects Liability Period" shall mean the period as set forth in Clause 6.5.

"Liquidated Damages" shall have the meaning given to it in Clause 10.3.

"Milestone" shall mean the completion of a specified activity, of a certain percentage and/or part of the Deliverables.

"O&M" means operation and maintenance of the Deliverables.

"Open Points List" shall mean a list of incomplete or defective Deliverables, which are minor in nature.

"Owner" means the company purchasing the Deliverables pursuant to the terms of the Prime Contract and shall include Owner's representatives, legal successors and assigns, Owner's engineer and where tests must be conducted, or approvals or consents must be sought and obtained in relation to the Deliverables.

"Prime Contract" shall mean the contract between Swisslog and Owner for the supply of the Deliverables or alternatively between Swisslog, as subcontractor, and a party that has entered into an Engineering, Procurement and Construction Contract with Owner.

"Purchase Order" or **"PO"** shall mean the document issued by Swisslog awarding the Work to Supplier thereby causing the Contract to come into force or alternatively, any other instrument of contract of the same effect.

"Swisslog" shall mean the Swisslog Company named as the ordering party in the respective Purchase Order, order confirmation or contract.

"Site" shall mean the place provided by Owner where the Deliverables shall be provided/installed.

"Subcontract" shall mean a contract between Supplier and a Subcontractor for part of the Deliverables.

"Subcontractor" shall mean any person or company having a contract with Supplier for part of the Deliverables.

"Substantial Completion" shall mean that the Deliverables have been supplied, installed, inspected, commissioned on a stand-alone basis, and is ready for safe and reliable use as intended and/or, if applicable, ready for final commissioning and performance testing in conjunction with other parts in accordance with the Contract in order to achieve Provisional Acceptance.

"Supplier" shall mean the person or company supplying equipment and services to Swisslog pursuant to the Contract.

"Supplier's Equipment" shall mean all machinery, tools, equipment, utilities, facilities etc. required for the execution and completion of the Deliverables and the remedy of any defects.

"Supplier's Representative" shall have the meaning given to it in Clause 4.1.

"Take Over" [or **Provisional Acceptance**] shall mean the acceptance of the Deliverables by Owner as confirmed by the issue of a Take Over Certificate (Clause 8.1).

"Take Over Certificate" [or **Provisional Acceptance Certificate**] or **"PAC"** shall mean the certificate to be issued by Owner and/or Swisslog, certifying that it has provisionally accepted the Deliverables.

"Technical Specifications" shall mean the requirement specification attached to and available at the Effective Date and all of the documentation (including later the Execution Specification and other documentation provided by Supplier, if accepted expressly in writing by Swisslog) relating to the Deliverables including such items as (i) the performance

specification of the Deliverables, (ii) the details of how the Deliverables shall be executed, (iii) the master time schedule for the execution of the Deliverables and (iv) the testing procedures and performance guarantee measuring and evaluation criteria.

"Test on Completion" shall mean the tests to be conducted prior to Final Acceptance, including (i) the performance tests to verify whether the Deliverables related performance guarantees have been met and (ii) the tests to verify compliance with Applicable Law and Design Codes.

"Warranty(ies)" shall refer to those warranties set forth in the Contract.

"Warranty Periods" shall mean the period during which any Warranty for Defects or Latent Defects is applicable.

2.2 Interpretation

- (i) 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, email, DocuSign and similar.
- (ii) References to the word "include" or "including" are to be construed without limitation.
- (iii) The table of contents and the headings to each Clause, Section Appendix, Schedule have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained, nor govern the rights, obligations or liabilities of the parties hereto.

2.3 Applicable terms and conditions

The legal relationships between Supplier and Swisslog are governed exclusively by these Conditions of Contract. Conflicting or deviating terms and conditions are hereby expressly rejected.

2.4 Data Protection

The Parties shall collect and process personal data in accordance with applicable data protection laws, in particular the General Data Protection Regulation of the European Union of 4th May 2016 (EU 2016/679; "GDPR") and any local data protection laws. Personal data which come to our attention in connection with the business relationship will be used exclusively within the scope of the specified purposes and for the fulfilment of the contractual relationship. The information notice for the processing of personal data at Swisslog in accordance with Art. 13 GDPR can be found under the following link: <https://www.kuka.com/Process>.

Supplier shall ensure that all persons entrusted with the provision of services comply with the statutory provisions on data protection and are bound in writing to maintain data secrecy. The corresponding declarations of commitment must be provided to Swisslog upon request.

If, in the course of providing services, Supplier processes personal data on behalf of third parties, they are obliged to immediately conclude with Swisslog a (sub)order processing contract, supplied by the latter, in accordance with Art. 28 GDPR.

2.5 Formation of Contract

Supplier's offer shall be prepared free of charge. It shall explicitly point out any deviations from Swisslog's request for

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proposal as well as any ambiguities, gaps or technical specifications contained therein which may impair the suitability of the Deliverables for the purpose for which they are intended or with regard to the latest state of the art or regulations and applicable laws.

Swisslog's PO or any changes or amendments thereto shall be binding only if made in writing. Drawings, specifications, etc. referred to in the PO shall form an integral part thereof.

Swisslog's may revoke POs at any time until they are confirmed in writing by Supplier, without any liability towards Supplier. Swisslog's shall receive the order confirmation immediately.

The Contract comes into force either by signing of the PO by Supplier or by issuing an order confirmation, provided that, such order confirmation shall explicitly point out any deviations from the PO and Swisslog has accepted such deviations in writing.

2.6 Severability, Amendments and Changes to the Contract

If at any time any provision of the Contract is, or becomes illegal, invalid or unenforceable, this 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 replace the same with another provision that from a legal, technical and economic perspective has a similar affect.

Amendments or modifications to the Contract shall be valid if in writing and signed by each party, pursuant to Clause 9.

3. WORK

3.1 Work

Supplier shall provide the Deliverables in a proper manner, at the times set forth in the Contract. Save where the Contract expressly provides otherwise, the cost of providing the Deliverables shall be exclusively borne by Supplier. The Deliverables are described in the Technical Specifications and in the Contract. The Deliverables shall be in accordance with the Contract, of high quality and fit for the purposes for which they are intended. Further, the Deliverables shall include any and all works, supplies and/or services which, while not being mentioned in the Contract, are to be reasonably inferred therefrom, including anything necessary for stability or completion or safe and reliable efficient operation of the Deliverables in accordance with Applicable Law and the Design Codes.

3.2 Prevailing Circumstances

Supplier warrants that it has acquainted itself with all facts, data, documents, circumstances, requirements, impediments (if any) and considerations relevant to the Deliverables.

In particular, Supplier warrants that:

- (i) it has carefully considered the manner of execution of the Deliverables, it has acquainted itself with all permitting and other legal requirements relevant to the Deliverables, it has familiarized itself with the condition of and all circumstances affecting the Site (including the location and size of that portion of the Site upon which the Work will be performed, the availability, suitability and location of any utilities or facilities and the location, suitability and size of any laydown and/or storage area), the means of transport available, the prevailing labor practices; and
- (ii) it has or will have, when needed, all technical, project management and material, manufacturing, equipment and financial means necessary for the

proper, timely performance of the Contract, including all personnel and labor needed to perform the Work including the Warranty obligations.

3.3 Full Responsibility for the Work

Supplier shall be responsible for its own interpretation of any documentation and information received and gathered by it. In particular, no document or information obtained by Supplier from Swisslog in connection with the Contract shall in any way release Supplier from its obligation to review such document and information and independently verify the same and furthermore to obtain any additional information and data from Swisslog or from other sources, where appropriate, in order to ensure prompt and proper provision of the Deliverables.

3.4 Origin of Deliverables

Supplier shall manufacture, procure and deliver the Deliverables (including labor resources) from the agreed places of origin to satisfy any applicable treaty or financing obligation which Swisslog may have to adhere to and to avoid any export/import control violation.

Supplier shall, at the time of delivery, declare the origin of the Deliverables and provide the certificate of origin before dispatching any part of the Deliverables from the factory of Supplier.

3.5 Commencement, Progress and Completion

Supplier shall commence providing the Deliverables on the Effective Date. Thereafter, it shall proceed diligently and in a professional manner with the provision of the Deliverables in accordance with the approved schedule. Supplier shall ensure that each Milestone is completed by the respective Milestone date.

3.6 Erection, Commissioning and Training

a) Erection and Commissioning

The Deliverables shall include all related Work at Site required for the storage, erection, commissioning, testing and trial operation of the Deliverables.

Supplier shall provide all Supplier's Equipment of whatever kind, commissioning spares and consumables required for these services as needed to achieve the contractual delivery dates.

b) Training

The Deliverables shall include the training and instruction of Swisslog and Owner O&M personnel. The training shall be such that the O&M personnel shall be able to operate and maintain the Deliverables without further assistance from Supplier and shall include theoretical and on the job training.

c) Completion of related work at Site

The work at Site shall include the performance of the services set forth in Section 3.6 a), completion of the training set forth in Section 3.6 b), supply of all documentation including the O&M Manuals and "as built" documentation in the language of the Site and the removal from Site of all Supplier's Equipment, debris and/or other items not forming part of the Deliverables and cleaning up, leaving and vacating of the Site in a safe and orderly condition.

