



# **TERMS AND CONDITIONS FOR PURCHASE ORDERS**

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## 1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement as hereinafter defined, the following words and expressions (set out in alphabetical order) shall have the meanings herein assigned to them unless the context, subject matter or content is inconsistent with such meanings:-

**Appendix** means the Appendix to the Conditions of the Contract;

**Appropriate Authority** means any statutory authority having jurisdiction over the Works;

**As-built Drawings** means as-built drawings for works designed (including alternative design) by the Contractor and/or Nominated Sub-Contractor and any other as-built drawings required to be provided as specified in the Contract Documents;

**Certificate of Extension of Time** means the certificate issued under Clause 11.0;

**Certificate of Making Good Defects** means the certificate issued under Clause 12.0;

**Certificate of Non-Completion** means the certificate issued under Clause 13.0;

**Clause** means the clauses in the Conditions of the Contract;

**Completion Date** means the date(s) for completion of the Works stated in the LOA/Work Instruction/Work Orders and Site Instruction;

**Conditions** mean the Conditions of the Contract;

**Construction Plant** means all tools, machineries and equipment that are being used during the construction works / repairs are underway.

**Construction Schedule** means estimate duration and timeline for the implementation of each stages of the construction works until the completion of each work in the time which the duration for completion has been agreed and set

**Consultant** means the Engineer, Quantity Surveyor and/or Specialist Consultant as appropriate;

**Contract or Contract Documents** comprise the following documents:

- i. Form of Agreement;
- ii. Conditions of Contract and the Appendices annexed thereto;
- iii. The Pricing Documents annexed thereto consisting of the Bill of Quantities, Schedule of Rate and Day Work Schedule;
- iv. Scope of Works;
- v. Specifications;
- vi. Contract Drawings; and
- vii. Letter of Award

**Contract Sum** means the sum stated in Letter of Award ("LOA");

**Contractor** means the party named in the Articles of Agreement and includes the Contractor's legal successors or personal representatives or any Person to whom the rights and obligations of the Contractor have been transferred with the agreement of the Employer;

**Contractor's All Risks Insurance ('CAR Insurance')** means an insurance policy which provides cover against any physical loss or damage to work executed and materials and goods under a standard CAR Insurance policy. The minimum insurance risks are specified under Clause 8.0 and the insurance shall have the appropriate endorsements. Any additional insurance risks in addition to those stated in these Conditions that are required to be covered under the CAR Insurance shall be stated in the Contract Bills;

**Date of Commencement** means the date(s) fixed and stated in the LOA;

**Day** means calendar day including the weekly day of rest but excluding gazetted holidays in the location where the Works is carried out;

**Defects** means defects, shrinkages or other faults due to materials or workmanship not in accordance with the Contract and Nominated Sub-Contract and/or due to any faulty design (if any) undertaken by the Contractor and Nominated Sub Contractor;

**Defects Liability Period** means the period stated in the Appendix under Clause 12.0;

**Employer** means Pelabuhan Tanjung Pelepas Sdn. Bhd. ("PTP"), its legal successors or personal representatives or any Person to whom the rights and obligations of the Employer have been transferred with the agreement of the Contractor;

**Environmental Management System Statement** means system of care for the environment at the site during construction / repairs are done, where, the system must follow the rules and regulation set by the Department of Environmental ("DOE").

**Final Account** means the documents showing the adjustment of the Contract Sum issued under Clause 6.0;

**Force Majeure** means any circumstances beyond the control of the Contractor caused by terrorist acts, governmental or regulatory action, epidemics and natural disasters;

**Interim Certificates** means the progress payment certificate issued by PTP under Clause 6.0;

**Letter of Award ("LOA")** means the letter of acceptance of the Contractor's tender issued by or on behalf of the Employer;

**Limit of Retention Fund** means the amount as stated in the LOA;

**Lump Sum Contract** means a fixed price Contract and is not subject to remeasurement or recalculation except for Provisional Quantities and Variations;

**Month** means calendar month;

**Nominated Sub-Contract** means the contract entered into between the Main Contractor and the Nominated Sub-Contractor pursuant to a nomination by PTP;

**Nominated Sub-Contractor** means a sub-contractor nominated by PTP;

**Nominated Supplier** means a supplier nominated by PTP for the release of monies to Nominated Sub-Contractors and/or Nominated Suppliers under;

**Performance Bond** means the bond required to be provided by the Contractor as a security for the due performance of the contract under Clause 3.0;

**Person** means an individual, sole proprietorship, firm (partnership) or body corporate;

**Provisional or Provisional Quantity** means the estimated quantities of work provided in the Contract Bills for work to be executed or for the supply of any materials and goods which cannot be determined or detailed at the time;

**Provisional Sums** means the sums provided in the contract and/or the Nominated Sub-Contract for work to be executed or for the supply of any materials and goods which cannot be foreseen, determined or detailed at the time;

**Retention Fund** means the sum retained in accordance with Clause 3.5;

**Service Provider** means any company or body authorised to provide water, electricity, telephone, sewerage and other related services;

**Site** means the land and other places on, in, under, over or through which the Works are to be executed and is provided by the Employer for the purposes of the Contract including other land and places obtained by the Contractor and accepted by the Employer as forming part of the Site;

**Variation** means changes made to the Works as defined under Clause 15.0;

**Week** means a period of seven (7) consecutive days;

**Work Orders** as described in Clause 2.2;

**Works** means the works described in the Articles of Agreement and referred to in the Contract Documents and includes any changes made to these works in accordance with the Contract; and

**Works Programme** means the works programme described in the Contract Documents and in Clause 3.5.

- 1.2 Where any word or expression is defined in these Conditions of Contract such definition shall extend to the grammatical variations of such words or expressions.
- 1.3 Words importing persons shall include firms and corporations.
- 1.4 Words importing the singular only also include the plural and vice versa where the context requires.
- 1.5 The index and headings in the Agreement shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Works.
- 1.6 Reference in these Conditions of Contract to Clauses and Appendices shall, unless expressly stated otherwise, be to Clauses of this Condition of Contract and Appendices thereto.
- 1.7 Where expired contract is extended, the original terms and conditions shall apply unless stated otherwise.

## **2.0 SCOPE OF WORKS**

- 2.1 The Contractor shall provide and carry out the Works as described in this Conditions of Contract which shall consist of:-
- i. Form of Agreement;
  - ii. Conditions of Contract and the Appendices annexed thereto;
  - iii. The Pricing Documents annexed thereto consisting of the Bill of Quantities, Schedule of Rate and Day Work Schedule;
  - iv. Scope of Works;
  - v. Specifications;
  - vi. Contract Drawings; and
  - vii. Letter of Award
- 2.2 For any term contract, PTP will issue to the Contractor from time to time work orders (referred to as "the Work Orders") which set out the extent, nature and scope of the Works required at that particular time including but not limited to instructions, specifications and precise works to be performed.
- 2.3 The Contractor shall observe and comply strictly with the Work Orders and the Specifications and take instructions from the designated officer of PTP as stated in Section 6 of the Schedule or such other person as PTP may notify the Contractor from time to time.
- 2.4 The scope of the Works and Specifications as described in the **Appendix A** is subject to be reviewed, varied, added, deleted or modified from time to time during the term of this Works depending on the requirements as determined by PTP at its sole discretion.

