

## NOMAC STANDARD TERMS

### PURCHASE OF GOODS

#### 1. Interpretation

##### 1.1. In these Terms:

- “Buyer”** shall mean the NOMAC entity issuing the Order;
- “Contract”** means the Buyer’s Terms together with the Order for the purchase of Goods;
- “Delivery Address”** means the address stated on the Order;
- “Goods”** means the goods (including any instalment of the goods or any part of them) described in the Order;
- “HSE”** means health, safety and environmental policies, standards, procedures and requirements applicable to the performance of the Services under this contract, as required by all applicable laws and regulations and as advised by the Buyer;
- “Owner”** means the entity specified on the face of the Order as consignee, if any;
- “Party”** means each of the Buyer or the Seller, and **“Parties”** means the Buyer and the Seller together;
- “Plant”** means the project specified on the face of the Order, if any;
- “PO” / “Order”** means the Buyer’s purchase order to which these Terms are annexed;
- “Price”** means the price of the Goods and/or the charge for the Services;
- “Prohibited Acts”** means any bribery, corruption or other prohibited act under the laws of the Kingdom of Saudi Arabia, the UAE, the US Foreign Corrupt Practices Act, the UK Bribery, ICC Rules on Combating Corruption 2011, Act, the laws of all other relevant jurisdictions and other requirements of national and international agencies, including acts such as the following:
- 1.1.1. bribery and corrupt practices, including the paying, offering, giving, receiving, agreeing to receive or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party, including a public official;
  - 1.1.2. fraudulent practices, including any actions or omissions, including misrepresentations, that knowingly or recklessly mislead, or are an attempt to mislead, another party in order to obtain a financial or other benefit or to avoid an obligation;
  - 1.1.3. coercive practices, including impairing or harming, or threatening to impair or harm, directly or indirectly, any other party or the property of any other party in order to improperly influence the actions of a party;
  - 1.1.4. collusive practices, including any arrangement between two or more parties designed to achieve an improper purpose, including improperly influencing the actions of another party; and
  - 1.1.5. obstructive practices, including, in relation to an investigation into allegations of bribery, corruption or other prohibited act: (A) deliberately destroying, falsifying, altering or concealing evidence that is material to the investigation; (B) making false statements to investigators in order to materially impede the investigation; (C) threatening, harassing or intimidating any other party to prevent it from disclosing its knowledge of matters relevant to the investigation or pursuing the investigation; and (D) an act intended to materially impede access to contractually required information in connection with the investigation.

- “Seller”** means the entity so described in the Order;
- “Services”** means the services (if any) described in the Order;
- “Specifications”** includes any plans, drawings, data or other information relating to the Goods or Services;
- “Terms”** means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
- “Writing”** and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail;
- 1.2. Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
  - 1.3. The headings in these Terms are for convenience only and shall not affect their interpretation.

#### 2. Basis of Order

- 2.1. The Order constitutes an offer by the Buyer to purchase the Goods and/ or acquire the Services subject to these Terms.
- 2.2. These Terms shall apply to the Contract to the exclusion of any

other terms to which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

- 2.3. The Order will lapse unless unconditionally accepted by the Seller in Writing within seven days of its date.
- 2.4. No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller.

#### 3. Specifications

- 3.1. The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/ or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.
- 3.2. Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3. The Seller shall comply with all applicable regulations or other legal or contractual requirements concerning the manufacture, packaging, packing, handling, treatment and /or delivery of the Goods and the performance of the Services.
- 3.4. The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to dispatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing. To this extent the Buyer reserves the right to appoint an authorized representative (the “Inspection Agent”) which will visit the premises on Buyer’s request and will undertake the inspections necessary to confirm manufacturing of the Goods and conformity with Specifications.
- 3.5. The Buyer shall have the right to inspect and/or test the Goods and Services, which if exercised shall be undertaken within a reasonable time from the date of delivery / performance. If as a result of such inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance. Without prejudice to the generality of the foregoing, the Buyer may elect to reject all or any portion of such Goods / Services which do not conform in every respect with the terms of the Order.
- 3.6. The Goods shall be marked in accordance with the Buyer’s instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged & safe condition in the ordinary course.
- 3.7. Buyer may at any time request alterations to the Goods Specification by notice in writing to the Seller. On receipt of the request for alterations, Seller shall, within five (5) working days or such other period as may be agreed between the parties, advise Buyer by notice in writing of the effect of such alterations, if any, on the Price and any other terms already agreed between the parties.
- 3.8. The Buyer reserves the right to ask the Seller in Writing to postpone the shipping of the Goods for a limited period. Any storage and insurance costs during the first ninety (90) days of such period starting from the date of receipt of the relevant notice shall be borne by the Seller. The Buyer may request an extension of the period of storage of the Goods for another period to be agreed in Writing between the Parties. The Parties agree that the risks inherent to the storage shall remain on the Seller’s account.