3.7 Provision of Spare Parts and Consumables and After Sales Services

a) Spare Parts and Consumables

Three months prior to starting at Site or at any date agreed upon between the Parties, Supplier shall provide:

- (i) a list of; recommended spare parts, wearing parts and

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consumables to be held at site in order to achieve the agreed availability. The price shall be fixed for three years from Take Over. Swisslog may place a PO for the spare parts as a change order to the Contract, or a separate PO.

- (ii) an estimate of the quantity of spare parts, wearing parts and consumables required to operate the Works for a period of 5 years.
- (iii) undertake not to sell maintenance services and spare parts of any kind directly to Owner, unless otherwise agreed in writing with Swisslog.
- (iv) ensure that spare parts, wearing parts and consumables (or an equivalent replacement) are available for a minimum period of 10 years after Take Over.

For the avoidance of doubt, spare parts and tools shall include any and all hardware and software relating to computers, whether such items are required to keep the Deliverables operational or to diagnose and trouble shoot or up-grade and refurbish the Deliverables.

b) Procurement from other Sources

Nothing in this Clause shall compel Swisslog to buy any spare parts, consumables from Supplier.

c) Provision of After Sales Services

Supplier shall have an adequate "After Sales Service Organization", which shall be dedicated to assisting in maintaining a high availability and reliability of the Deliverables by specialized staff, in particular trouble shooting experts, spare parts, tools, consumable materials, etc. Supplier represents and warrants that said organization shall be available between the hours of 8 am and 5 pm from Monday to Friday (other than on national holidays).

Supplier warrants that within 24 hours of a request by Swisslog or Owner, it shall have an appropriate expert ready to travel to the Site or other designated destination.

Supplier shall upon receipt of Swisslog's request send to Site an appropriate number of expert(s) to support the operation, trouble shooting and repair. The expert(s) and/or specialist(s) shall be charged at the rate set out in the PO save where the expert is required to remedy Defects in the Deliverables which shall be free of charge. Supplier expressly waives any requirement that a separate PO be issued by Swisslog, prior to the dispatch of any expert to the Site, provided that Swisslog shall issue a separate Change Order or an additional PO in a timely manner in those cases where Supplier is entitled to compensation for such expert.

Supplier shall not sell spare parts, services or retrofit projects directly to the Owner without written permission from Swisslog. If Supplier is requested directly by the Owner to do so, then Supplier will immediately inform Swisslog. Swisslog will advise Supplier how to proceed.

d) Long Term Services Contract

Prior to Take Over Swisslog may purchase from Supplier a service package for the operation, maintenance and repair, as the case may be. In order to enable Swisslog to evaluate and to decide how to proceed Supplier shall provide an offer for such services as requested by Swisslog.

4. STAFF AND PROJECT ORGANISATION

4.1 Supplier's Staff and Representative (Project Manager)

Supplier shall use qualified and experienced personnel to perform the Work. Supplier shall, within fourteen days of the

Effective Date, submit to Swisslog the names and particulars of the project manager, site manager and persons at the head office for support. Supplier shall not change Supplier's Representatives without the prior consent of Swisslog.

Supplier's Representative shall have full authority to act on behalf of Supplier. All notices, information and other communications given by Supplier to Swisslog shall be submitted by Supplier's Representatives.

4.2 Scheduling

Supplier shall, within ten days after the Effective Date provide a detailed time schedule for approval by Swisslog, showing the critical path of the Work. Such time schedule shall show the Milestones and all essential activities, during planning, design, engineering, procurement, manufacturing, inspection, testing, preparation for dispatch, transport, erection, commissioning and final testing activities.

If Supplier's progress falls behind the agreed Time Schedule or it becomes apparent that it will fall behind the agreed Time Schedule, Supplier shall promptly submit to Swisslog a revised time schedule showing the steps being taken to expedite progress irrespective of the cause of delay and do its utmost to make good any delay. Measures for expediting progress shall include, without limitation, the use of additional manpower and material, shift work, working on weekends and public holidays. The costs incurred in relation to such measures shall be borne by Supplier unless Swisslog has caused such delay.

4.3 Monitoring

Swisslog and/or Owner shall have unrestricted access to the Work at Site and reasonable access to Supplier's and Subcontractors' factories and/or other facilities.

4.4 Inspection and Quality Assurance

Supplier shall implement an appropriate and recognized quality assurance program.

All Deliverables furnished and Work performed shall be properly inspected by Supplier at its expense and shall at all times be subject to quality surveillance and quality audit by Swisslog. Supplier and its Subcontractors shall make available all necessary facilities for the inspection of the work.

4.5 Health and Safety ("H&S")

Supplier acknowledges the requirement to furnish its offer only after appropriate analysis of the requirements according to the size and complexity of the Deliverables. Supplier is aware of its need to uphold the expectations of legislative compliance and will adhere to all applicable legal statutes and local compliance requirements. Supplier shall in minimum meet the quality standard ISO 45001 (OHSAS 18001).

It is explicitly understood that Supplier has full responsibility for health and safety of all works or services provided to Swisslog.

Supplier must ensure that all employees are suitably competent to safely undertake all activities they engage in.

Supplier must be able to deliver routine on-site communication to its workers using English or local language so as not to compromise any aspect of safe practice.

Supplier is aware that any breach of H&S legislative compliance may result in the immediate removal of Supplier from site and annulment of the Contract. The same applies to sub-contractors.

Supplier is obliged to at all times comply with Swisslog H&S Supplier Code of Practice as amended from time to time. The currently valid version is available on Swisslog's homepage (www.swisslog.com). Should the H&S Code not be available via the homepage, Supplier is obliged to request a copy of the

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H&S Code from Swisslog and cannot plead that he was not aware of the content of the H&S Code.

4.6 Co-operation with Others

Supplier acknowledges that it shall not have exclusive possession of and access to the Site or any part thereof. Supplier shall fully cooperate with Swisslog, other contractors, other suppliers, parties and persons engaged in work to avoid conflicts. In dealing with any such other parties Supplier shall at all times safeguard the interests of Swisslog.

4.7 Contact with the Authorities and the Owner

Any correspondence or negotiation by Supplier with a government authority, Owner, or their agent shall only be carried out with approval of Swisslog.

5. PROVISIONS PERTAINING TO THE EXECUTION OF THE WORK

5.1 Standards of Execution

Supplier shall design, engineer, manufacture, supply, install, commission and test the Deliverables and each part thereof and carry out the Work in accordance with the requirements of the Contract:

- (i) with all the skill and care to be expected of a well-qualified and experienced supplier with experience in carrying out works of a similar type, nature and complexity; and
- (ii) using appropriate up-to-date designs, specifications and workmanship in accordance with methods, techniques, practices, codes and standards comparable to those utilized or adhered to by other internationally well experienced suppliers at the time of performance of the Work; and
- (iii) with all the resources as required to perform the Work in a proper and timely manner;

so that the Deliverables and the Work comply or will comply at the date of Take Over with the Contract

5.2 Design

Supplier shall design the Deliverables to have a minimum design life of 10 years. The design life for computers and control equipment and the incorporated software and diagnostics (hardware and software) shall be 10 years.

If such hardware and/or software needs to be replaced after expiry of the Warranty Period, but before the expiration of the 10-year period, Supplier shall provide an offer at competitive market conditions for any replacement hardware and software.

5.3 Compliance with the Applicable Law, Design Codes

a) Compliance

The Deliverables and the Work shall comply with Applicable Law.

Supplier shall demonstrate compliance with the provisions of the Dodd-Frank Act Section 1502 and the conflict minerals provisions of Regulation (EU) 2017/821.

The Deliverables shall further comply with the Regulation (EC) No. 1907/2006 (REACH) and the Directives (EU) 2011/65 and (EU) 2017/2102 (RoHS).

Supplier and its Subcontractors shall transport the Deliverables to Site accompanied by any relevant Material Safety Data Sheets. All mandatory labelling information must be provided for transit. If appropriate, Supplier shall comply with regulations governing the packaging, marking, shipping and documentation of hazardous material.

b) Unclear Laws and Codes

In the event that any Applicable Law or Design Code is unclear, incomplete or contradictory, Supplier shall immediately give written notice to Swisslog. After due consideration, Swisslog will decide how such ambiguity contradiction is to be dealt with and inform Supplier accordingly. In such a circumstance Supplier shall not be entitled to a Change Order.

c) Swisslog Code of Conduct

Supplier confirms that it complies with Swisslog Supplier Code of Conduct ("CoC") as amended from time to time. The currently valid version is available on Swisslog's homepage (www.swisslog.com). Should the CoC not be available via the homepage, Supplier is obliged to request a copy of the CoC from Swisslog and cannot plead that he was not aware of the content of the CoC.

d) Environmental, Social, Governance (ESG)

Swisslog works with the on-line platform of IntegrityNext to monitor the ESG compliance. Supplier shall update and complete the questionnaire regarding the ESG requirements. This will enable, among others, meeting the legal requirements of the German Supply Chain Act (for example).

Supplier is able and willing to share the carbon footprint information for Scope 1, Scope 2 and Scope 3 emissions. The figures for Scope 3 emissions will be required for the scope of supply as well as for the overall business of Supplier.

e) Licenses

Supplier shall obtain, at its own risk and cost, all licenses, authorizations, formalities, registrations, permits and certificates required for the Deliverables, including any licenses needed to:

- (i) export and import or for transit of the Deliverables through any country or State on its way to the Site; and
- (ii) use software, patents, trademarks and other intellectual property related thereto.