## **3.0 PERFORMANCE BOND**

- 3.1 The Contractor shall within fourteen (14) days of the date of the Letter of Award provide to PTP's Representative a performance bond in the form of a bank guarantee issued by a bank established in Malaysia and to which PTP has approved in a sum equal to ten per cent (10%) of the Contract Sum and in the form appearing in **Appendix B** of this Conditions of Contract for the due observance and performance of this Contract. The bond shall be held or remain valid and effective for the term of this Agreement with a further period of 180 days from the Expiry Date. The cost of obtaining the bond shall be at the expense of the Contractor.
- 3.2 If seven (7) days prior to the date of expiry stated in the bond delivered by the Contractor to PTP's Representative in accordance with the above Clause 3.1 or otherwise the Defects Liability Certificate shall not have been issued by PTP's Representative, the Contractor shall prior to the date of expiry of such bond at his own expense renew or extend the period of such bond in the same form and amount save as to the expiry date therein contained so that the bond shall remain in full force and effect for the benefit of PTP until PTP's Representative shall have issued a Defects Liability Certificate.
- 3.3 In accordance with Clause 3.1 above, any failure of the Contractor to provide the requested bond to PTP within fourteen (14) days from the notification to do so at any time during the subsistence of this Agreement shall constitute a material breach of this Agreement by the Contractor.

- 3.4 If any demand is made by PTP under the bond delivered by the Contractor to PTP's Representative in accordance with Clause 3.1 above with the result that the amount (if any) available under the said bond is less than ten per cent (10%) of the value of the Works at that time remaining to be performed by the Contractor at that time, the Contractor shall before continuing with any further works deliver to PTP a further bond in such amount that PTP holds a bond with an aggregate value of not less than ten per cent (10%) of the value of the Works at that time remaining to be performed. Any such additional bond to be provided by the Contractor shall comply with the requirements contained in Clause 3.1 above. The cost of obtaining such additional bond shall be at the expense of the Contractor.
- 3.5 PTP shall be entitled to assign all rights, title and interest under the bond to be provided under Clause 3.1 above and any additional bond provided under Clause 3.4 above.
- 3.6 This performance bond shall not be exchanged as or discharged and to be treated as retention monies.
- 3.7 In the event this Agreement is terminated due to the Contractor's breach, PTP shall have the right to demand on the bank guarantee and forfeit the same and whatever retention monies kept by PTP as liquidated damages for any loss or delay incurred by PTP due to such delay. In the event there are no retention monies, PTP shall have the absolute discretion to withhold any monies payable to the Contractor as such liquidated damages. PTP shall give seven (7) days written notice to the Contractor to remedy the delay and/or breach failing which PTP shall exercise its right under this Clause.
- 3.8 The bank guarantee will be returned to the Contractor for cancellation after its expiry according to Clause 3.2 above provided always that the Contractor having fully completed the Works in accordance with the terms of this Agreement and PTP has issued a certificate of completion on the same.

#### **4.0 CONTRACT SUM**

- 4.1 The contract sum stated in the Letter of Award for the Works under this Agreement is only an estimate is not guaranteed and shall not be taken as final. The final total contract sum payable for the Works under this Agreement shall be based on the actual measurements of the Works performed under the various Work Orders issued and duly completed by the Contractor within the stipulated time.
- 4.2 Notwithstanding the contract sum, if the final total amount paid based on the actual measurements of the Works performed is less than the contract sum, the Contractor shall have no claim whatsoever on the shortfall or deficient amount.
- 4.3 All measurements on the Works performed will be based on the Schedule of Rates as stated.
- 4.4 The contract sum is inclusive of all labour, materials, consumables, equipments, tools, machineries, vehicles, transportation, taxes, levy and others necessary to perform the Works, which are to be provided by the Contractor at its own expense.
- 4.5 Price quoted must be in RINGGIT MALAYSIA (RM) and shall remain firm for 90 days. Except where express provision is made to the contrary, PTP shall pay the applicable rate imposed under the Goods and Services Tax (GST) to the Contractor in addition to the Contract Sum upon presentation of a valid tax invoice and the Contractor shall remit the GST amount for

taxation in accordance with the legislation. The Contractor hereby agrees that the Contractor shall be registered for GST purposes.

- 4.6 The Contractor shall provide to PTP upon fourteen (14) days of the acceptance of the Contract the rationalization of the BQ and Schedule of Rates without affecting the original Contract Sum. All rationalized rates shall be mutually agreed by both PTP and the Contractor.

## **5.0 WORKS PROGRAMME AND ORGANIZATION CHART**

- 5.1 Within fourteen (14) days from receipt of the Letter of Award (or within such longer period as may be agreed in writing by PTP), the Contractor shall provide to PTP for his information:

- i. Three (3) copies of the Works Programme showing the order in which he proposes to carry out the Works. The Works Programme shall comply with any requirements specified in the Contract Documents. If the Works or any part of the Works is delayed for whatever reason, PTP may instruct the Contractor to revise the Works Programme/Schedule and the Contractor without charge to PTP shall provide PTP from time to time with similar number of copies of any revised Works Programme/Schedule.
- ii. Three (3) copies of company organization chart that represents and defines the structure of an organization in terms of rank, plots the relationships between staff, showing directors, managers and general workers, lines of authority and responsibility and key personnel resume.

## **6.0 PAYMENT**

- 6.1 The completion of any of the Works under any Work Order(s) must be satisfactory to PTP and certified by PTP under a certificate of completion of work for a particular Work Order before the Contractor can issue its invoice. The following are to be issued/to be received by PTP/the Contractor:-

- i. Work Instruction/Site Instruction
- ii. Request for Inspection Form
- iii. Service Request Form
- iv. Final Measurement Sheet

- 6.2 PTP shall make payment on each undisputed invoice within sixty (60) days from the date of receipt of the original undisputed invoice for that part of the Works completed and certified pursuant to Clause 6.1.

- 6.3 PTP is entitled to withhold payment where an invoice is disputed due to any discrepancy until such discrepancy is clarified or resolved and to withhold payment due under Clause 6.2.

## **7.0 OBLIGATIONS OF THE CONTRACTOR**

- 7.1 The Contractor undertakes and covenants with PTP that it will at all material times and at its own cost and expense:-

- 7.1.1 Standard and Quality



- i. Ensure that the Contractor's standard and quality of the Works is good, prompt, efficient and non-disruptive to PTP's twenty-four hours port and Free Zone operations;
- ii. Follow all specifications and scope of works given and such variations as may be issued from time to time;

#### 7.1.2 Labour and Employees

Provide its own labour and employees of all levels of skills required to perform the Works and ensure that its employees are adequately qualified and licensed (as applicable), properly trained, skilful, competent and experienced in all aspects of the Works. In the event the Contractor employs specially licensed employees to perform any part of the Works, the Contractor shall produce said licence prior to the employee commencing work;

#### 7.1.3 Character of Employees

Ensure that all its employees deployed for the Works, are of good character, healthy and are free from any criminal records, drugs, mental or medical problem or disorder, failing which PTP is entitled to deny entry or ban such person from PTP'S premises without any liability whatsoever to the Contractor;

#### 7.1.4 No illegal foreign workers

Employ only Malaysians or legalised foreign workers having valid work permits to perform the Works and shall produce documentary proof of same to PTP prior to commencing any part of the Works. PTP hereby reserves the right to deny entry or ban any person whom PTP is not satisfied of his status, without any liability whatsoever to the Contractor;

#### 7.1.5 Safety standards

Adopt and maintain adequate safety measures and precautions for its employees in the performance of the Works and maintain high safety standards with zero accident occurrence;

#### 7.1.6 Licences

Maintain all necessary approvals, permission, permits or licences from the relevant authorities necessary to carry out its business and to perform the Works and provide originals of the same for inspection by PTP prior to commencing any part of the Works;

#### 7.1.7 Compliance with all Laws

Comply with all applicable laws including matters relating to employment, safety, health and the performance of the Works;

#### 7.1.8 Emergency Services

In addition to the Work Orders, the Contractor shall attend to any emergency or breakdown calls for any urgent remedial work and respond promptly within twenty four (24) hours after notification by PTP.

#### 7.1.9 Progress Meeting and Reporting

Comply with PTP's instruction with regards to progress reporting, updating and attending progress meeting.

