



# **Purchase Order Terms and Conditions SMR Automotive Systems (Thailand) Ltd. (SMR-T)**

March, 2016

## **1. Scope of Purchase Terms**

1.1 Supplier acknowledges and agrees that these Purchase Order Terms and Conditions are incorporated in, and made a part of, each request for quote, purchase order, release, drawing, requisition, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange or other tangible format, provided to Supplier (hereinafter called as the "Terms"), which are applicable to all purchases made by SMR Automotive Systems (Thailand) Ltd., its subsidiaries and divisions, and any entity controlling, controlled by, or under common control with it (hereinafter called as the "SMR-T") , from the Supplier, whether for tooling, machines, parts, spare parts, raw materials, or other various goods or services (hereinafter individually or collectively called the "Supply").

1.2 The Terms shall constitute the only agreement binding between Supplier and SMR-T which expressly excludes the application of the Suppliers' general terms of sale as well as any documents issued by Supplier now or in the future in relation, directly or indirectly, to the Supply. The Terms may not be varied or modified in any manner, unless in a subsequent writing signed by an authorized representative of SMR-T. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree or any of the Terms is rejected. All such proposals shall be considered a material alteration of the Terms, and the additional and different terms shall not become a part of the contract between the parties. Any stenographic or clerical errors are subject to correction by SMR-T. Supplier's written acknowledgment, commencement of work on the Supply, or shipment of the Supply, whichever occurs first, shall be considered an effective mode of acceptance of the Terms. If the Terms shall be considered an acceptance of a prior offer by Supplier, such acceptance is limited to and expressly made conditional on assent to the express terms set forth in the Terms.

1.3 The provisions of the Terms shall prevail over any other agreements that the parties may enter into in addition to the Terms, e.g. quality agreement, etc.

## **2. Order, Prices and Terms of Payment**

2.1 All prices for Supply are as stated in the purchase order for Supply. Supplier shall be solely responsible for all transport and unloading costs, customs charges, taxes and insurance costs, unless otherwise specified on the purchase order.

2.2 Supplier warrants that the prices for the Supply sold to SMR-T are no less favorable than those prices Supplier currently extends to any other customer for the same or similar Supply in similar quantities. If Supplier reduces its prices to third parties during the term of the purchase order for the Supply, Supplier agrees to reduce the prices correspondingly charged to SMR-T. Supplier warrants that the prices on the purchase order are complete and that no other charges shall be added and also no modification or adjustment of the prices may be made without SMR-T's written consent.

2.3 Supplier's invoice shall include all information appearing on the purchase order necessary for identification and origin of the Supply. The invoice shall be sent to the invoicing address written on the face of the purchase order.

2.4 No payment shall be made by SMR-T in advance of receipt of the Supply. Unless otherwise stated on the purchase order, the invoice shall be payable on the first Friday after, sixty (60) days from the date of invoice of the Supply to SMR-T. If the payment or other actions is made or taken on a day that is not a business day in Thailand or Supplier's country, the payment or other action shall be made or taken on the next following business day of both countries. All invoicing and payment shall be made through electronic data interchange or such other means as SMR-T may require in writing.

2.5 SMR-T may apply late delivery penalties against any invoice, in an amount determined by SMR-T, for all purchase orders for which Supply was delivered late to SMR-T through no fault of SMR-T.

2.6 Payment for Supply shall not constitute final acceptance of the Supply or waive SMR-T's right to reject Supply. SMR-T may reject the Supply and hold Supplier in default if, at any time, SMR-T discovers a defect or its customer discovers a defect.

2.7 In addition to any right of setoff provided by law, all amounts due to Supplier shall be considered net of indebtedness of Supplier and its affiliates/subsidiaries to SMR-T; and SMR-T shall have the right to set off against or to recoup from any amounts due to Supplier and its affiliates/subsidiaries from SMR-T.

2.8 Supplier may not assign any accounts receivable from SMR-T to third parties without SMR-T's prior written approval.

2.9 SMR-T has the right to audit and review all records of Supplier to enable SMR-T to verify the accuracy of the prices for the Supply, assess Supplier's ongoing ability to perform its obligations under the Terms or to verify any claim submitted to SMR-T in accordance with these Terms. Supplier agrees to maintain all records relating to the Supply to facilitate an audit by SMR-T for a period of four (4) years following final payment under the Terms.