Such licenses, permits or certificates shall also include any authorization to manufacture, produce, certify and execute the related Work at Site.

f) Certification Tests

Supplier shall bear all costs related to the testing and verification of the Deliverables. Such costs shall include, but not be limited to, the costs of preliminary tests, tests on material, acceptance procedures, the cost of preparing, reviewing and submitting any documentation necessary for such tests. Supplier shall also pay the cost required to certify the Deliverables and the cost of its personnel participating in such tests.

If the tests have to be repeated because the Deliverables do not pass a test due to circumstances for which Swisslog and/or Owner is not responsible, Supplier shall bear all costs associated with the repetition of said tests.

g) Software and Intellectual Property

With regard to software that forms a part of the Deliverable, Swisslog and the Owner acquire the right to use such software within the parameters of the defined usage of the Deliverable, such right of use being unlimited in time and non-exclusive and free of charge.

At the request and expense of Swisslog, the source code must be deposited with an independent third party, to be approved in writing by Swisslog. Source code shall be released to Swisslog, if Supplier does not fulfil its contractual obligations despite a reminder.

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Supplier warrants that the Deliverables and the production of it by Supplier does not infringe any patent rights, proprietary protection rights, intellectual property rights or any other rights of any third parties. Supplier shall indemnify Swisslog in full, regardless of any fault (i.e., intention or negligence) on the part of Supplier, from any such claims of third parties. Swisslog is also entitled in the event of such an infringement to immediately terminate the Contract.

5.4 Submission and Approval of Documents

a) Approval of Documents

Supplier shall submit to Swisslog for review and approval (where necessary) any documents, drawings, calculations, technical data, bills of loading, certificates of origin and other documents as agreed. All such documents shall be sufficiently detailed to permit proper review and shall be submitted on or before the dates set forth in the Contract.

All drawings shall show the definite location and dimensions of all parts of the Deliverables to adjoining equipment and structures. The drawings shall be completed and submitted to Swisslog in a timely manner, allowing sufficient time for review and any alterations which might be necessary.

Supplier shall also provide all details of its process instrumentation and electrical and/or electronic equipment to allow Swisslog to design, develop software and/or build and test any electrical supply and control equipment interfacing with the Deliverables.

Any approval by Swisslog or waiver thereof shall not relieve Supplier from its responsibility to ensure that the Deliverables conforms in all respects with the requirements of the Contract, nor shall such approval or waiver thereof prejudice any claim, right or privilege which Swisslog may have under the Contract and/or in relation to any Defect.

Supplier shall review drawings made available by Swisslog in order to ensure that all details are adequate for the purposes of the Deliverables and to avoid any delay. Any potential problems shall be immediately notified to Swisslog.

b) Provision of Documents to the Deliverables

Supplier shall provide to Swisslog any and all drawings, calculations, general plans, certificates, a spare parts and consumable lists and any other documents pertinent to the Deliverables in accordance with the Contract.

The documentation shall be prepared and submitted in digital format specified by Swisslog, along with one high quality hard copy to allow easy reproduction. The documents shall be in such language specified by the Swisslog and become the property of Swisslog.

Eight weeks prior to Substantial Completion Supplier shall provide two copies of the O&M Manuals for review and comment. Final O&M Manuals shall be issued prior to Substantial Completion in both digital and paper form in the language at Site.

5.5 Subcontracts

Supplier shall not subcontract the whole or any part of the Deliverables without the prior written consent of Swisslog. Supplier shall be fully liable for all acts or omissions, performance or failure to perform of its Subcontractors.

5.6 Tests and Rights to Information, Defects before Take Over

Supplier shall notify Swisslog in writing, seven days in advance, of the date and place of all tests of conformity, compliance, acceptance and/or performance to be performed in relation to the Deliverables and shall submit to Swisslog any

documents relating to such tests.

Any approval of a test by Swisslog, inspection or waiver thereof shall not relieve Supplier from its duty to ensure that the Deliverables conform in all respects with the requirements of the Contract, nor shall such approval, test, inspection or waiver thereof prejudice any claim, right or privilege which Swisslog may have in relation to Defects.

Swisslog may instruct Supplier to promptly remedy a Defect in the Deliverables and/or non-conforming Work found during tests and shall have no obligation to pay for such Deliverables or the Work, until such Defect in and/or non-conforming Work is remedied. Alternatively, if the project so requires, Swisslog may remedy or have remedied such Defect and charge the cost of so doing to Supplier.

5.7 Packing, Delivery and Transportation to Site

Supplier shall adhere to the shipping, packing, marking and handling instructions provided by Swisslog. Supplier shall promptly provide all information, documents, quality records, confirmations, declarations and certificates of origin before transportation of the Deliverables to Site.

Unless stated otherwise in the PO, Supplier shall be under an obligation to organize and pay for transport to Site. Supplier shall only enter into contracts of carriage with reliable, solvent transport undertakings. If, for any reason, there is a risk that the Deliverables will arrive late, Supplier shall promptly notify Swisslog accordingly and recommend any means of accelerating the transportation, including transport by air. If Swisslog caused the delay, it shall bear the cost of accelerated transportation, but only if it orders Supplier to transport the Deliverables by means of accelerated transport and, in all other cases Supplier shall bear the cost of accelerated transportation.

Supplier shall not transport the Deliverables or any Supplier's Equipment to the Site without having first obtained a written authorization for such delivery from Swisslog.

At least twenty-eight days before shipping, Supplier shall submit to Swisslog a preliminary notice advising about the shipping details, to include, the number of crates, the size, volumes and weights and the certificate of origin. One day before shipment, Supplier shall submit to Swisslog the packing list and all documents required for the transport of the Deliverables to Site.

5.8 Archiving of Work-Related Documents

Supplier shall keep all relevant product data and documents for a period of fifteen years after the date of Take Over.

5.9 Product labeling and publications

Supplier is not entitled to provide the Deliverables with its own company logo, its company name or other types of advertising. Exceptions to this are official requirements (e.g., relating to type plates) or as agreed by Swisslog.

Supplier shall always obtain written consent of Swisslog in advance for any public communications, media information, brochures, electronic publications, advertisements or other publications relating to the Deliverables.

Supplier shall not label any of the Deliverables at the Owner's Site with Supplier's name or other advertisement except as required by the authorities (such as the machine nameplate and requirements for CE marking).

5.10 Permits and Visas

Supplier shall obtain all permits, visas and approvals necessary to execute the Work at Site in accordance with the time schedule.

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5.11 Supplier Reminder

Should Swisslog fail to take any decision, give consent or approval or perform any other duty within the agreed time schedule, Supplier shall remind Swisslog in writing to act promptly. Should Supplier fail to do so, it shall lose any right claim based on Swisslog's failure to act.

6. WARRANTY

6.1 Warranties

Supplier warrants as follows:

- a) Work/Deliverables Related Warranties
 - (i) as time is of the essence, the Work shall be performed in a timely manner and each Milestone shall be met;
 - (ii) the Deliverables shall be of good quality and fit for purpose, ready for safe and reliable operation as of the Substantial Completion date and the date of Take Over;
 - (iii) the Work shall comply with Applicable Law and the Design Codes in effect on the date of Take Over;
 - (iv) the Work shall be new and of the quality as specified in the Contract;
 - (v) meet applicable noise standards;
 - (vi) will not emit any toxic substances or contaminate goods stored;
 - (vii) it shall only use properly qualified, well experienced personnel to perform the Work in accordance with the Contract; and
 - (viii) Deliverables shall achieve all performance guarantees set forth in the Contract.
- b) Defects in Title, Liens and Intellectual Property Rights
 - (i) Swisslog shall enjoy good title to all the Work and Deliverables;
 - (ii) that no Supplier or Subcontractors' liens, claims for compensation, security interests, mechanics liens and encumbrances shall at any time attached to the Deliverables and/or any other property belonging to Swisslog or Owner; and
 - (iii) that the Deliverables or any material, design or other works provided by Supplier does not infringe any patent, copyright, registered design, trademark, trade secret or any other third-party intellectual property right;
- c) General Warranties
 - (i) Supplier shall not, through any act or omission, cause Swisslog to incur any liability to Owner or any other third party (including any claim for personal injury, death or property damage);
 - (ii) all representations made by Supplier are true and complete; and
 - (iii) Supplier will perform any other obligation set forth in the Contract.

If a breach of any Warranty set forth in Section a) to c) is discovered and reported to Supplier, Supplier is obliged to remedy such breach of Warranty without undue delay.

- d) the Work and Deliverables shall be free from Defects/Latent Defects

The parties agree that Swisslog may demand the remedy of any Defect at any time during the relevant Defects Liability Period

If a Defect is discovered prior to the end of the relevant period, but remedial work is conducted after the end of the period, Swisslog shall have a period of three months after completion of the remedial work to verify its compliance with the terms of the Contract.

6.2 Defects Liability Period

Defects Liability Period shall commence on the date of Take Over and shall last:

- (i) 27 months in general.
- (ii) 63 months for structural elements (racking, steel work, building, cladding etc.).

Supplier warrants that it shall at all times during the Defects Liability Period(s) maintain a service capability to provide competent support to Swisslog and/or Owner within twenty-four hours after being notified of a Defect and if necessary and agreed to dispatch a properly qualified and equipped team within 24 hours.