#### 4. Price of Goods & Services

- 4.1. The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer

- in Writing.
- 4.3. The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.
  - 4.4. The Buyer shall, if requested by any competent authority, withhold from payments due from the Buyer to the Seller under this Contract all such tax and pay such amounts to such competent authorities.

#### **5. Terms of Payment**

- 5.1. The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2. Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within thirty (30) days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.
- 5.3. All payments made by the Buyer shall be made after deduction of applicable taxes under the laws of the jurisdiction of the Client.
- 5.4. The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

#### **6. Delivery & Title**

- 6.1. The Goods shall be delivered in accordance with INCOTERMS 2010 DAP place of destination at, the Delivery Address, and on the date or within the period stated in the Order, in either case during the Buyer's usual business hours. Notwithstanding the foregoing, the Seller shall: (i) give the Buyer reasonable advance notice of any shipment; (ii) procure appropriate insurance cover for such shipment from the point of origin to Delivery Address, including offloading and all storage and transshipment en route (such insurance to be Institute Cargo Clauses "A" (all risks including strikes, riot, civil commotion and concealed damage) and to name the Buyer and the Owner as co-insured (as applicable); and (iii) incur the costs of any deductibles payable under such insurance up to Delivery Address.
- 6.2. The Buyer shall be responsible for obtaining customs clearance and the Seller shall be responsible for all inland transportation costs and fees up to the Delivery Address.
- 6.3. In the event that Goods are already stored and available in the United Arab Emirates, the Seller shall be responsible for all related inland transportation to and from the Delivery Address.
- 6.4. If applicable, the Seller acknowledges that the Buyer is arranging for the procurement on behalf of the Owner, and that all Orders and bills of lading with respect to the Goods shall specify that the Owner shall take title directly from Seller. Hence the name of the Owner shall be specified in all the related documents pursuant to this Order, including but not limited to, the shipping documents, bill of lading, etc. till the final delivery to the Delivery Address.
- 6.5. Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.
- 6.6. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.7. A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.8. If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.9. The Buyer may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.10. The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.11. The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.12. If the Goods are not delivered or the Services are not performed on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damages for delay one (1) per cent of the Price for every week's delay, up to a maximum of ten (10) per cent.

#### **7. Risk & Property**

- 7.1. The Seller shall bear the risk of loss and damage to the Goods until delivery at the Delivery Address whereupon the risk shall pass to the Buyer or the Owner (as applicable).
- 7.2. The property in the Goods shall pass to the Buyer or to the Owner (as applicable) on delivery unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer or the Owner (as applicable) once payment has been made and the Goods have been appropriated to the Contract.
- 7.3. Buyer reserve the right to request Seller to ensure that all import and delivery related documents shall be issued in the name of the Owner, stating that the Owner has title to the Goods.

#### **8. Warranties & Liability**

- 8.1. The Seller shall ensure that a full warranty cover for the Goods is in place for a period of twelve (12) months from the date of the delivery of the Goods at the Delivery Address.
- 8.2. The Seller warrants to the Buyer that the Goods:
  - 8.2.1. will be of satisfactory quality (within the meaning of that term under the laws of England & Wales) and fit for purpose (within the meaning of that term under the laws of England & Wales) for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;
  - 8.2.2. will be free from defects in design, material and workmanship;
  - 8.2.3. will correspond with any relevant Specification or sample; and
  - 8.2.4. will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.3. The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.4. Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
  - 8.4.1. to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven (7) days; or
  - 8.4.2. at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 8.5. The Seller and the Buyer each represent, warrant, agree and undertake to each other that:
  - 8.5.1. neither the Seller, any of its affiliates, owners, officers, directors, employees or other representatives at the date of the entering into force of the Contract, has offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so;
  - 8.5.2. neither the Seller, any of its affiliates, owners, officers, directors, employees or other representatives during the term of this Contract will perform any Prohibited Act, in relation to the performance of the Services under this Contract;
  - 8.5.3. neither the Buyer, any of its affiliates, owners, officers, directors, employees or other representatives during the term of this Contract will perform any Prohibited Act, in relation to the performance of this Contract;
  - 8.5.4. both the Seller and the Buyer covenant that should it become aware of any Prohibited Act relating to the performance of the Services under this Contract, it shall promptly notify the other Party and shall cooperate in good faith with any concerns of such nature of which it may be notified by the other Party. Either Party may by written notice require the other Party to remove (or cause to be removed) anyone who is involved in the performance of this Contract, who in the reasonable opinion of the notifying Party, has committed or may be involved in the committing of a Prohibited Act;
  - 8.5.5. the Seller shall insure that the contracts with all its personnel and all subcontractors contain anti-bribery and anti-corruption provisions equivalent to sub provisions 8.4.1, 8.4.2 and 8.4.3; and