#### 7.1.10 Supervision of Works

The Contractor shall supervise the Works at all times, and ensure that all Works shall according to the specification/BQ/scope of work/work programme. The Contractor shall be made liable for any defect, imperfection or any other fault whatsoever which may appear and which are due to materials or goods or workmanship not being in accordance with specifications of the specification/BQ/scope of work/work programme, the Contractor shall make good such defects, imperfections or any other fault whatsoever at the Contractor's own costs.

#### 7.1.11 Accident Reporting

At the point of accident, the contractor must ensure that his employee and sub-contractor employee comply with PTP HSE rules and regulations. Contractor have to notify PTP immediately the incident and provide all necessary assistance and cooperation during the investigation.

### 7.2 Contractor's Alternative Design

7.2.1 Where PTP has accepted any Contractor's Alternative Design if any, such Contractor's Alternative Design shall form part of the Works and the Contractor hereby agrees to adopt and accept full responsibility for such Contractor's Alternative Design under and subject to the provisions of the Agreement.

7.2.2 The Contractor shall develop and complete the Contractor's Alternative Design in accordance with the provisions of the Agreement so as to procure the Contractor's Final Design which will, when completed, be adequate, accurate and sufficient and jointly and severally meet in all respects the requirements of the Agreement.

7.2.3 Drawings and other design documents prepared by the Contractor pursuant to Clause 7.2.2 above shall be submitted to PTP's Representative for approval.

### 8.0 INSURANCES (if applicable)

8.1 The Contractor shall insure in the joint names of its representatives, its sub-contractors and suppliers and other interested parties for their respective rights and interests in the terms of the insurance referred to in Section 8 of Schedule of this Agreement.

8.2 The Contractor will comply and ensure that its sub-contractors and suppliers comply with the terms and conditions of the aforementioned insurance and the procedures for claims

notification and administration there under and shall do nothing nor omit to do anything, which might render the insurance voidable.

- 8.3 Upon the occurrence of any contingency giving rise to a claim under the policies of insurance obtained by the Contractor pursuant to Clause 8.1 and identified in the Letter of Award, the Contractor shall notify in writing the person, firm or company nominated for this purpose in writing by PTP. The Contractor shall at its own expense prepare, submit and obtain settlement of all insurance claims under the insurances (including those of its Sub-Contractors and Suppliers of any tier) provided that if in the opinion of PTP the Contractor fails to pursue a claim with due diligence PTP shall have the right, exercisable on fourteen (14) Days written notice, to assume control over the preparation, submission and settlement of such claim, and recover its costs for doing so from the Contractor as a debt, subject always to having due regard to the interests of the Contractor.
- 8.4 All monies to be received under the insurance referred to in Clause 8.1 shall be paid by the insurers to PTP or to such person, firm or company nominated in writing by PTP or such third party to receive such monies. The Contractor hereby irrevocably authorises PTP, or such third party, or such nominee to give a good discharge to the insurers for such monies. In the event of any damage, loss or injury to the Works where any indemnity is provided under the terms of the insurance referred to in Clause 8.1, then, unless due to the Excepted Risks, the Contractor shall not be entitled to any payment in respect of the restoration thereof other than the monies received under the insurance.
- 8.5 If and to the extent that PTP or any third party or nominee receives monies from the insurers in respect of claims made by or on behalf of the Contractor or its Sub-Contractors of any tier, PTP shall make or procure payment to the Contractor or the relevant Subcontractor, without unreasonable delay, of such monies or the appropriate proportion thereof having regard to the extent to which the relevant loss or damage to which such insurance monies relate has been rectified in accordance with Clause 8.3.
- 8.6 Other than in respect of loss or damage and attributable to the Excepted Risks, the Contractor shall be responsible for the amount of any deductibles under the aforementioned insurance. In the event of any damage loss or injury to the Works where an indemnity is provided under the terms of such insurance, then unless due to the Excepted Risks the Contractor shall not be entitled to any payment in respect of the restoration thereof other than the monies received under such insurance.
- 8.7 Upon the occurrence of any loss or damage to the Works or unfixed materials or goods prior to completion from any cause whatsoever the Contractor shall, the provisions of this Clause 8.0 and the Contractor's obligation to comply with all the requirements of the insurers, proceed immediately to restore, replace or repair the same free of charge save only that any monies, if and when received from the insurance under this Clause 8.0 shall be released to the Contractor by PTP by instalments on the interim certificate of PTP's Representative calculated as from the date of receipt of monies in proportion to the extent of the work of restoration, replacement or repair previously carried out by the Contractor, but having regard also to any likely shortfall or deficit in the money so paid and to the Contractor's consequential obligation in such event to reinstate an appropriate proportion of the loss or damage represented by such shortfall or deficit free of charge.

## **9.0 RULES AND REGULATIONS AND HEALTH, SAFETY AND ENVIRONMENT (“HSE”) POLICY**

- 9.1 The Contractor shall submit to PTP a Health, Safety and Environment Plan within fourteen (14) days from the date of issuance of the Letter of Award in accordance with PTP’s HSE requirements and obtain approval thereof before commencement of the Works. PTP reserves the right to make amendments, variations or revision to the said Health, Safety and Environment Plan.
- 9.2 The Contractor further covenants to comply with PTP’s prescribed rules and regulations and PTP’s Health, Safety, Security and Environmental policies (referred to as “the Rules and Regulations and HSE Policies”) imposed by PTP from time to time pertaining to the port of PTP (referred to as “the Port”).
- 9.3 PTP shall not be liable to the Contractor in any way for any violation or non-compliance of the Rules and Regulations and HSE Policies by any person including other users of the Port, contractors, sub-contractors, sub lessees and/or tenants or the employees, agents, visitors, invitees or licensees of PTP.
- 9.4 PTP reserves the right at any time and from time to time to vary, amend, add or suspend all or any of the Rules and Regulations and HSE Policies and to substitute or make further rules and regulations and/or policies as PTP may in its discretion deem fit.
- 9.5 In the event of any conflict between the any of the Rules and Regulations and the HSE Policies and any provisions of this Agreement, the provisions of the Rules and Regulations and the HSE Policies shall prevail for as long as the Rules and Regulations and the HSE Policies shall be in force. The Contractor shall accept as final and binding the decision of PTP on any matters arising out of the Rules and Regulations and the HSE Policies.
- 9.6 The Contractor shall comply at all times with the International Ship and Port Facility Security Code (ISPS) currently adopted by PTP or any other requirement as may be advised by PTP from time to time in preserving the security and/or other aspects of the Port’s operations.
- 9.7 The Contractor shall register all its employees carrying out the Works with PTP’s Port Police at the Contractor’s own cost. The Contractor shall comply with all rules on the use of any passes for entry to the Port and in the event of any breach PTP is unconditionally entitled to prohibit any particular offending individuals from having access to the Port.
- 9.8 The Contractor agrees and declares that the Contractor's failure or the failure of any of its employees to observe and comply with any of the Rules and Regulations and the HSE Policies or any matter mentioned in this Clause 9 shall constitute a breach of the terms of this Agreement.
- 9.9 The Contractor shall at its own expense from time to time and whenever required by PTP's Representative clear away and remove from the Site all rubbish accruing from its operations. As and when Construction Plant and surplus goods and materials are no longer required for the completion of the Works the Contractor shall after obtaining the prior consent in writing of PTP's Representative remove them from the Site and on completion of the Works shall clear away and remove from the Site all Construction Plant, surplus goods, material and Temporary Works of every kind and leave the whole of the Site and Permanent Works clean and in a workmanlike condition to the satisfaction of PTP's Representative.