The Defects Liability Period for spare parts and/or Special Tool shall be 27 months commencing on the date such part is used by Swisslog.

6.3 Interruption of Operation, Extension of Defects Liability Period

If during the Defects Liability Period, the Deliverables must be shut down or operation curtailed due to a Defect, then the Defects Liability Period shall be extended by a period of time equal to the sum of (i) the length of such shutdown or operation curtailment and (ii) the period required to remedy the Defect.

6.4 Defects Liability Period for Repaired or Replaced Parts

The Defects Liability Period of the remedied part shall start afresh once the Defect has been remedied and the Deliverables has been returned to service.

6.5 Latent Defects

Subject to Section 10.2 b), Supplier shall remedy any Latent Defect that manifests itself during the period that the law of the country of Site provides for Latent Defects Liability, or if no law exists for a minimum period of five years from Final Acceptance.

6.6 Duty to Report Defects

Supplier shall be under a strict duty to promptly notify Swisslog of any Defect and/or other deficiency in the Deliverables of which it becomes aware either as a consequence of the Work, or experience gained with similar Deliverables, or otherwise. Supplier acknowledges that Swisslog is likely to suffer significant loss or damage should Supplier fail to perform strictly in accordance with this Section and therefore any breach of this Section shall constitute gross negligence.

7. Price

7.1 Price Basis

Unless the Contract expressly provides otherwise, the Contract Price shall constitute Supplier's sole entitlement to compensation for its performance of the Contract and shall include compensation for design, engineering, procurement, manufacture, delivery, construction, erection, assembly, commissioning, testing, the provision of performance guarantees and warranties set forth in the Contract, and the provision of any other equipment, facility, material, Deliverables, utility or service more specifically described in or to be inferred from the Contract and/or for performing any and all obligations set forth herein.

The Contract Price shall be fixed and firm for the duration of the contract.

The Contract Price includes delivery of the Work "DDP Site" for Work being procured from Suppliers resident abroad and

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"DPU Site" from Suppliers resident in the country of Swisslog or as set forth in the PO.

In the absence of any agreement to the contrary, Supplier shall insure the Deliverables for the benefit of Swisslog against the normal risks encountered for the full replacement value of the Deliverables.

7.2 Price Break-Down / Option for Spare Parts

Supplier shall break-down the Contract Price and present it for following parts of the Deliverables comprising the entire Contract Price:

- (i) the Deliverables including all Work defined or inferred in the Specification (including Swisslog RFO);
- (ii) Spare Parts and consumables for operation (optional delivery); and
- (iii) maintenance options.

The Contract Price break-down shall, where required, be further detailed and broken down to satisfy the requirements of export and import, insurance and customs clearance.

The prices and conditions for the recommended spare parts and consumables shall be subject to clause 3.7 and may be ordered by Swisslog at its discretion.

7.3 Tax and Custom Duties

a) Taxes

All prices are inclusive of all taxes and duties except to the extent the same are to be borne by Swisslog pursuant to the applicable Incoterms. All such taxes and duties deemed included in the Contract Price shall be borne by Supplier, and Supplier shall pay such taxes and duties itself or, where these have been paid by Buyer, reimburse Buyer for such taxes and duties.

Invoices shall be issued in accordance with Applicable Law for VAT and shall contain all the information required by law. If the invoice does not comply with the statutory provisions of VAT law, Swisslog shall not be obliged to pay the invoice.

If Swisslog is required by Applicable Law to withhold income taxes from any payment due to Supplier ("payment amount"), then the payment amount shall be reduced by the amount of such withholding. Swisslog will deliver to Supplier a withholding tax certificate or similar documentation reasonably satisfactory to Supplier evidencing payment of any such withholding upon request by Supplier.

If an applicable double taxation agreement provides for a reduction or exemption from withholding taxes Supplier shall provide to Swisslog all documentation required for the grant of a reduced withholding tax rate under the applicable double taxation agreement.

b) Excluded Taxes

Supplier shall make every reasonable, legally available effort to reduce the amount of taxes or duties, which Swisslog must reimburse. Further, each party will offer the other party reasonable, lawful co-operation, if requested, in support of a party's effort to take advantage of any tax/duty optimization scheme or tax/duty exemption scheme, including in relation to sales tax and customs or import duties.

8. TERMS OF PAYMENT

8.1 Terms of Payment

The Contract Price shall be paid in instalments as defined in the PO and only be due to the extent that the relevant Milestone or Work has been achieved or has been performed.

If no payment terms are listed in the PO, the following shall be used:

- (i) **5 %** (five per cent) of the Contract Price shall be due at the Effective Date.
- (ii) **40 %** (forty per cent) of the Contract Price shall be due at time when the main erection material is delivered to Site.
- (iii) **35 %** (thirty-five per cent) of the Contract Price shall be due at Substantial Completion.
- (iv) **20 %** (twenty per cent) of the Contract Price shall be due upon Take Over and clearance of all Punch List Items.

8.2 Security Instruments

Unless stated otherwise in the PO Supplier shall provide the following:

- (i) **Advance Payment Bank Guarantee:** If Swisslog pays an advance payment, Supplier must provide Swisslog with an advance payment guarantee in the form of a bank guarantee in the amount of the down payment, such bank guarantee being valid from the date Swisslog makes the down payment to Supplier. The advance payment guarantee shall be valid until 60 days after the commencement of work at site.
- (ii) **Performance Bond Bank Guarantee:** Supplier must provide Swisslog, prior to the commencement of work at site, with a performance bond in the form of a bank guarantee in the amount of fifty percent of the Price. Swisslog shall return the performance bond to Supplier once all Supplier's obligations under this Agreement, except for warranty claims, have been fulfilled by Supplier. This shall be valid until "End of installation and Passing of Risk" plus 60 days as defined in clause 8.
- (iii) **Warranty Bond Bank Guarantee:** Supplier must provide Swisslog, prior to Swisslog paying of the final payment, with a warranty bond in the form of a bank guarantee for the greater of an amount equal to the final Milestone payment, or a minimum of five percent of the Price. Swisslog shall return the warranty bond upon the expiry of the warranty period plus 60 days. If no warranty bond is provided, an equal amount of the Price shall be withheld by Swisslog as security for the fulfilment of claims during the warranty period, this amount is due for payment once the warranty period ends.

The guarantees shall be irrevocable, first/on demand guarantees and from a first-class bank. The text of the guarantees and the issuing bank shall be approved by Swisslog prior to issue and shall be subject to the law of these Conditions of Contract.

8.3 Additional Provisions Governing Payments

Swisslog shall not be obliged to make payment to Supplier if Supplier is in breach of contract and for so long as such breaches continue.

Payments shall be made within sixty days after receipt of Supplier's invoice, accompanied by the relevant documentation.

An option for payments to be made within thirty days after receipt of Supplier's invoice will be considered for a two percent reduction in price. If this applies it will be stated in the PO.

Any late payment due to a party under the Contract shall attract an annual interest rate of five per cent. Should Swisslog wrongfully withhold a payment, the sole remedy available to Supplier shall be such interest.

Payments for the Deliverables shall not be deemed an acceptance of them or a waiver of any of Swisslog's rights

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under the Contract.

9. TAKE OVER AND ACCEPTANCE; RISK OF LOSS AND TRANSFER OF TITLE

9.1 Take Over

Take Over shall only occur when each of the following conditions have been fulfilled in total and have been verified by Swisslog:

- (i) Supplier has provided Swisslog with a certificate of Compliance 6.8 attesting that the Deliverables are free of Defects and are fully compliant with the Contract and in particular with Applicable Law and Design Codes;
- (ii) if requested by Swisslog, Supplier has provided Swisslog with the Partial Release & Waiver of Liens;
- (iii) Deliverables shall have achieved Substantial Completion, and thereafter successfully completed all final commissioning and performance tests in conjunction with other parts, and if applicable, passes the Test on Completion;
- (iv) Owner signed Take Over;
- (v) Deliverables shall be free of any Defect, except for minor Open Points Items;
- (vi) all items forming part of the Work, such as but not limited to spare parts consumables, have been delivered to Swisslog;
- (vii) all documents of any kind required as part of the Work shall have been delivered to and accepted by Swisslog;
- (viii) Supplier shall have returned to Swisslog any tools, instruments and spare parts belonging to by Swisslog;
- (ix) Supplier shall have removed all Supplier's Equipment from Site and left the Site in a clean, safe and workmanlike condition; and
- (x) Supplier shall have performed all other obligations set forth in the Contract, which are conditions precedent to Take Over.

Upon successful performance of the matters set forth above, Swisslog shall issue a Take Over Certificate.

9.2 Use before Take Over

Swisslog shall be entitled to examine the Deliverables at any time. Swisslog shall perform the Test on Completion and shall be entitled to conduct any subsequent inspections it may wish to perform before issuing the Take Over Certificate. Take Over shall not be deemed to occur by virtue of the fact that Swisslog takes control of the Deliverables or any part thereof.

Swisslog shall have the right to use the Deliverables or any part thereof prior to Take Over. Swisslog shall bear the costs of making good any damage to such parts due to improper use by Swisslog or Owner and for normal wear and tear. "Improper use" in this context shall mean any use expressly prohibited by the Technical Specifications and/or the Operation and Maintenance Manuals and/or any use that could not reasonably have been foreseen having regard to the description of the Deliverables. Swisslog may request Supplier to supervise such use of the Deliverables prior to Take Over.