- 8.5.6. Notwithstanding any limitation of liability in this Contract, either Party shall indemnify to the fullest extent possible and hold the other Party and its affiliates, owners, officers, directors, employees or other representatives during the term of this Contract harmless from and against any and all claims, actions, damages, losses, penalties, costs, and expenses, including court and legal fees, from which any of them may suffer or incur as a result of, or in connection with any Prohibited Act and non-compliance with this provision, by such Party or any of its affiliates, owners, officers, directors, employees, or other representatives.
- 8.6. The Seller shall indemnify the Buyer in full against all liabilities, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 8.6.1. breach of any warranty given by the Seller in relation to the Goods or the Services;
- 8.6.2. any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- 8.6.3. any liability under applicable consumer protection legislation in respect of the Goods;
- 8.6.4. any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- 8.6.5. any act or omission of any of the Seller's personnel in connection with the performance of the Services.
- 8.7. Any action for breach of the Contract or claim brought by the Seller against the Buyer must be commenced no later than six (6) months after expiration or termination of the Contract or the completion of the Services whichever is earlier (the "Claim Period"). If the Seller fails to bring such action within the Claim Period, then the Seller shall be deemed to have waived whatever rights it may have had in relation to such cause of action including all legal and equitable remedies.
- 8.8. Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that Party's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either Party's reasonable control;
- 8.8.1. Act of God, explosion, flood, tempest or fire;
- 8.8.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.8.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.8.4. import or export regulations or embargoes;
- 8.8.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either the Seller or the Buyer or of a third party);
- 8.8.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery; and
- 8.8.7. power failure or breakdown in machinery.

## 9. Suspension and Termination

- 9.1. The Buyer may cancel or amend the Order anytime for convenience upon providing thirty (30) days written notice to the Seller. In case the Buyer cancels the Order the Buyer's sole liability shall be to pay to the Seller the Price for the Goods provided or Services rendered as at the date of termination, less the Seller's net saving of cost arising from cancellation.
- 9.2. In addition to the provision outlined in clause 9.1 the Buyer may terminate the Contract by giving notice to the Seller at any time if:
- 9.2.1. the Seller makes any composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or a moratorium comes into force in respect of the Seller (within the meaning of applicable insolvency legislation); or
- 9.2.2. an encumbrances takes possession, or a receiver is appointed, of any of the property or assets of the Seller;
- 9.2.3. the Seller ceases, or threatens to cease, to carry on business; or

9.2.4. the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

- 9.3. The Buyer shall notify the Seller in Writing in case of any default in the Goods / Services within a reasonable time after the delivery and allow the Seller to correct the default within fifteen (15) days from the notice. If, at the end of the fifteen (15) days' notice, the Seller fails to correct such default, the Buyer shall have the right, without prejudice to the possible termination of the Order in accordance with Clause 9.2 above, to either:
- 9.3.1. Impose a technical assistance to the Seller without exclusion of the Seller's obligations or liabilities under the Contract;
- 9.3.2. Take the place of the Seller in the performance of all or part of the supply of the Goods / Services, at the sole expense and risks of the Seller, without ceasing the validity of the Order. In this respect, the Buyer may hire a third party to complete the supply of the Goods / Services by means of a subcontract and charge all related costs borne by the Buyer to the Seller; or
- 9.3.3. Reject all or part of the Goods which do not conform in every respect with the terms of the Order, and charge all costs borne by the Buyer as a result of the Seller's default to the Seller.
- 9.3.4. The Buyer shall deduct all such costs borne by it as mentioned in the above Clauses 9.3.1, 9.3.2 and 9.3.3 from any outstanding amounts due to the Seller by the Buyer.
- 9.4. Notwithstanding anything to the contrary the Buyer shall have the right at its sole discretion to suspend all or part of the Order at any time subject to delivering to Supplier a notice of suspension in Writing. Said suspension shall take effect from the date of reception of the written notice sent by the Buyer to the Seller (the "Reception Date") and the Seller shall temporarily stop the execution of the affected Order. For the avoidance of doubts during the suspension the obligations arising from the Order shall be suspended only with regards to the provision of the Goods, while those relating to confidentiality, insurance, patents and custody of Goods shall remain in full force and effect.
- 9.5. The implementation of the Order shall be resumed by the Seller upon receiving a notice in Writing from the Buyer. If, subject to receiving the said notification, the Seller refuses to resume the implementation of the Order, the Buyer shall have the right to terminate the Contract. Buyer shall also have the right to terminate the Contract in case Seller suspends the Order without providing Buyer with a legitimate reason accepted by the Buyer.
- 9.6. If the suspension of the Order, in the absence of Seller's default, is prolonged for more than ninety (90) days from Reception Date, the Parties shall agree upon the basis of continuation of the Order or if such a continuation proves to be impossible, the Contract will automatically be terminated.