- 9.10 Without limiting any obligation of the Contractor under Clause 9.9 or any requirement of the Environmental Management System Statement, the Contractor shall at all times carry out the Works so as to prevent any damage to or pollution of the environment at the Site and any immediately adjoining areas. In the event that damage to or pollution of the environment is caused as a consequence of the carrying out of the Works, the Contractor shall make good any damage or pollution so caused at his expense.
- 9.11 In the event of the Contractor failing to carry out the provisions of Clause 9.9 PTP's Representative may give the Contractor a notice in writing that the provisions of this Clause 9.9 must be fully complied with within seven (7) Days of the date of the notice. If the Contractor fails to comply with the notice in whole or in part, PTP's Representative may make arrangements for the work to be carried out by others and the cost thereof incurred by PTP shall be deducted by PTP's Representative from the Contract Sum.
- 9.12 The Contractor shall provide and ensure that its employees or agents or representatives or any appointed person to be well equipped with the approved type of PPE according to PTP's Health, Safety and Environment ("HSE") standard requirements. PTP shall have the right to require the Contractor to change the existing Personal Protection Equipment (referred to as "PPE") into a new one from time to time should the Contractor failed to meet PTP's HSE requirement which the cost shall be borne by the Contractor.

## **10.0 DELAY**

- 10.1 The Contractor shall comply strictly with the time line or schedule as may be required by PTP in the relevant Work Orders and complete each Work Order in time, failing which PTP reserves the right to appoint a third party to carry out the balance of the incomplete work under the same Work Order, at the risk and cost of the Contractor.
- 10.2 In the event a third party is appointed under Clause 10.1 above due to the delay by the Contractor, PTP shall be entitled to:-
- 10.2.1 withhold payment for that portion of the Works that is completed under that particular Work Order;
  - 10.2.2 claim the cost incurred in payment to the third party to complete the work;
  - 10.2.3 claim double the amount of the third party payment from the Contractor;
  - 10.2.4 claim any administrative cost incurred by PTP in making the alternative arrangement on the third party to complete the Work Order(s); and
  - 10.2.5 set-off and deduct the claims under Clause 10.2.2, 10.2.3 and 10.2.4 from the amount withheld under Clause 10.2.1, without prejudice to any claim for the balance thereof.

## **11.0 EXTENSION OF TIME FOR COMPLETION**

- 11.1 Upon it becoming reasonably apparent that the progress of the Works or any Section is delayed, the Contractor shall forthwith give written notice within fourteen (14) days of the causes of delay to PTP's Representative.

11.2 It shall be a condition precedent to any extension of time by PTP's Representative under any provision of the Agreement, including Clause 11.3, that in respect of each and every delaying event identified in the Contractor's notice under Clause 11.1 the Contractor shall, in such notice or otherwise in writing as soon as possible after such notice but in no event more than fourteen (14) days or such longer period as PTP's Representative may in its absolute discretion determine, notify PTP's Representative in writing of any factors and the relevant Agreement provision which he considers may entitle him to an extension of time together with a statement by reference to the Construction Schedule of:

- i. the reasons why delay has occurred or is likely to result; and
- ii. an estimate of the period by which the Works or any Section are or is likely to be delayed; and
- iii. details of the steps the Contractor proposes to take to avoid or reduce the delay or likely period of delay.

11.3 If in the opinion of PTP's Representative the completion of the Works or any Section thereof is likely to be delayed or has been delayed beyond the relevant Date for Completion by reason of:

- i. any Variation ordered; or
- ii. any circumstance or occurrence (other than a breach of the Agreement by the Contractor) entitling the Contractor to an extension of time for completion of the Works or any Section by reason of an express provision of the Agreement; or
- iii. any act of prevention or breach of Agreement by PTP; or
- iv. the occurrence of an Excepted Risk; or
- v. PTP's Representative suspending the Works

then provided the same is not due to any act, omission, negligence, default, or breach of the Contractor or any Sub-Contractor or Supplier or any of their servants or agents PTP's Representative shall so soon as he is able to estimate the length of the delay beyond the date or time aforesaid following receipt of the Contractor's notification furnished in accordance with Clause 11.4 determine and notify the Contractor in writing of any extension of time to which he considers the Contractor is entitled under this Clause 11.3. Provided that where two or more factors are operating concurrently PTP's Representative need not so notify the Contractor until as soon as is reasonably practical after the last of such factors has ceased to operate. Provided further that the Contractor shall use constantly its best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of PTP's Representative to proceed with the Works.

11.4 The Contractor shall within fourteen (14) Days of the cessation of the factor or factors notified to PTP's Representative under Clause 11.2 notify PTP's Representative in writing of the revisions (if any) he may require to the relevant Date for Completion, giving reasons therefore and such other particulars as shall be reasonably necessary to enable PTP's Representative to consider the application.

- 11.5 Notwithstanding Clause 11.3 PTP's Representative shall not be obliged to take into account any circumstances which are not notified to him in accordance with the periods referred to in Clauses 11.1, 11.2 and 11.4 but may upon the written request of the Contractor extend the said periods if he considers the request for such extension to be reasonable.
- 11.6 The Contractor shall after consultation with PTP's Representative submit to PTP's Representative for its approval such revisions to the Construction Schedule which the Contractor considers necessary to enable him to meet any extension of time referred to in Clause 11.3 and the requirements of PTP's Representative. The submission shall be made within seven (7) Days of receipt of a notification from PTP's Representative for the purpose of this Clause 44.6 or such other time as is agreed by PTP's Representative in writing. Should the periods referred to in Clauses 11.2 and 11.4 be extended PTP's Representative may call for an interim Construction Schedule to be submitted in the best detail possible at the time specified.
- 11.7 PTP's Representative shall as soon as is reasonably practical after receipt of the Contractor's submission furnished in accordance with Clause 11.6 approve the revisions to the Construction Schedule unless such submission is in the opinion of PTP's Representative unreasonable having regard to the obligations of the Contractor under the Agreement in which case the Contractor shall submit to PTP's Representative for its approval a Construction Schedule revised so as to comply with the instructions of PTP's Representative.
- 11.8 Without prejudice to any other grounds which do not entitle the Contractor to an extension of time the Contractor shall not be entitled to:
- i. extensions of time for delays resulting from weather conditions; or
  - ii. any Costs, loss or expense associated with any delay and/or extension of time in respect thereof except to the extent that he is expressly entitled to Costs under any provision of the Agreement; or
  - iii. an extension of time in respect of any cause of delay nor for any period of delay which by the exercise of its best endeavours could be avoided or reduced (to the extent that such could have been reduced). The onus of proving that the Contractor has exercised its best endeavours, and that despite such endeavours, the delay could not be avoided or reduced, shall in all cases rest with the Contractor in this respect.
- 11.9 An extension of time granted in respect of one Section shall not of itself entitle the Contractor to an extension of time for any other Section or for the whole of the Works.
- 11.10 As an alternative to granting an extension of time hereunder PTP's Representative may order the Contractor in writing to recover the period of delay specified in such order and the Contractor shall thereupon comply with and give effect to such order by the implementation of such measures as PTP's Representative shall approve in writing (such approval not to be unreasonably withheld). Any such order shall be treated as a revision.
- 11.11 Float time within the Construction Schedule belongs to PTP and PTP's Representative may direct that float time be utilised by the Contractor to advance the performance of the Works and the Contractor shall forthwith comply with such direction at its own cost without any right to an extension of time.

- 11.12 If the Contractor does not accept PTP's Representative's determination under Clause 11.3 he shall advise PTP's Representative in writing of such non-acceptance within seven (7) Days of receipt of such determination. PTP's Representative and the Contractor shall then meet as soon as is reasonably possible but in any event within fourteen (14) Days of the said determination for the purpose of together reviewing the relevant records and endeavouring to reach agreement. PTP's Representative shall confirm or alter its determination by notice in writing to the Contractor within seven (7) Days of the date of the meeting.
- 11.13 If the Contractor disputes PTP's Representative's determination notified to him under Clause 11.12 above, he shall be entitled to refer such dispute to mediation in accordance with provided that such reference is notified to PTP's Representative in writing within twenty-eight (28) Days of the date of such determination. In the event of such reference the Contractor shall continue to comply with Clauses 11.6 and 11.7.