9.3 Final Acceptance

Final Acceptance shall occur when all of the following have been properly performed and/or are achieved in accordance with the terms of the Contract to Swisslog's satisfaction:

- (i) Owner signed the FAC;
- (ii) if requested by Swisslog, Supplier has provided Swisslog with the Final Release & Waiver of Liens;
- (iii) all Open Points List Items are remedied and accepted

- by Swisslog;
- (iv) all items forming part of the Work, such as but not limited to spare parts, consumables, have been delivered to Swisslog; and
- (v) Supplier shall have performed all other obligations set forth in the Contract, which are precedent to Final Acceptance.

Notwithstanding anything to the contrary contained elsewhere in the Contract or by law, Supplier acknowledges that all of the aforementioned are conditions precedent to Final Acceptance.

9.4 Delay in Achieving Milestones, Submission of Documentation, Substantial Completion and/or Take Over attributable to Supplier

If a Milestone, the submission of documents, Substantial Completion and/or Take Over is delayed, for any reason for which Swisslog is not responsible and such delay is not excused under the Contract, in each case where the non-achievement of the Milestone date in question is coupled to the payment of Liquidated Damages, Supplier shall pay Liquidated Damages pursuant to Clause 10.3.

9.5 Delay in Substantial Completion and/or Take Over caused by Swisslog

If Substantial Completion and/or Take Over is delayed by Swisslog or Owner, and the Deliverables is ready to be taken over, Swisslog may request Supplier to preserve the Deliverables. Swisslog shall reimburse all direct, reason-able, documented costs incurred by Supplier in preserving the Deliverables in a proper, workmanlike fashion and in accordance with Good Industry Practice. Reimbursement of such costs shall constitute the sole remedy available to Supplier and the entire liability of Swisslog.

9.6 Risk of Loss

The risk of loss of or damage to Deliverables shall pass from Supplier to Swisslog at Take Over. If any part of the Deliverables is damaged prior to Take Over, Supplier shall promptly replace the same at no cost to Swisslog.

9.7 Transfer of Title

Title to the Work or any part thereof (which shall include Work in progress) shall pass from Supplier to Swisslog at the earlier of:

- (i) the date when payment for such Deliverables is made; or
- (ii) delivery of the Deliverables to Site; or
- (iii) the date of express or implied appropriation of any Work to the Contract; or
- (iv) the date upon which the Contract is terminated for any reasons other than termination for Swisslog's breach.

Supplier shall promptly indemnify and defend Swisslog against any and all claims, demands, suits, liens or damages arising from any defect in title or encumbrance or charge upon the Deliverables. If requested by Swisslog, Supplier shall promptly execute any document certifying transfer of title.

10. CHANGES IN THE WORK

10.1 Supplier's Changes

Supplier shall not make any changes by alterations, amendments or additions to the Deliverables without the prior written consent of Swisslog. Should Supplier wish to make alterations, amendments or additions, it shall provide Swisslog with such information to allow Swisslog to evaluate such changes. Supplier shall only receive additional

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compensation if such changes are confirmed in writing by Swisslog. If such changes result in a cost saving to Supplier such saving shall be deducted from the Contract Price.

10.2 Swisslog's Changes

Swisslog shall be entitled to alter, amend, add to or omit any part of the Deliverables. If such changes are significant and cause a material increase in the cost or time required for performance of the modified Deliverables, an equitable adjustment to the Contract shall be agreed between the parties.

Any significant change shall be confirmed in a written Change Order issued by Swisslog and acknowledged by Supplier in writing, detailing the extent of the change, the effect on the time schedule (if any), the effect on the Contract Price and any other matter of importance.

10.3 Supplier claim

Supplier shall be entitled to make a claim in those circumstances expressly set forth in the Contract and in no other circumstances. A claim shall be submitted in writing to Swisslog within ten days of the occurrence giving rise to such claim. If the occurrence is a continuing one, Supplier shall within ten days of the commencement date of the occurrence, notify Swisslog of its intent to claim when the full effect of the occurrence can be determined. In such case, Supplier shall submit a claim no later than ten days after the date when the full effect of the occurrence can be determined.

Supplier's claim shall be properly documented and shall in its claim identify the contractual provision relating to the claim. Should the claim be financial in nature Supplier shall provide all supporting calculations, offers, other appropriate documentation, the influence of the occurrence on the time schedule and on any other obligation of Supplier with appropriate proof. An extension of time shall only be granted in those circumstances where the occurrence demonstrably will affect the achievement of a Milestone on the critical path of the Work.

Should the claim not be submitted in writing, within the applicable period, such claim shall be deemed to have been unconditionally waived in its entirety.

Swisslog shall review any written claim within a reasonable period of time and notify Supplier of its findings. If Supplier doesn't agree with Swisslog's findings, it may submit the matter to dispute resolution pursuant to Clause 18. Supplier shall not be entitled to suspend the Work pending resolution of a claim.

11. REMEDIES

11.1 Supplier's Performance Obligation

If Supplier is in breach of any condition of the Contract, Swisslog shall be entitled to demand that Supplier promptly remedies the breach such that the Contract is fulfilled in every respect and the cost of remedying a breach shall be borne solely by Supplier.

11.2 Remedies

a) Swisslog's Buy-Down Right

Swisslog may, at its sole discretion, opt to accept a breach, a Defect, Latent Defect or other non-conforming Work, provided however, Swisslog shall be entitled to demand an equitable reduction of the Contract Price to reflect the reduced value of the Deliverables.

If the Defect, Latent Defect or other non-conforming Work is so significant that the Deliverables cannot be used for its

intended purpose or such use is significantly impaired or the cost of operating and maintaining the Deliverables is significantly increased thereby or the reliability of the Deliverables is significantly impacted, in addition to any other remedies that it may have, Swisslog may reject the Deliverables and reclaim the Contract Price.

Should Owner terminate the Prime Contract due to such Defect, Latent Defect or other non-conforming Work, Swisslog shall have the right to terminate the Contract in accordance with Clause 17.1.

b) Supplier's Obligation to Remedy

Subject to Section 10.2 a), in the event that a Defect, Latent Defect or other non-conforming Work is evident during the Defect/Latent Defect Periods, Swisslog shall demand that Supplier remedy the same promptly and at its own cost. Supplier shall be paid for the remedial work should it later demonstrate that the Defect, Latent Defect or other non-conforming Work was attributable solely to normal wear and tear, Force Majeure or Swisslog or Owner not having operated and/or maintained the Deliverables in accordance with specific provisions of the O&M Manuals.

If any Defect, Latent Defect or other non-conforming Work appears, Swisslog may fix a period of time during which Supplier shall repair or replace any part of the Deliverables which is defective. Such period of time shall be reasonable having regard to the circumstances.

Before commencing with any remedial work Supplier shall submit a report to Swisslog identifying the Defect, Latent Defect or other non-conforming Work, the cause of the same, the remedy which Supplier recommends and the period required to implement such a remedy. Supplier acknowledges that Swisslog might have to seek and obtain Owner's approval of the proposed remedy and the time required to execute the repair and that Owner may reject such proposed remedy, in which case Supplier shall propose a remedy reasonably acceptable to Owner.

Supplier shall act in good faith and with best endeavors to remedy the Defects in the shortest possible time; with Swisslog's and Owner's consent, round the clock on a multi shift basis, at weekends and on holidays.

c) Swisslog's Right to Remedy

If, after receiving notification of any Defect, Latent Defect or other non-conforming Work, Supplier fails to promptly commence to remedy or fails to remedy the same within a reasonable period of time, Swisslog shall be entitled to give Supplier five business days written notice of its intention to take charge of such remedial work and thereafter Swisslog shall be entitled to remedy or have remedied such Defect, Latent Defect or other non-conforming Work.

In the event of an emergency or should the circumstances otherwise reasonably justify such action, Swisslog and/or Owner shall be entitled to carry out any remedial work, for which Supplier is liable under Clause 6.1.

Swisslog's or Owner's assumption of such remedial work shall not release Supplier from any Warranty or other obligation including the payment of the remedial work, provided such remedial work is executed in accordance with Good Industry Practice.

d) Back Charges for Remedy of Defects

If remedial work is carried out by Swisslog or Owner pursuant to the terms of Section 10.2 c), and/or involves a re-placement of a defective part using a part taken from Swisslog or Owner's Site stock, provided that Supplier is liable for such remedial

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work pursuant to the Contract, it shall reimburse Swisslog and/or Owner for any reasonable costs incurred thereby including the reasonable expenses related to administration and handling.

11.3 Liquidated Damages

a) Liquidated Damages for delay

The Deliverables must be performed by the Milestones defined in the Time Plan as amended by Swisslog from time to time. Any changes to the Time Plan that hinders Supplier from implementing its works as agreed must be reported promptly to Swisslog in writing. Supplier is automatically in delay of performance when it fails or is likely to fail to meet an agreed Milestone.

If Supplier fails to meet the agreed Milestone(s), Supplier is in delay and must pay liquidated damages to Swisslog. Unless stated in the purchase order, the Milestones that have liquidated damages are:

- Start on site.
- Start of integration commissioning with Swisslog.
- Acceptance of the Works by Swisslog.