2.10 SMR-T may set off any monies that it owes to Supplier against any monies that it is owed by Supplier.

### **3. Forecasts; Quantity of Supply**

3.1 SMR-T may provide Supplier with estimates or forecasts of its future anticipated volume or quantity requirements for Supply, included any quantity represented on a blanket purchase order, release or other document. Supplier acknowledges that any estimates or forecasts of quantity are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time.

3.2 SMR-T makes no representation, warranty, guaranty or commitment, express or implied, regarding any estimates or forecasts provided to Supplier, including the accuracy or completeness of the estimates or forecasts. Supplier shall rely on those quantities that are indicated as firm as set forth on releases issued by SMR-T only and no other documentation.

### **4. Shipments and Packaging**

4.1 Supply shall be packed in accordance with the Terms, industry standards or such other instructions that SMR-T may provide to Supplier. At any time, SMR-T may change packaging or transport requirements. Supplier shall be responsible for any damage to the Supply arising from packaging or transport.

4.2 If requested by SMR-T, Supplier shall promptly furnish the following to SMR-T:

- (a) a list of all ingredients in the Supply and corresponding amounts of ingredients; and
- (b) information concerning any changes in or additions to such ingredients.

Supplier shall provide all Material Safety Data Sheets and "hazardous substance" warnings related to the Supply, together with special handling instructions to advise SMR-T and third parties, including transportation carriers, as to the degree of care and precaution that shall prevent bodily injury or property damage in handling, transportation, processing, use, recycling or disposal of the Supply.

4.3 Supply shall be labeled as required under federal, state and local regulations, regulations from the country of manufacture and supply and AIAG standards, including any storage requirements, SMR-T purchase order number, description of the Supply, quantity and the gross or net weight of Supply. Supplier shall include a bill of lading consisting of delivery and identification information for the Supply, including a clear description of the origin of the Supply.

### **5. Risk of Loss**

5.1 Notwithstanding Article 16.1, Risk of loss of the Supply shall not be transferred to SMR-T until receipt of the Supply by SMR-T at the location indicated on the purchase order or as otherwise directed by SMR-T.

## **6. Deliveries and Late Delivery**

6.1 Time and quantity are of the essence for the purpose of any provision of these Terms. Unless otherwise specified in the Terms, the delivery's term shall be FOB or other delivery terms SMR-T indicated on the purchase order which SMR-T may modify delivery terms from time to time.

6.2 Supplier shall take all measures necessary to meet the delivery date for the Supply and comply with the Terms. Deliveries shall be made in the quantities, on the dates, and at the times specified by SMR-T in the purchase order.

6.3 Supplier shall not fabricate, assemble or ship any Supply, or procure materials or Tools, except to the extent authorized by the Terms. SMR-T shall not pay for any Supply, materials, Tools and related costs that are not authorized by the Terms. If the requirements of SMR-T's customers or market, economic or other conditions require changes in delivery schedules, SMR-T may change the rate of scheduled shipments or temporarily suspend scheduled shipments without liability to supplier, except for that quantity of Supply specified as firm on a release issued by SMR-T.

6.4 Other than as set forth in Article 18 of these Terms, in the event of late delivery of Supply, all damages suffered by SMR-T shall be the responsibility of Supplier and Supplier shall pay costs of any kind incurred by to meet the specified delivery schedule. In the event of late delivery, SMR-T may purchase the Supply from a third party immediately, without notice.

6.5 Supplier shall provide written notice to SMR-T immediately of any actual or potential labor dispute, and all related information relating to the dispute, which may delay or threaten to delay the timely performance of the Terms by Supplier. SMR-T may purchase Supply from a third party immediately upon receipt of notice from Supplier if SMR-T deems necessary, in its sole discretion. Supplier shall notify SMR-T six (6) months in advance of the expiration of any current labor contract(s). Prior to the expiration of any labor contract, Supplier shall store, at its expense, a minimum thirty (30) day inventory of finished Supply at a warehouse unaffected by the labor contract.

6.6 If according to purchase order of SMR-T's required delivery date it becomes necessary for the Supplier to ship by a more expensive way than specified in this purchase order, any increased transportation cost resulting there from shall be paid for by the Supplier unless the necessity for such rerouting or expedited handling has been caused by SMR-T.