## **12.0 DEFECT LIABILITY**

- 12.1 The Works must be completed to the satisfaction of PTP without any defects. Any defect, shrinkage or other fault which become apparent with the period as stated in Section 9 of the Schedule of Particulars (referred to as "the Defect Liability Period") shall be repaired, rectified and made good by the Contractor at its own cost and expense within the time period as stated in Section 10 of the Schedule of Particulars from the date of notification by PTP (referred to as "the Rectification Period").
- 12.2 In the event that the Contractor fails to rectify any defect, shrinkage or other fault to the satisfaction of PTP within the Rectification Period, PTP reserves the right to appoint a third party to carry out the rectification therein PTP is entitled to deduct and claim set-off of the amounts involved in said appointment of third party and associated costs from the performance bond/retention money/ interim claims.
- 12.3 The Contractor shall ensure that the warranty shall be not less than 6 months for the date of installation of the repaired parts by PTP representatives.

## **13.0 LIQUIDATED DAMAGES**

- 13.1 In the event the Contractor fails to complete the performance of the Works as per the agreed time frame as stated in the Bill of Quantity (BQ) and/or Work Order, the Contractor shall be liable for the payment of Liquidated Damages ("LD") to PTP according to the following formula:-

$$\frac{\text{Value of BQ and/or Work Order item(s)}}{\text{Number of days agreed for completion}} = \text{LD per day}$$

For BQ and/or Work Order of RM20,000.00 and below, the maximum LD payable is up to 20% of the value of the BQ and/or Work Order. For BQ and/or Work Order of more than RM20,000.00, the maximum LD payable is up to 10% of the value of the BQ and/or Work Order. The LD shall apply for each BQ and/or Work Order.

- 13.2 For standard purchase, the LD per day is 1% up to a max of 10% of the Purchase Order ("PO") value of the undelivered item.



13.3 In the event of any agreement between both parties during clarification meeting was agreed upon, the same shall be assigned in the PO.

#### **14.0 PENALTY**

14.1 At any time during the performance of the Works, the Contractor shall be responsible to make good any part of the Works which, in PTP's opinion is of substandard quality at the Contractor's own cost upon notification by PTP.

14.2 In the event PTP is of the view that the Contractor is not performing any part of the Works to PTP's satisfaction, PTP reserves the right to deduct payment due to the Contractor the amount equivalent to the specific task as specified in the Bill of Quantity and/or Work Order.

14.3 In the event of any non-performance by the Seller or a failure to supply the goods in accordance with the terms and conditions of this agreement or work order, PTP can exercise its right to request for an immediate and full refund of the deposit paid to the Seller. The Seller shall refund the deposit within five (5) working days after receiving the notice of demand by PTP.

14.4 If the refund is not processed within the abovementioned timeframe, PTP shall charge a late payment interest of TWO percent [2%] at a daily rate until the refund together with any other costs and fees have been repaid to PTP accordingly.

#### **15.0 ALTERATIONS ADDITIONS AND OMISSIONS**

15.1 PTP's Representative may at its absolute discretion issue instructions requiring a Variation which shall be in writing (or if oral subsequently confirmed in writing). Upon receipt of a Variation instruction the Contractor shall immediately consider whether such Variation is sufficiently detailed to allow proper execution and presents no design or construction impracticalities. In the event that the Contractor is of the opinion that any Variation is not sufficiently detailed or presents a design or construction impracticality he shall forthwith so advise PTP's Representative in writing who shall thereupon decide whether or not the same shall be carried out. PTP's Representative may confirm its instructions in writing or modify the said instruction to such an extent as he considers justified, provided always that until PTP's Representative so confirms or modifies its instruction it shall be deemed not to have been given.

15.2 The term "Variation" means a change in the Specification, Contract Drawings or, if applicable, the Contractor's Design which makes necessary the alteration or modification of the design, quality or quantity of the Works as described by or referred to in the Agreement. Such alteration or modification shall include:

- i. the addition, omission or substitution of any work;
- ii. the alteration of the kind, standard or any of the design (to the extent required by the Agreement), work, materials, Equipment or goods to be used in the Works;
- iii. changes in the specified sequence, method and timing of construction; and

- iv. the removal from the Site of any work, materials, Equipment or goods executed or brought thereon by the Contractor for the purposes of the Works other than works, materials, Equipment or goods which are not in accordance with the Agreement.
- (a) which are not in accordance with the Agreement
- 15.3 No Variations shall be made by the Contractor without an order by PTP's Representative. No Variation instructed by PTP's Representative pursuant to Clause 15.1 shall in any way vitiate or invalidate the Agreement but the value (if any) of all such Variations shall be taken into account in ascertaining the amount of the Contract Sum, in accordance with the provisions of Clause 16. For the avoidance of doubt, no order in writing of PTP's Representative either pursuant to Clause 15.1 or otherwise shall be required for an increase or decrease in the quantity of any Remeasured Work where such increase or decrease is not the result of an order given under Clause 15.1 but is the result of the quantities exceeding or being less than those stated in the Bills of Quantities for Remeasured Works. Such increase or decrease in quantity shall be measured and valued under Clause 4.
- 15.4 PTP's Representative may, in its absolute discretion issue instructions in circumstances where, in the opinion of PTP's Representative, the Contractor will fail to meet any of its obligations under the Agreement. The Contractor shall not be entitled to any extension of time or further payment in respect of or in connection with any such instructions.
- 15.5 The Contractor may propose in writing to PTP's Representative any modifications to the Works or to any part thereof or to any Equipment, materials and goods to be incorporated therein which in the Contractor's opinion will improve the appearance or quality of the Works, the economy of the construction, the bringing forward of the Date for Completion or the efficiency of use of the completed works. PTP's Representative at its sole discretion may approve or reject the Contractor's proposed modifications and failure by PTP's Representative to respond within fourteen (14) Days of the Contractor's proposal shall be deemed to be a rejection. If approved by PTP's Representative, an instruction requiring a Variation may be issued in accordance with this Clause 15. The application of this Clause 15.5 shall in no way permit the Contractor to suspend or delay its performance of the Works or any part thereof pending PTP's Representative's review of the Contractor's proposals.
- 15.6 (a) At the time of issuing an instruction requiring a variation PTP's representative may by notice in writing either:
- i. notify the Contractor of its estimate of the additional sums to which he considers the Contractor will be entitled under the Agreement or, as the case may be, the savings in cost envisaged, in respect of the intended Variation and the length of any extension of time for the Works or any Section as the thereof to which he considers the Contractor would reasonably be entitled to pursuant to Clause 11 or, case may be, any reduction in the contract period; or
  - ii. Require the Contractor to estimate the additional sums and, by reference to the Construction Schedule, the length of extension of time for completion of the Works or any Section thereof to which he considers he will be entitled pursuant to Clause 11 or, as the case may be, the savings in cost or reduction of time envisaged, in respect of the intended Variation providing all necessary documentation and supporting calculations in writing.

If the Contractor disputes the estimate of PTP's Representative in Clause 15.6.(a).i or any part thereof the provisions of Clause 15.6.(d) will apply as if the Variation had been issued under the provisions of Clause 15.6.(c).i.

The Contractor shall within seven (7) Days of receipt of the notice from PTP's Representative under Clause 15.6.(a).ii (or such greater period as PTP's Representative may fix) submit a proper and detailed estimate to PTP's Representative of the said additional sums or savings (as the case may be) and extensions of time or reduction in the Contract Period (as the case may be) and shall not in the meantime proceed with the Variation unless specifically instructed to do so.