Unless stated in the purchase order, liquidated damages for the delay of a Milestone shall be due at the rate of 0.2% of the Price per working day of delay up to a maximum of 10% of the Price.

b) Liquidated Damages for failure of performance

Failure to achieve required performance. Unless stated in the purchase order and where the Deliverables includes performance criteria the following liquidated damages shall apply in the event of a failure to achieve the required throughput and availability.

- Failure to achieve the contracted throughput. Liquidated damages at a rate of 1% per 1% (or part thereof) of throughput that is not achieved up to a cap of 10% of the Price.
- Failure to achieve the contracted availability. Liquidated damages at a rate of 1% per 1% (or part thereof) of availability that is not achieved up to a cap of 10% of the Price.

c) Additional Damages

Swisslog reserves the right to claim additional proven damages, whereby the liquidated damages for delay or failure of performance will be offset against such additional damages.

d) Liquidated Damages are not Penalties

The parties agree that because of the unique nature of the Deliverables and the Work, and the unavailability of substitutes for either the Deliverables and the Work, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Swisslog if the Work is not completed on time and/or the Deliverables fail to achieve the performance guarantees. Consequently, the parties have, in good faith, established the Liquidated Damages set forth in the Contract.

12. LIABILITIES AND INDEMNITIES

12.1 Third Party Claims

To the fullest extent permitted by law, Supplier shall indemnify, hold harmless and defend Swisslog and Owner

from and against any and all claims, demands, liabilities, judgements, awards, losses, damages, costs or expenses (including reasonable legal fees) arising out of or related to Work and/or the performance or non-performance of the Deliverables and/or the performance or non-performance of the Contract, and resulting in bodily injury or death, or damage to or destruction of third-party tangible property.

12.2 Tax Indemnity

Supplier shall defend, indemnify and hold Swisslog and/or Owner harmless from all claims by any governmental unit claiming withholding taxes levied on vendors', suppliers', Subcontractors' or agents' invoices received by Supplier or taxes based on income or profits of Supplier or any Subcontractors with respect to any payment for the Deliverables provided to or earned by Supplier, or any of its or their respective agents or employees under this Contract. Swisslog and/or Owner shall defend, indemnify and hold Supplier or any Subcontractors harmless from and against all claims by any governmental unit claiming taxes based on sales and use and other taxes on goods and services, including property taxes.

12.3 Breach of Warranties

Supplier shall defend, at its sole expense, all claims, demands, suits and/or proceedings which relate directly or indirectly to an alleged breach of Warranties and shall hold Swisslog and/or Owner harmless from any liabilities, losses, damages, fines, penalties, and/or costs resulting therefrom.

Without derogating from the generality of the aforementioned, if the Deliverables give rise to a claim, demand, suit and/or proceeding then Supplier shall obtain for Swisslog and/or Owner the right to use the Deliverables, including all computer software incorporated therein or take such action to alter, modify or replace the Deliverables, such that the Deliverables no longer infringes, provided however, such alteration, modification or replacement shall not result in the Deliverables being less valuable or cause the Deliverables to perform adversely in comparison to the time prior to such alteration, modification or replacement and further provided that any alteration, modification or replacement shall not relieve Supplier of the duty to supply the Deliverables such that the same conforms with the Contract in all respects.

Supplier warrants that it in the event of a failure to pass the performance tests it shall be liable for loss of production, loss of operation, loss of goods, cost of capital, loss of goodwill or reputation, loss of anticipated savings or profit, loss of or waste of management or labor, or loss of use and/or any indirect, incidental, punitive, or consequential loss or damage up to an amount equal to the Contract Price.

13. INSURANCE

13.1 Supplier Furnished Insurance

As from the Effective Date until Supplier shall have performed all of its obligations set forth in the Contract, Supplier shall take out and maintain and cause its Subcontractors to take out and maintain, at its sole expense, the following insurance coverage:

- (i) Property Insurance against loss or damage to the Deliverables until the Deliverables are at Site;
- (ii) General & Product Liability insurance with a combined single limit of not less than the equivalent of 5 million Euro per occurrence and year covering property damage, bodily injury and combined financial losses.
- (iii) Professional Indemnity insurance to the minimum value of 5 million Euro per occurrence.

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- (iv) The insurance coverage set forth under (i) above shall insure the Deliverables for the full replacement value thereof including any materials incorporated therein or services required therefore. The insurance coverage set forth under (ii) and (iii) shall cover any liabilities of Supplier and/or its Subcontractors resulting from the design and execution of the Contract.

13.2 Other Insurance

Throughout the time during which Supplier's or Supplier's Sub-contractor's personnel perform Work on Site, Supplier shall take out and maintain, at its expense, all insurance required by Applicable Law in relation to workers' compensation or its equivalents including employer's liability in connection with the performance of the Work in an amount not less than the equivalent of two million Euro per occurrence.

13.3 Insurance during Erection and Commissioning

Supplier will take out a project specific Contractor's All Risk Insurance (CAR), such CAR insurance to name Supplier (and its Subcontractors) as named insured, which shall insure, inter alia, the Deliverables from the date of delivery to Site until Work Take Over, with a minimum value the higher of; the Contract Price; or fifteen million Euro.

The coverage, exclusions and deductibles for the CAR may vary from project to project, provided however, the CAR deductibles shall not exceed an equivalent of twenty thousand Euro. Swisslog shall notify Supplier of the actual amount of the deductibles in a timely manner.

Supplier shall strictly adhere and cause its Subcontractors to strictly adhere to the terms of this Contract and provide the CAR and shall promptly make all information available required by the insurer.

13.4 Supplier's Liability

Should Supplier or any Subcontractor cause any insurance policy to be vitiated or alternatively cause the insurer to deny coverage in a particular instance, Supplier shall indemnify Swisslog in relation to all costs, expenses, losses or damages arising therefrom. Supplier shall not be discharged from any obligation set forth in the Contract by virtue of any denial of coverage and/or the failure of an insurer to pay any claim in respect of any insurance set forth in this Clause or otherwise. Supplier shall be liable for all deductibles and excesses relating to any insurance save where Swisslog or Owner is solely responsible for the occurrence giving rise to the claim.

13.5 Provisions of Policies; Renewals

All insurance policies to be purchased by Supplier under Clauses 12.1, 12.2 and 12.3 shall:

- (v) in the case of the insurance set forth in Clause 12.1, commence no later than 30 days after the Effective Date, and
- (vi) in the case of the insurance set forth in Clause 12.2 and 12.3, commence no later than 30 days prior to the date when Supplier commences its Site activities and all such insurances shall expire no earlier than the end of the Defects Liability Period.

Supplier shall provide evidence of such insurance coverage which is acceptable to Swisslog, in due time before Effective Date. The renewal of any policy or the replacement thereof shall be submitted to Swisslog not later than thirty (30) days prior to the expiration date of the policy.

If Supplier fails to produce evidence of the required insurance coverage, then Swisslog reserves the right to obtain and pay for such insurance. Premiums paid by Swisslog in such an

event shall be reimbursed by Supplier or alternatively will be set off against any payments of whatever kind due to Supplier.

14. FORCE MAJEURE

14.1 Excused by Force Majeure

In case of a Force Majeure event acting upon either Party, the affected party shall not be considered in default of those obligations and shall be excused the performance of affected obligations for so long as the Force Majeure event continues. The affected party shall not be entitled to compensation for additional costs incurred by virtue of such Force Majeure event and furthermore should that party wish to claim an extension of time due to Force Majeure, it shall be under an obligation to provide reasonable evidence that the Force Majeure event has impacted the timely completion of items of Work on the critical path towards the achievement of any Milestones or Substantial Completion.

14.2 Definition of Force Majeure

"Force Majeure" shall mean any event or circumstance, to the extent that such event or circumstance:

- (i) is beyond the reasonable control of the party relying thereon;
- (ii) was not operative or could not reasonably have been foreseen at the date of the Contract;
- (iii) is not an event or circumstance, the risks or consequences of which such party has expressly agreed to assume hereunder; and
- (iv) cannot be cured, remedied, avoided, or otherwise overcome by the prompt exercise of due diligence of the party relying thereon (or any third person over whom such party has control, including any Subcontractor);

and shall, subject to the aforementioned, mean any event or circumstance beyond the reasonable control of the party affected by such Force Majeure (excluding strikes or labor disputes involving Supplier's or Subcontractors' employees unless part of a national or regional strike), which despite all reasonable efforts of the affected party to prevent or mitigate its effects, causes a delay or disruption in the performance of any obligation imposed on such party under the Contract, provided that:

- (i) the circumstances of Force Majeure shall not have arisen by some default, omission or neglect of the party claiming relief or, in the case of Supplier, any Subcontractor and
- (ii) the party claiming relief shall have given the other notice, as soon as reasonably practicable but in any event within five days of becoming aware of the Force Majeure.

14.3 Information and Mitigation of Force Majeure

Supplier shall endeavor to continue to perform its obligations under the Contract as far as reasonably practicable and shall during the period of such Force Majeure event protect and secure the Deliverables in such manner as Swisslog shall require. Supplier shall notify Swisslog of the steps it proposes to take including any reasonable alternative means of performance that is not prevented by Force Majeure. Furthermore, the party impacted by Force Majeure, shall use all reasonable endeavors to minimize the effect of the Force Majeure event on the performance of the Contract.