## **7. Compliance, Technical Changes and Quality**

7.1 Without prejudice to the provisions of Article 7.3, the Supply shall be manufactured in compliance with the Terms.

7.2 SMR-T may require Supplier to implement changes to the Supply, including design, inspection, testing or quality control. SMR-T shall equitably determine, in its sole discretion, any adjustment in price or delivery schedules resulting from the changes. Upon request, Supplier shall provide information to SMR-T as required by SMR-T relating to the changes, including cost and timing of implementation.

7.3 Supplier shall comply with any and all applicable federal, state and local laws, regulations and standards in force in the United States and in the country of manufacture and sale, including those that relate to the quotations, pricing, manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Supply, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon request from SMR-T, Supplier shall certify in writing its compliance with this Article .

7.4 At the request of SMR-T, Supplier shall provide an appropriate certificate stating the country of manufacture of the Supply.

7.5 Supplier shall comply with all ISO/TS16949 requirements and other requirements as specified by SMR-T, including quality and production.

7.6 Supplier shall participate in productivity initiatives in order to improve quality of the Supply, increase customer satisfaction or reduce costs of the Supply.

## **8. Contractual Changes**

8.1 SMR-T may make changes to the Terms at any time. If any change causes an increase or decrease in the cost of or time required for performance of the Terms by Supplier, an equitable adjustment may be made by SMR-T, at SMR-T's sole discretion.

8.2 Supplier must submit in writing any claim for adjustment to SMR-T within thirty (30) days from the date that notification of the change is received by Supplier.

8.3 Upon approval of the claim by SMR-T, any excess or obsolete Tools or Supply set forth in the claim shall become the property of SMR-T, for SMR-T to dispose or utilize as it deems necessary. Notwithstanding the foregoing, Supplier must continue to perform under the Terms as changed.

## **9. Acceptance and Inspection of Supply**

9.1 SMR-T and SMR-T's customers shall have the right to enter Supplier's premises at reasonable times during working hours to verify that the Supply conforms to the Terms. Supplier agrees to provide all supporting documentation requested by SMR-T or SMR-T's customers in the course of the investigation. Final acceptance of the Supply by SMR-T shall not be conclusive with respect to latent defects or misrepresentations.

9.2 SMR-T reserves the right to reject or revoke acceptance of non conforming Supply at any time.

9.3 In addition to Article 9.2 and any other remedies SMR-T may have, at its option, SMR-T may:

- (a) correct or have corrected the non conforming Supply at Supplier's expense;
- (b) reject and return the Supply at Supplier's own risk and expense; or
- (c) instruct Supplier to retrieve the non conforming Supply at its expense within seven (7) days of notification of rejection or revocation of acceptance.

SMR-T shall have the right to further inspection after Supplier takes remedial action.

SMR-T shall be permitted to dispose of the Supply upon Supplier's failure to retrieve the non conforming Supply. If defects or deficiencies in the Tools provided by Supplier are discovered by SMR-T prior to a successful runoff and final acceptance, SMR-T shall be entitled to, among other remedies, a return of all sums paid to date under this Agreement .

9.4 Supplier shall be responsible for the design and/or manufacture of the Supply to the extent designated by SMR-T in the Terms or as otherwise agreed to in writing by the parties, regardless of any assistance provided by SMR-T or approval by SMR-T.

## **10. Express Warranty**

10.1 Supplier expressly warrants for the Warranty Period as follows:

(a) the Supply shall strictly conform to the Terms, including instructions, advertisements, statements on containers or labels, descriptions and samples, then current release/revision levels of specifications and drawings;

(b) the Supply shall be free from defects in workmanship and material and shall be new and of the highest quality;

(c) SMR-T shall receive title to the Supply that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement;

(d) the Supply shall be merchantable, safe and fit for any purpose intended by SMR-T or SMR-T's customer, including the specified performance in the component, system, subsystem and environment in which the Supply is or reasonably may be expected to perform; and

(e) Supplier's performance shall be in strict accordance with the Terms.

These warranties shall be in addition to all other warranties afforded to SMR-T by operation of law or by industry standards, except that no course of dealing or usage of trade shall be applicable unless expressly incorporated into these Terms by a writing signed by the parties. These warranties shall survive the expiration or termination of the Terms and shall apply to SMR-T, its successors, assigns, customers and the end users of SMR-T's Supply. These warranties may not be limited or disclaimed by Supplier. SMR-T's approval of Supplier's design, material, process, drawing, specifications or the like for the Supply shall not be construed to relieve Supplier of strict compliance with the warranties in this Article 10. For purposes of the Terms, Warranty Period shall be the longer of the following time periods:

(a) 48 months from the date of first use of the Supply by SMR-T or acceptance by SMR-T, whichever occurs later; or

(b) if the Supply is incorporated, in whole or in part, into products sold by SMR-T to third parties, the latter of the following dates:

(i) 18 months after acceptance by such third parties;

(ii) the time period of warranty that such third parties give to their customers; or

(iii) the date on which any longer or broader federal, state or local law, regulations may require, including those regulations of countries in which the Supply is installed, used or sold.