## 10. Announcements and Confidentiality

- 10.1. The Seller shall not disclose the existence of this Contract without the consent of the Buyer, which consent will not be unreasonably withheld.
- 10.2. For a period of five (5) years from receipt, the Seller shall treat as confidential, confidential information belonging to the Buyer which is disclosed to or obtained by the Seller as a result of the discussions and negotiations leading to this Contract or of its implementation / performance. Confidential information includes but is not limited to non-public information which the Buyer designates as being confidential or which under the circumstances surrounding its disclosure or by virtue of its nature ought to be treated as confidential by the Seller ("Confidential Information").
- 10.3. The obligations of non-disclosure and confidentiality shall not extend to the Seller in respect of anything which:
- 10.3.1. is in the public domain other than as a result of a breach of these obligations;
- 10.3.2. was in the Seller's records prior to the date of this agreement; or
- 10.3.3. is required to be disclosed under a legal or regulatory duty.
- 10.4. It is understood that the Seller will inform its officers and personnel of the confidential nature of the Confidential Information and will require them to be bound by the terms of this clause or to obligations equivalent to those stated herein and not to disclose Confidential Information to any other person.

## 11. General

- 11.1. The Buyer is a member of the group of companies whose holding company is Arabian Company for Water and Power Projects (ACWA Power Projects), and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.
- 11.2. The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 11.3. A notice required or permitted to be given by either Party to the other under these Terms shall be in Writing addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the Party giving the notice.
- 11.4. No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.5. The failure by the Buyer, whether or not deliberate, to exercise a right or to insist on the precise performance of this Contract, or its delay in doing so, shall not affect its future exercise or enforcement of rights.
- 11.6. If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 11.7. Unless expressly stated otherwise in these Terms, this Contract shall be governed by the laws of the jurisdiction of the Client, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.
- 11.8. The Seller shall at all relevant times maintain, at its own cost, such insurance cover (with a reputable international insurer) as is best practice in its business sector and is appropriate (both in scope and quantum of cover) to the value and nature of this Contract and the risks inherent in its performance.
- 11.9. The Seller agrees to provide the Buyer with a certificate of insurance evidencing the insurance coverage referred to in Clause 11.8 if requested by the Buyer.
- 11.10. Seller shall adhere to any HSE standards prescribed by regulations, law or the Buyer. Any written notice by Buyer to (re)align with those HSE standards shall be acted upon by the date specified in that notice. The Seller shall take whatever action that may be necessary on its part such that its deputed personnel and subcontractors are provided with a workplace that is free from recognized hazards that are likely to cause death or serious physical harm and are able to perform the Services in a safe manner, in accordance with HSE standards as prescribed by regulations, law, or the Buyer. The seller shall provide all its deputed personnel with appropriate personal protective equipment, during the performance of the Services at project sites at its own cost and as advised by the Buyer. Seller shall notify Buyer immediately of any accidents, incidents, impending or actual stoppages of work, industrial disputes or other matters which are likely to affect the rendering of the Services, the interests or other operations of Buyer and/or the Owner.
- 11.11. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either Party the agent of the other Party, nor authorize either Party to make or enter into any commitments for or on behalf of the other Party.
- 11.12. These Terms constitute the entire terms for the purchase of the Goods / rendering of services and shall not be modified except in Writing. These Terms supersede all prior agreements, arrangements or understandings whether in writing or otherwise between the parties.
- 11.13. A provision which either in its terms or from its intent is to survive termination of this Contract shall remain in force however the termination occurs.
- 11.14. Third Party's Rights Act 1999  
The Parties to this Agreement do not intend that any term of this Agreement should be enforced, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement and the application of the Third party's Rights Act is expressly excluded.
- 11.15. Dispute Resolution  
In the event of any dispute arising out of or in connection with the validity, construction, performance or termination of the Contract,

which cannot be resolved by an amicable settlement between the Buyer and the Seller, the Parties agree to submit the matter to settlement proceedings under the ICC Alternative Dispute Resolution Rules ("ADR Rules"). If the dispute has not been settled pursuant to the said ADR Rules within 45 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 under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed pursuant to the said Rules of Arbitration. The arbitration shall take place in jurisdiction of the Client's choice. The language of the arbitration shall be English. The arbitration decision shall be final and binding on the Buyer and the Seller.

- 11.16. This Contract and any dispute, controversy, proceedings or claims of whatsoever nature arising out of or relating to this Contract shall be governed by and construed in accordance with the laws of the laws of the jurisdiction of the Client ("Governing Law") and with the express exclusion of United Nations Convention on Contracts for the International Sales of Goods ("CISG").