14.4 Termination for Force Majeure

a) Notice of Termination

If by virtue of Clause 13.1 either party shall be excused the performance of any material obligation for a period of six

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months, then the parties may at any time thereafter by written notice to terminate the Contract.

b) Payments during Force Majeure and/or Upon Termination

Supplier agrees to store, preserve and conserve the Deliverables for the first ninety days of Force Majeure at no cost. Thereafter, Supplier shall be entitled to invoice for the reasonable costs of storing, preserving and conserving the Work in progress, such invoice to be submitted at regular intervals of not less than sixty days.

In the event that Force Majeure continues for a period of six months, Supplier shall be entitled to be paid for the Work in progress, provided however, Supplier shall properly label all such Work in progress as the property of Swisslog and thereafter continue to store, preserve and/or conserve the same at its own risk; or alternatively, and at Swisslog's request, deliver such Deliverables to the Site or any other destination selected by Swisslog. Risk in relation to the Work shall remain with Supplier. If the Deliverables are already at Site, Swisslog may elect to store, preserve and conserve and Supplier shall offer all assistance necessary to allow the storage, preservation and conservation of such Deliverables and the risk shall pass to Swisslog.

In the event that the Contract is terminated pursuant to Section 13.4a) above, Swisslog shall pay to Supplier (based on Supplier's invoice supported by time sheets and Work in progress reports and invoices for material and services purchased) the following:

- (i) all Work in progress;
- (ii) the cost of Deliverables and materials which have been delivered to Supplier, or for which Supplier is liable to accept delivery and such Deliverables and materials shall upon payment become the property of Swisslog and;
- (iii) any other cost or liability which was reasonably incurred by Supplier in the expectation of completing the Work.

The total sum to be paid to Supplier under this Clause, when added to any other sums previously paid by Swisslog to Supplier pursuant to the Contract, shall not exceed that portion of the Contract Price attributable to the terminated portion of the Work. For the avoidance of doubt, Supplier shall not be entitled to claim any loss of profit in relation to the Work nor shall it be entitled to any payments for non-utilization or underutilization of its staff after the termination.

15. ASSIGNMENT

Supplier shall not assign the Contract or the performance of any part, nor any moneys due without Swisslog's prior written consent. Swisslog may assign the Contract or any rights or obligations hereunder to any company in the KUKA Group, or to the Owner or successors in interest of Owner.

16. CONFIDENTIALITY, EXCHANGE OF PROPRIETARY INFORMATION

To enable the parties to execute the Work, the parties may disclose and exchange proprietary and/or confidential information. Each party shall maintain any such information received from the other party in strict confidence and shall not disclose the same to any third party or use such information except for performance of the Work. However, nothing contained herein shall preclude Swisslog from disclosing proprietary and/or confidential information received from Supplier to Owner or Owner's employees, directors, agents and/or advisors. Each party shall ensure that proprietary and/or confidential information received from the other party is disseminated within its own organization on a "need to

know" basis only and that any recipient receiving such information is bound by a confidentiality as stringent as the obligation set forth herein. Nothing contained herein shall prevent disclosure of proprietary and/or confidential information with a view to complying with the requirements of Applicable Law and/or an order of the court. Swisslog and Owner reserve the sole right to publicize or authorize any press release or publicity material concerning the Works. Supplier shall not make any such disclosure without the prior written consent of Swisslog and/or Owner.

17. SUSPENSION

17.1 Right to Suspend

Swisslog may at any time instruct Supplier to suspend the performance of the Work by written notice to Supplier. Such suspension shall continue for the period specified in the suspension notice. At any time after the effective date of the suspension, Swisslog may require Supplier to resume performance of the Work or any portion thereof. On or before the end of a specified suspension period, Swisslog will advise Supplier in writing that:

- (i) the suspension period will be extended; or
- (ii) the Work will resume; or
- (iii) the Contract will be terminated on a specific date.

If no such notice is received from Swisslog prior to the expiration of the suspension period, Supplier shall give notice to Swisslog requesting Swisslog's intention about continuation of the Contract.

Save where Swisslog has suspended for Supplier breach and/or Force Majeure, Swisslog shall reimburse to Supplier those direct costs listed below attributable to the suspension which are incurred during the suspension period, provided that the same are reasonable and properly evidenced in writing:

- (i) the direct cost of storing, conserving, preserving and otherwise safeguarding the Work;
- (ii) the direct cost of Supplier's personnel;
- (iii) the direct cost incurred by Subcontractors in storing, conserving, preserving and otherwise safeguarding a portion of the Work and/or maintaining personnel;
- (iv) rental payments made in respect of equipment used at Site, provided Swisslog has agreed in writing that such rental should continue during the suspension period; and/or
- (v) the direct cost of demobilization or remobilization.

Reimbursement of such costs may be applied for at intervals of no less than every sixty days until the end of such suspension period.

Supplier shall be entitled to no other payment or compensation during the period or as a consequence of the suspension.

17.2 Supplier's Obligation during Suspension

In the event that Supplier's performance under the Contract is suspended by Swisslog, as provided in Clause 16.1, Supplier shall:

- (i) discontinue performance under the Contract to the extent specified in the notice of suspension;
- (ii) place no further orders for materials, services, or facilities with respect to the suspended part of the Work other than to the extent required in the notice;
- (iii) make reasonable efforts to obtain suspension upon terms satisfactory to Swisslog of all orders, Subcontracts and rental agreements to the extent they relate to performance of suspended part of the Work;
- (iv) continue to protect and maintain the Work including those portions that have been suspended;

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- (v) keep, to the extent required in the notice, its organization and equipment committed to performance under the Contract on a standby basis; and
- (vi) take all other reasonable steps to minimize costs associated with such suspension.

17.3 Supplier's Waiver of Right to Suspend for Dispute

Save as expressly provided in Clause 13 and this Clause, any suspension of the Work by Supplier shall be deemed a willful breach of contract.

18. TERMINATION FOR BREACH OR CONVENIENCE

18.1 Termination for Breach

a) Breach and Notice of Termination upon Breach

If Supplier shall:

- (i) assign the Contract, or sublet the whole or any part of the Work without the consent of Swisslog; or
- (ii) suspend the Work; or
- (iii) despite two previous warnings in writing by Swisslog, fail to execute the Work in accordance with the Contract, or is failing to proceed with the Work with due diligence such that the timely achievement of any Milestone, Substantial Completion and/or Take Over is jeopardized; or
- (iv) otherwise commit a breach of any condition of the Contract;

then Swisslog may give seven days' notice to Supplier of its intention to proceed in accordance with the provisions of this Clause. Upon the expiry of such notice, if Supplier has not commenced to remedy such defect and/or thereafter diligently pursued such remedy to successful completion within a reasonable period of time having regard to all the circumstances, Swisslog may, without prejudice to any other remedy under the Contract, forthwith terminate the Contract and enter Site and expel Supplier therefrom but without thereby releasing Supplier from any of its obligations or liabilities which have accrued under the Contract and without affecting the rights and remedies conferred by the Contract on Swisslog. Upon termination, Swisslog at its sole discretion may itself complete the Work or may employ any other contractor to do so. Swisslog shall enjoy the free use of any Supplier's Equipment and documentation for this purpose.

Supplier shall immediately discontinue further performance of the Work, shall segregate any Work and/or Deliverables from other work and equipment not being part of the Contract and clearly mark or otherwise identify the Work and/or Deliverables as being the property of Swisslog. Further, Supplier shall not remove any Deliverables or any Supplier's Equipment from the Site.

b) Bankruptcy and Insolvency

If Supplier shall become bankrupt or insolvent, shall cease or threaten to cease to carry on business or if a petition for the winding up of Supplier is presented or a meeting is convened for the purposes of considering a resolution for the making of a receiving order or Supplier compounds with its creditors, or being a corporation commences a winding up or has an administration order made against it or carries on its business under an administrator, a receiver or manager for the benefit of its creditors or becomes unable to pay its debts as they fall due excluding contested demands in good faith, then Swisslog shall be entitled at its sole discretion:

- (i) to terminate the Contract forthwith by written notice to Supplier or to the administrator, receiver or liquidator or to any person in whom the Contract may

become vested, in which event the provisions of Section c) shall apply; or

- (ii) to give such administrator, receiver or liquidator or other person the option of performing the Contract subject to its providing a written guarantee in a form satisfactory to Swisslog for the due and faithful performance of the Contract up to an amount to be agreed.

c) Payments upon Termination for Breach

- (i) Save where Swisslog has rejected the Work/Deliverables in its entirety, in which case Supplier shall be under a duty to refund the Contract Price and pay any Liquidated Damages and other damages due hereunder, as soon as practicable after Swisslog has terminated the Contract for breach. Swisslog shall, after making such enquiries as it thinks fit, value the Work/Deliverables and all sums then due to Supplier as of the date of termination and certify the amount thereof.
- (ii) Swisslog shall not be liable to make any further payments to Supplier until the costs of execution and all other expenses incurred by Swisslog in completing the Work/Deliverables (including Warranty work) have been ascertained; such costs and expenses to include:
 - a) the losses Swisslog shall suffer in the event that the Work/Deliverables fails to comply with the terms of the Contract;
 - b) the losses Swisslog shall suffer as a result of delay Supplier causes in failing to complete the Work/Deliverables by the agreed date; and
 - c) Liquidated Damages and other damages due to Owner or third parties.