- (b) If agreement is reached between the Contractor and PTP's Representative upon PTP's Representative's or the Contractor's estimate, PTP's Representative shall so notify the Contractor in writing in which event the Contractor shall forthwith proceed with the Variation and the Contractor shall not be entitled to any further payment or extension of time in respect of such Variation beyond that set forth in PTP's Representative or the Contractor's estimate as the case may be.
- (c) In the event that the Contractor fails to provide an estimate within the period required by this Clause 15.6 or PTP's Representative certifies that it is not a proper estimate or agreement upon the estimate cannot to be reached within a period considered reasonable by PTP's Representative in its absolute discretion then:
  - i. PTP's Representative may instruct the Contractor to comply with the Variation instruction and the Contractor shall forthwith so comply; or
  - ii. PTP's Representative may instruct the Contractor not to comply with the relevant instruction in which case the Contractor shall have no claim whatsoever arising out of or in connection with the instruction or with any failure to reach agreement.
- (d) in respect of any Variation instructed by PTP's Representative under the provisions of Clause 15.6.(c).i PTP's Representative may, at any time, estimate such sums and period and extension of time (if any) as he in its absolute discretion considers appropriate and shall notify the Contractor of its decision accordingly. PTP's Representative's decision shall be final and binding upon the Contractor until such time as it is reviewed by PTP's arbitrator. In the event that the Contractor objects to PTP's Representative's decision he shall, as a condition precedent to its entitlement to any further sum or extension of time:
  - i. give written notice of its objections to PTP's Representative within ten (10) Days of PTP's Representative's decision; and
  - ii. submit, within twenty (20) Days after its notice in (i) above, full and complete details of its claim for said entitlement.

Upon receipt of the Contractor's submissions PTP's Representative shall confirm or vary its decision as he shall in its absolute discretion think fit and shall notify the Contractor accordingly.

15.7 Notwithstanding the provisions of Clause 15.6 PTP's Representative may instruct the Contractor at any time, whether before or after receipt of the Contractor's estimate under Clause 15.6.(a).ii to comply with the relevant instruction forthwith.

15.8 PTP's Representative shall not be bound to give effect to the valuation of Variations in interim valuations by adjustment to the Contract Sum unless and until an agreement in writing as to

the valuation thereof, or part thereof, exists between PTP's Representative and the Contractor or unless and until PTP's Representative has made a decision as to the additional sums to which he considers the Contractor will be entitled and has notified the Contractor of its decision in accordance with Clause 15.6.(d) as the case may be. Such agreements or decisions as the case may be shall be entirely conclusive as to the effect of any Variation or part referred to therein.

15.9 At the time of making application for an interim payment the Contractor shall submit a report setting out the status of all Variations and their effect (if any) on the Construction Schedule and the Contract Sum.

## **16.0 VALUATION OF VARIATIONS**

16.1 The value of all Variations ordered by PTP's Representative in accordance with Clause 15 shall be ascertained by PTP's Representative in accordance with Clauses 16.3, 16.4, 51A.5 and 16.6 and the following principles:

- i. where the varied work is similar in character to and/or executed under similar conditions to work priced in the Bills of Quantities and Schedule of Rates such work shall be valued at the applicable Rates therein;
- ii. where the varied work is not of similar character to and/or not executed under similar conditions to work priced in the Bills of Quantities and Schedule of Rates then PTP's Representative shall establish a new Rate for such work based upon the Rates contained in the Schedule of Rates as appropriate in so far as may be reasonable making such allowances thereto by way of addition or deduction as may be necessary to take account of any dissimilarity in the character of the work or the conditions under which the work is executed;
- iii. where the varied work cannot be properly valued in accordance with the provisions of Clauses 16.1(a) or (b) PTP's Representative shall establish a new Rate for such work, which shall be fair and reasonable.

16.2 Unless otherwise expressly stated, the Schedule of Rates shall be inclusive of all work, material and expenditure whether temporary or permanent which will be indispensably necessary to complete the works as described in the Schedule of Rates or to be inferred therefrom.

16.3 All Variations required by PTP's Representative or subsequently sanctioned by him shall be measured and valued by PTP's Representative who shall measure the varied work from the Drawings except in those cases where in PTP's Representative's opinion physical measurement is necessary and subsequent measurement will not be practicable. When PTP's Representative requires any part or parts of the Works to be physically measured he shall give to the Contractor the opportunity of being present at the time of such measurement and of taking such measurements as PTP's Representative may require. Should the Contractor fail to be present at such time after receipt of reasonable written notice from PTP's Representative the quantities measured by PTP's Representative provided they have been communicated in writing to the Contractor within fourteen (14) Days of the date of such physical measurement taking place shall be final and binding as between PTP and the Contractor. In cases where the Contractor has been present any such quantities communicated in writing at any time by PTP's Representative to the Contractor shall be similarly binding unless the Contractor within

fourteen (14) Days of receipt of the same shall send details with sufficient explanations of any differences in the quantities claimed by the Contractor to PTP's Representative.

- 16.4 If the Contractor requires a varied or new rate under Clause 16.1, the Contractor shall as a condition precedent to obtaining a varied or new rate within twenty-eight (28) days of the date of the Variation give notice in writing to PTP's Representative:
- i. stating its reasons for requiring a varied or new Rate and its proposed Rate; and
  - ii. identifying any existing evidence and/or documents upon which he is relying and details of the records, which the Contractor is intending to maintain to substantiate such Rate.
- 16.5 PTP's Representative shall be entitled within twenty-eight (28) days of receipt of the Contractor's notice under Clause 16.4 to instruct the Contractor as to any records that PTP's Representative requires him to keep. The Contractor shall keep such records at its own expense and submit them to PTP's Representative as directed.
- 16.6 PTP's Representative shall consider the notice and submissions of the Contractor and shall notify the Contractor in writing of its decision upon the Contractor's entitlement or otherwise to a varied or new Rate within sixty (60) Days of receipt of the Contractor's notice, sending to the Contractor a statement of its reasons and copies of any documents upon which he relies. PTP's Representative shall be entitled to request further information from and/or a meeting with the Contractor which the latter shall supply or attend as the case may be, as part of such consideration in which case the period of sixty (60) Days shall run from the date of submission of the further information or the date of the last meeting attended by the Contractor whichever is the later.
- 16.7 If PTP's Representative wishes to establish a varied or new Rate and the Contractor has not submitted a claim under Clause 16.4, PTP's Representative shall notify the Contractor in writing and the latter shall comment in writing upon PTP's Representative's notice within twenty-eight (28) Days of receipt thereof. PTP's Representative shall fix such varied or new Rate within sixty (60) days of receipt of the Contractor's comments sending to the Contractor a statement of its reasons. PTP's Representative shall be entitled to request further information from and/or a meeting with the Contractor which the latter shall supply or attend as the case may be, in which case the period of sixty (60) Days shall run from the date of submission of the further information or the date of the last meeting attended by the Contractor whichever is the later.
- 16.8 If the Contractor disputes PTP's Representative's decision under Clauses 16.6 or 16.7 he shall be entitled to refer the dispute to mediation provided that such reference is made by notice in writing to PTP's Representative within twenty eight (28) Days of the date of such decision.
- 16.9 PTP's Representative may order in writing that any additional or substituted work or attendance on Construction Plant or re-entry work or additional work in the Defects Liability Period shall be executed on a Daywork basis. The Contractor shall then be paid for such work under the Rates and conditions set out in the Daywork Schedule and in the absence of applicable Rates such Rates as the Contractor and PTP's Representative shall agree prior to the execution of such work. The Contractor shall furnish to PTP's Representative such receipts or other vouchers as may be necessary to prove the amounts paid and before ordering materials shall submit to PTP's Representative quotations for the same for its approval. In respect of all work executed on a Daywork basis the Contractor shall during the continuance of such work

deliver each day to PTP's Representative an exact list in duplicate of the names occupation and time of all workmen employed on such work and a statement also in duplicate showing the description and quantity of all materials and plant used thereon or therefor. One copy of each list and statement will if correct or when agreed be signed by PTP's Representative and returned to the Contractor. At the end of each month the Contractor shall deliver to PTP's Representative a priced statement of labour, material and plant used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if PTP's Representative shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provision was impracticable he shall nevertheless be entitled to authorise payment for such work either as Daywork (on being satisfied as to the time employed and plant and materials used on such work) or at such value therefor as he shall consider fair and reasonable.