If the cost to complete when added to the total amounts already paid to Supplier prior to the date of termination exceeds the Contract Price, Supplier shall upon demand pay to Swisslog the amount of such excess. Any such excess shall be deemed a debt owed by Supplier to Swisslog and shall be recoverable accordingly. For the avoidance of doubt, Supplier undertakes to compensate Swisslog within thirty (30) days of receipt of an invoice of Swisslog. If the actual cost to complete, as calculated pursuant to the principles set forth herein, is less than the Contract Price minus any earlier payments made to Supplier, such difference shall be paid to Supplier within thirty days of the end of the Defects Liability Period.

18.2 Termination for Convenience

a) Notice of Termination for Convenience

Swisslog may, at its sole discretion, terminate the Contract, in whole or in part, for convenience, pursuant to the terms of this Clause by giving Supplier written notice of such termination for convenience. Such notice shall become effective three days after Swisslog has sent the notice.

In the event of such termination, Supplier shall immediately discontinue further performance of the Work. Swisslog shall be entitled to take delivery of any and all Work completed or commenced prior to the date of termination for convenience and Supplier shall deliver the same free of any liens or encumbrances.

b) Payments upon Termination for Convenience

For any items of Work delivered prior to or pursuant to such termination that accord with the Contract, Supplier shall be entitled to an amount equal to the value that the delivered parts of the Work, such value to be determined through mutual agreement of Swisslog and Supplier. Furthermore, Supplier shall be entitled to an equitable amount to cover its:

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- (i) direct, unavoidable costs committed to third parties prior to termination; and
- (ii) reasonable direct, unavoidable costs for prompt, orderly termination (less amounts recoverable by Supplier) (collectively "the Termination Costs").

Supplier shall properly document the Termination Costs and within thirty days after receipt of the termination notice and submit the same for Swisslog's review and approval. If Swisslog disputes the Termination Costs, it shall be entitled to have Supplier's accounts audited by a competent third party. Supplier shall make every reasonable effort to mitigate the Termination Costs. Supplier's sole right to compensation and Swisslog's sole liability in relation to termination for convenience shall be the Termination Costs.

19. DISPUTES

19.1 Dispute Resolution Procedure

Claims, disputes and other matters relating to the Deliverables or the interpretation of or performance under the Contract shall be referred initially to Swisslog. Swisslog shall be the initial interpreter of the terms and conditions of the Contract and the initial judge of performance thereunder. Any objection to Swisslog's interpretation or decision shall be raised by written notice within two weeks stating the reason for Supplier's objections.

Should Supplier be dissatisfied with the interpretation of Swisslog, a member of management of both parties shall meet. Each representative shall have full authority to settle such dispute whereas both Parties shall attempt to settle the dispute amicably.

If not less than four weeks from the date of an initial meeting said persons fail to settle such dispute, either party may give written notice to the other party of the desire to commence dispute resolution pursuant to the terms of Clause 18.2 or 18.3, and the procedure shall start within two weeks after the notice date.

19.2 Amicable Dispute Resolution ("ADR")

In the event of any dispute arising out of or in connection with the Contract, which cannot be resolved pursuant to Clause 18.1, Swisslog may, at its sole discretion, decide if the dispute shall directly be submitted to the non-exclusive jurisdiction of the competent court pursuant to Clause 22a) or to the arbitration tribunal pursuant to Clause 18.3 or if it the matter shall be deferred to settlement proceedings under the ICC ADR Rules.

If the dispute has not been settled pursuant to said Rules within forty-five days following the filing of a Request for ADR or within such other period as the parties may agree in writing, such dispute shall be finally settled by the non-exclusive jurisdiction of the competent court or arbitration in Swisslog's jurisdiction or alternatively at the sole discretion of Swisslog in any court of competent jurisdiction or arbitration.

The parties agree to share equally the costs of the ADR. Each party will bear its own costs for representation by counsel at the ADR.

The venue of mediation shall be the Swisslog's place of business or as the parties otherwise agree.

The parties agree that the ADR provided for herein is a compromise negotiation for purposes of all international, federal and state rules of evidence. The entire procedure will be confidential. All statements, promises, offers and opinions, whether oral or written, made in the course of the ADR by any of the parties, are confidential and shall, in addition and where appropriate, be deemed to be lawyer client privileged. Such statements, promises, offers and opinions shall not be

discoverable or admissible for any purposes, in any litigation or other proceeding involving the parties.

19.3 Competent court; Arbitration

All disputes arising out of or in connection with the Contract shall, at the sole discretion of Swisslog, be finally settled under the non-exclusive jurisdiction of the competent court pursuant to Clause 22a) or the Rules of Arbitration of the International Chamber of Commerce in accordance with said Rules. Supplier irrevocably submits to the non-exclusive jurisdiction of the competent court in Swisslog's jurisdiction or arbitration with regard to all matters arising from or in connection with the Contract. Supplier agrees that a judgement in any proceedings brought in such court or arbitration shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction.

Should the disputes be settled under the Rules of Arbitration of the International Chamber of Commerce the following shall apply:

- (i) The parties shall mutually agree if the arbitral tribunal shall comprise of a sole arbitrator or three arbitrators. If the parties can't agree within 2 weeks of the first request on the number of arbitrators, Swisslog shall have the right to decide on the number of arbitrators.
- (ii) The seat of the arbitration shall be in the country where Swisslog has issued its PO.
- (iii) The language of the arbitration shall be English.

20. EXTERNAL TRADE / EXPORT CONTROL

a) Supplier undertakes to comply with all requirements of national and international customs and external trade law ("export control law"). It shall promptly provide Swisslog in writing with all data required by SWISSLOG to comply with all requirements of export control law within 14 days of conclusion of the Contract.

b) This includes in particular:

- (i) indication for every item with "Yes" or "No" whether there is an export license requirement under export control law;
- (ii) indication of all export list numbers, including the American Export Control Classification Number (ECCN);
- (iii) statistical commodity code according to the current commodity classification of foreign trade statistics and the HS (Harmonized System) code;
- (iv) indication of the country of origin and, upon Swisslog's request, a supplier's declaration of preferential origin issued free of charge, or a EUR1 document or certificates of preference or any other documents required by the customs authorities.

c) In the event that Supplier violates its obligations under this Clause, in particular if declarations are found to be incorrect, it shall bear all damages and expenses incurred by Swisslog as a result thereof, insofar as Supplier is responsible for the same. Supplier shall be liable for its representatives or subcontractors to the same extent as for its own fault.

d) Irrespective of other rights arising from this Contract, Swisslog shall be entitled to an extraordinary right of termination of the Contract in writing in the event that Supplier violates any obligation under this Clause and does not remedy the breach of obligation despite a reasonable deadline set by Swisslog.

21. ENTIRE AGREEMENT, INDEPENDENT SUPPLIER

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- e) The Contract contains the entire understanding of the parties with respect to the subject matter hereof. There are no other oral or written understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in the Contract.
- f) Supplier is an independent Supplier and nothing contained herein shall be construed as constituting any relationship with Swisslog or Owner other than that of a Swisslog and an independent supplier. Neither Supplier, nor any of its employees, are or shall be deemed to be employees of Swisslog or Owner.
- g) Each party has reviewed every provision contained herein and has had an adequate opportunity to negotiate each of the provisions of the Contract and to have any ambiguities, lacunae or concerns discussed and where appropriate addressed. Therefore, it is agreed that neither party shall assert in any dispute that the Contract has been drawn up exclusively or primarily by only the other party, and that therefore it should be interpreted against that other party.

22. WAIVER

- a) The rights of Swisslog under the Contract are cumulative; and nothing contained in the Contract shall be deemed to exclude or restrict any right or remedy that Swisslog may have at law or pursuant to the terms of another agreement.
- b) No act, course of conduct, failure or neglect to act or acquiescence on the part of Swisslog or a person acting on its behalf shall result in Swisslog being taken to have waived, or being precluded from enforcing or relying on:
 - (i) a provision of the Contract; or
 - (ii) a breach by Supplier of an obligation under the Contract or at law; or
 - (iii) a right or remedy of Swisslog at law, including a right arising out of a breach such as described in (ii) above.
 - (iv) Section (b) shall not apply between Swisslog and Supplier to the extent that Swisslog in writing expressly waives reliance on a specific provision, breach or right; but this is subject to any condition, limitation or other term attaching to such waiver.

23. NOTICES

23.1 Language of Notices

All certificates, notices or written orders to be given from one party to the other shall either be delivered by hand against written acknowledgement of receipt or sent by courier or airmail or email. The addresses for such communications shall be as stated in the PO.

23.2 Delivery of Notices

A notice shall be deemed delivered:

- (v) when presented personally; or
- (vi) if received on a working day for the receiving party, when transmitted by receipted email to the receiving party's email address specified and, if received on a day that is not a working day of the receiving party, on the first working day following the date it has been transmitted; or
- (vii) if sent by courier or by mail, when actually received.

24. PLACE OF FULFILMENT

Unless otherwise agreed, the place of fulfilment for delivery shall be at Owner's Site and for payment shall be Swisslog's place of business.

25. GOVERNING LAW AND CONTRACT LANGUAGE

- a) Unless stated otherwise on the PO, the Contract shall be governed and interpreted in accordance with the provisions and stipulations set forth by the laws of the country where Swisslog has issued its PO.
- b) Any international private law statutes / conflicts of law's provisions and the United Nations' Convention on Contracts for the Sale of Goods shall be excluded.
- c) The language of the Contract shall be English.