## **17.0 INDEMNITY**

- 17.1 The Contractor shall absolve PTP from any responsibility or liability in respect of any accident that may occur to any of the Contractor's employees in the performance of the Works, or to any other person arising from such accident, irrespective of the cause or the effect of the accident.
- 17.2 The Contractor shall fully indemnify and keep indemnified PTP harmless from and against all actions, suits, claims, demands, proceedings, losses, damages, compensation, legal cost (on solicitors and client's basis) charges and expenses whatsoever due to any default, negligence, omission, misuse or abuse by the Contractor or its employees in the performance under this Agreement, which result in any loss or damage to property or injury or death to any person.
- 17.3 The Contractor shall perform all of its obligations under this Agreement at its own risk. The Contractor will not be indemnified from any claim or demand resulting from any accident, damage, injury, or death arising from the performance of this Agreement except where such accident, damage, injury or death is caused by any negligence or wilful act of PTP or its employees.

## **18.0 FORCE MAJEURE**

- 18.1 Neither party shall be in breach of its obligations under this Agreement if it is unable to perform part or its entire obligation under this Agreement as a result of the occurrence of an Event of Force Majeure.
- 18.2 An Event of Force Majeure is an event not within the control of either of the parties and which it is unable to prevent or avoid and shall mean:-
- 18.2.1 war, armed conflict, invasion or act of foreign enemies;
  - 18.2.2 insurrection, rebellion, revolution, civil war, act of terrorism or government intervention; and
  - 18.2.3 earthquakes, floods, fires, natural catastrophes or disasters.

18.3 Notwithstanding the foregoing provisions, the Parties shall:

18.3.1 make all reasonable efforts to prevent, minimise and mitigate any delays or costs occasioned by any Event of Force Majeure, including recourse to alternative acceptable sources personnel, works, equipments and materials; and

18.3.2 use their best efforts to ensure resumption of normal performance of this Agreement after the occurrence of any Event of Force Majeure and perform their obligations and duties hereunder to the maximum extent practicable.

18.4 Continued Performance

The Contractor shall continue to perform its obligations under this Agreement to the maximum extent possible as soon as the Event of Force Majeure is over. When the Contractor is able to fully resume performance of its obligations hereunder, the Contractor shall give notice to PTP to that effect and shall promptly resume such performance.

18.5 If the continuing occurrence of an Event of Force Majeure is such that frustrates the original intentions and objectives of this Agreement, both parties shall discuss the circumstances and consequences of the Event of Force Majeure and consider how to achieve to the extent that may be possible the intentions and objectives of this Agreement. Both parties shall agree upon the amendment or termination of this Agreement if this is the appropriate solution to the difficulties encountered including and this Agreement of the terms and conditions of any such amendment or termination. In the event no such agreement has been achieved within a period considered to be reasonable by PTP, PTP shall have the right to terminate this Agreement by 28 days written notice served on the Contractor.

## 19.0 TERMINATION

19.1 PTP shall have the right to terminate this LOA by giving the Contractor two (2) weeks prior notice in writing. The cost of demobilizing of the Contractor's machineries, tools, plants and equipments shall be borne by the Contractor. All surplus material and complete or incomplete works at the area shall be the property of PTP.

19.2 In the event the Contractor fails to provide the Works to the standard and requirements of PTP, PTP reserves the right to terminate this LOA by giving 24 hours' notice without any liability to the Contractor whatsoever.

19.3 PTP may determine the employment of the Contractor if the Contractor defaults in any of the following:-

- i. if without reasonable cause, he fails to commence the Works in accordance with the Agreement;
- ii. if without reasonable cause, he wholly or substantially suspends the carrying out of the Works before completion;
- iii. if he fails to proceed regularly and/or diligently with the Works;
- iv. if he persistently refuses or neglects to comply with the Work Instruction(s);
- v. if he fails to comply with the provisions in clause 7.0;
- vi. if he has abandoned the Works; or
- vii. if the PTP's opinion any of the Contractor's act or omission causes a detrimental effect to the Works and/or PTP in general.

- 19.4 Upon the occurrence of any default under clause 19.3, and if PTP decides to determine the Contractor's employment, PTP shall give to the Contractor a written notice delivered by hand or by registered post specifying the default. If the Contractor shall continue with such default for fourteen (14) days from the receipt of such written notice, then PTP may, within ten (10) days from the expiry of the said fourteen (14) days, by a further written notice delivered by hand or by registered post, forthwith determine the employment of the Contractor under the Agreement.
- 19.5 In the event of the Contractor becoming insolvent or makes a composition or arrangement with its creditors, or have a winding up order entered against, or (except for purposes of reconstitution or amalgamation) a resolution for voluntary winding up, or having a liquidator or receiver or manager of its business or undertaking duly appointed, or having possession taken by or on behalf of the holders of any debentures secured by a floating charge, or of any property comprised in or subject to the floating charge, the employment of the Contractor shall be forthwith automatically determined.
- 19.6 In the event that the employment of the Contractor is determined under this clause 19, the following shall be the respective rights and duties of PTP and the Contractor:-
- 19.6.1 the Contractor shall vacate the Site and return possession of the Site to PTP who may employ and pay a third party to carry out and complete the Works and to make good any defects. Such third party may enter upon the Works and use all temporary buildings, construction plant, tools, materials and goods intended for, delivered to and placed on or adjacent to the Site (except those construction plant that is on hire by the Contractor) and may purchase all materials and goods necessary for the carrying out and the completion of the Works. The Contractor if so required by PTP or by PTP on behalf of PTP shall within twenty one (21) days of the date of determination, assign to PTP the benefit of any agreement for the continuation of the hire of construction plant and equipment already on the Site;
- 19.6.2 the Contractor if so required by PTP, shall within twenty one (21) days of the date of determination, assign to PTP without payment the benefit of any agreement for the supply of materials, goods and/or for the execution of any work for the purposes of the Agreement to the extent that the same is assignable;
- 19.6.3 the Contractor when instructed in writing by PTP shall remove from the Works any temporary buildings, construction plant, tools, equipment, materials and goods belonging to or hired by him. If within a reasonable time after any such instruction has been issued to the Contractor, and he has not complied therewith, then PTP may without liability remove and sell any such property belonging to the Contractor except those that are on hire and hold the proceeds less all costs incurred to the credit of the Contractor; and
- 19.6.4 the Contractor shall allow or pay to PTP all cost incurred to complete the Works including all loss and/or expense suffered by PTP. Until after the completion of the Works, PTP shall not be bound by any provision in the Agreement to make any further payment to the Contractor, including payments which have been certified but not yet paid when the employment of the Contractor was determined. Upon completion of the Works, an account taking into consideration the value of works carried out by the Contractor and all cost incurred by PTP to complete the Works including loss and/or expense suffered by PTP shall be incorporated in a final account prepared.



- 19.7 PTP shall within twenty eight (28) days of the determination of the Contractor's employment, give a written notice to the Contractor of the date of inspection on Site to jointly record the extent of the Works executed and the materials and goods delivered to the Site. The Contractor shall provide all necessary assistance to PTP to perform their task. Upon completion of the record by PTP, a copy shall be sent to the Contractor and such records shall form the basis for the evaluation of the value of the works executed and materials and goods delivered to the Site by the Contractor up to the date of determination.
- 19.8 PTP shall within six (6) months on completion of the Works, submit to the Contractor for their agreement, a final account for all cost incurred to complete the Works including the sums previously certified to the Contractor before the date of determination, Liquidated Damages, set - off and all other loss and/or expense suffered.
- 19.9 Upon receipt of a written notice by the Contractor from PTP to determine the employment of the Contractor, the Contractor shall yield possession of the Site within fourteen (14) days from the receipt of the said written notice and shall remove its personnel and labour force (but not construction plant, tools and equipment unless so instructed by PTP) from the Site. Irrespective of the validity of the said written notice the Contractor's remedy shall be limited to compensation for damages only.
- 19.9 The provisions of clause 19.7 are without prejudice to any other rights and/or remedies which PTP may possess.

## **20.0 ASSIGNMENT**

- 20.1 The Contractor shall not assign any benefit of or interest in the Agreement or thereunder without the prior written consent of PTP.
- 20.2 The Contractor shall not sub-let the whole of or parts of this Agreement. Except where otherwise provided by the Agreement, the Contractor and its Sub-Contractors shall not sub-contract any part of the execution of the Works without the prior consent of PTP's Representative. Any such consent shall not relieve the Contractor from any liability or obligation under the Agreement and the Contractor shall, regardless of whether such consent is required under this clause be responsible for the acts, defaults and neglects of any Sub-Contractor, Supplier, their sub-sub-contractors and sub-suppliers, agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, its agents, servants or workmen.
- 20.3 Provided that the Contractor shall not be required to obtain such consent for:
- i. the purchase of materials which are in accordance with the standards specified in the Agreement; or
  - ii. the sub-contracting for which the Sub-Contractor or supplier is designated in the Agreement.
- 20.4 Without prejudice to the obligations of the Contractor generally under this clause, the Contractor shall use all reasonable endeavours to maximise the use of Bumiputra Sub-Contractors for any of the works to be performed in Malaysia. For the purposes of this, the term "Bumiputra Sub-Contractor" shall mean a contractor who is (a) registered with Pusat Khidmat Kontraktor Jabatan Perdana Menteri, Kuala Lumpur and is eligible to carry out those

parts of the Works to be sub-let in accordance with the class and heading of their registration and (b) registered with the Construction Industry Development Board pursuant to the Construction Industry Development Board Act 1994.

- 20.5 PTP may assign (whether in whole or in part) or novate the Agreement at any time to any third party and the Contractor irrevocably consents to such assignment or novation and undertakes to execute within a reasonable time following written demand by any such third party, all documents necessary to effect such assignment or novation.
- 20.6 In the event of a Sub-Contractor having undertaken towards the Contractor in respect of the Clause or any part thereof, or Works supplied by such Sub-Contractor or any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Agreement, the Contractor shall procure that the benefit of such continuing obligation shall be assignable to PTP and thence by PTP to any nominee stipulated in writing by PTP and shall at any time, after the expiration of such Defects Liability Period, assign to PTP, at PTP's request and cost, the benefit of such obligation for the unexpired duration thereof.

## **21.0 CONFIDENTIALITY**

- 21.1 The Contractor shall keep the terms of this Agreement or any other information or documents confidential at all times and shall not disclose to any third party without the written consent of PTP. The obligations of confidentiality shall survive the expiry or termination of this Agreement. Confidential Information shall include all information that is either non-public, confidential or proprietary in nature relating to any plan, drawing, specification, operation or any matters of PTP.

## **22.0 CLAIMS**

- 22.1 If the Contractor intends to make any claim in respect of any matter under this Agreement and notwithstanding any other provisions thereof, it shall be a condition precedent that the Contractor shall have notified PTP in writing of any such intended claim within forty eight (48) hours of the occurrence of the event first giving rise thereto.
- 22.2 The notification required under clause 22.1 above shall give a brief description of the events giving rise to the intended claim, the relevant of this Agreement, the legal grounds on which the intended claim is based, the anticipated effects of the events giving rise to the intended claim, and the measures the Contractor shall or proposes to put into effect to extinguish or mitigate the effects of the event giving rise to the intended claim.
- 22.3 The parties shall meet and attempt to agree on the grounds as shall be appropriate and equitable to both parties' interests on which the intended claim of the Contractor can be settled, including amendments of this Agreement as may be appropriate.

## **23.0 DISPUTE RESOLUTION**

- 23.1 All disputes arising out of or relating to this Agreement between the parties shall first be negotiated by the parties by consultation and resolution. The party raising the dispute shall specify the nature of the dispute and the relief sought and serve a notice of the same to the other party.

## **24.0 GOVERNING LAWS**

24.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.

## **25.0 INDEPENDENT CONTRACTOR**

25.1 Nothing in this Agreement shall create, or be deemed to create, a partnership or relationship of principal and agent or employer or employee between the parties herein. The Contractor is an independent contractor and shall be responsible for its own taxes and levies.

## **26.0 NOTICES**

26.1 Any notice request or demand requiring to be served by either party hereto to the other shall be in writing and:-

26.1.1 Registered Post

if it is given by the party or its solicitor by post in a registered letter addressed to the party to be served at its address stated in this Agreement it shall be deemed to have been received at the time such registered letter would in the ordinary course of post be delivered; or

26.1.2 By Hand

if it is dispatched by hand to the party to be served, it shall be deemed to have been received when it is actually delivered; or

26.1.3 By electronic mail or facsimile

if it is sent by electronic mail or facsimile, it shall be deemed to have been received immediately after transmission .

## **27.0 KNOWLEDGE AND ACQUIESCENCE**

27.1 Knowledge or acquiescence by PTP of any breach of the terms by the Contractor shall not operate as or be deemed to be waiver of such terms and notwithstanding such knowledge or acquiescence PTP shall be entitled to exercise its rights under this Agreement and to require strict compliance and performance by the Contractor of the terms herein.

## **28.0 SUCCESSORS BOUND**

28.1 This Agreement shall be binding upon the successors in title and assigns of the Vendor and the successor in title and permitted assigns of the Contractor.

## **29.0 OFFERING GIFTS OR INDUCEMENTS**

29.1 PTP shall be entitled to terminate the Contractor's employment under the Agreement and to recover from the Contractor the amount of any loss resulting from such termination if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or performance of the Agreement or any other agreement with PTP or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other agreement with PTP or if any of the like acts

shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor).

### **30.0 BUSINESS ETHICS**

30.1 The Contractor and its agents, Sub-Contractors and Suppliers are not expected or authorised to take any action on behalf of PTP which would violate applicable laws. All financial statements, reports, billings, and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account of PTP.

### **31.0 DECLARATION AGAINST WAIVER**

31.1 The condonation by PTP of any breach or breaches by the Contractor or a Sub-Contractor or Supplier of any of the stipulations and conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of PTP's rights, powers and remedies under the Agreement in respect of any breach or breaches as aforesaid.

### **32.0 NOTICE OF GARNISHMENT**

32.1 The Contractor shall not cause permit or suffer to be issued in satisfaction of any decree judgement or other order given or to be given against the Contractor any notice of garnishment binding any property of the Contractor which is in the possession of PTP.

### **33.0 ADVERTISING PROHIBITED**

33.1 The Contractor shall not exhibit or permit to be exhibited any advertisement on the Site, Construction Plant, Equipment or Temporary Works unless such shall have received the prior written approval of PTP's Representative before they are put up and they shall be removed immediately if PTP's Representative so demands.

### **34.0 PRESS RELEASE**

34.1 The Contractor and its representatives and any of its Sub-Contractors or Suppliers shall not make any public or press statements relating to the Agreement without the prior written approval of PTP.

### **35.0 REGISTRATION OF ENGINEERS ARCHITECTS AND SURVEYORS**

35.1 The Contractor shall comply with the Registration of Engineers Act 1967 (Amended 1972), the Architects Act 1967, the Quantity Surveyors Act (Amended 1972) and the Registration of Land Surveyors Ordinance 1955 in respect of all persons employed by him and any Sub-Contractor and Supplier in connection with the Works and working in Malaysia.

### **36.0 STAMP DUTIES (if applicable)**

36.1 PTP shall be responsible for paying any stamp duties arising from the execution and signature of the Agreement.