10.2 Supplier warrants that Supplier shall make the Supply, including the sub assemblies and spare parts, available to SMR-T and its customers for fifteen (15) years after the date of final shipment of the Supply under the Terms. During this period, Supplier shall continue to provide technical support and service at the same level as presently provided.

## **11. Product Liability, Recall Campaigns**

11.1 Notwithstanding the expiration of the Warranty Period, if SMR-T, its customers and/or the manufacturer of the vehicles (or other finished product) on which the Supply, or any parts, components or systems incorporating the Supply, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a "Recall"), Supplier shall nonetheless be liable for costs and damages associated with the Recall to the extent that the costs and damages are based upon a reasonable determination that the Supply fails to conform to these Terms.

## **12. Indemnification and Insurance**

12.1 To the fullest extent permitted by law, Supplier agrees to indemnify, hold harmless and defend SMR-T and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnities") from and against any damages, loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnities and all attorney's fees and any other cost of litigation ("Liabilities") arising out of a breach of these Terms. However, Supplier's obligation to indemnify SMR-T shall not apply to any Liabilities arising from SMR-T's sole negligence.

12.2 Supplier shall maintain insurance coverage in amounts not less than the following, which insurance shall cover the particular SMR-T entity for which the Supply is to be provided:

(a) Worker's Compensation Statutory Limits for the state or states in which this agreement is to be performed (or evidence of authority to self insure);

(b) Employer's Liability THB 30,000,000 for Bodily Injury by Accident per Accident, THB 30,000,000 for Bodily Injury by Disease per policy limit, and THB 30,000,000 for Bodily Injury by Disease, per employee;

(c) Comprehensive General Liability (including Completed Operations and Blanket Contractual Liability) THB 30,000,000 combined bodily injury and property damage per occurrence;

(d) Automobile Liability (including owned, non owned and hired vehicles) THB 30,000,000 combined bodily injury/property damage per occurrence; and

(e) Commercial Umbrella limits in the amount of THB 150,000,000 per occurrence and THB 300,000,000 annual aggregate.

Supplier shall furnish certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Supplier that shall name the specific SMR-T entity as an additional insured. Such certificates shall provide that the SMR-T entity shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Supplier's insurance carrier shall be rated a minimum of A or better under the AM Best rating. Supplier's insurance shall be primary and must offer a blanket waiver of subrogation endorsement. Supplier's purchase of insurance coverage and the furnishing of certificates of insurance shall not release Supplier of its obligations or liabilities under these Terms. In the event of Supplier's breach of this Article 12, SMR-T shall have the right to cancel the undelivered portion of any Supply covered by these Terms and shall not be required to make further payments except for conforming Supply delivered or services rendered prior to cancellation.

## **13. Work on Premises**

13.1 If Supplier's work under these Terms involves operations by Supplier on SMR-T premises or one of its customers, Supplier shall take all necessary precautions to prevent injury to any person or property during the progress of such work.

13.2 Supplier shall maintain such public liability, property damage and employee's liability and compensation insurance as shall protect SMR-T from these risks and from any claims under applicable workers compensation and occupational disease act. This insurance is in addition to the insurance provisions as set forth in Article 12.

13.2. Supplier's performance under these Terms shall be consistent and in accordance with current labor agreements between SMR-T and any union organization with which SMR-T may have a collective bargaining agreement.

#### **14. Confidentiality**

14.1 All information provided to Supplier by SMR-T under these Terms shall remain SMR-T's property and be considered confidential by Supplier. Supplier shall take all necessary measures to ensure that neither Supplier nor its employees, agents, suppliers or authorized subcontractors, shall disclose such confidential information to any third party without SMR-T's prior written consent and that the information is used only for the purpose submitted.

14.2 Without obtaining the prior written consent of SMR-T, Supplier shall not advertise or publish the fact that Supplier has contracted to furnish SMR-T Supply, or use any trademarks or trade names of SMR-T in Supplier's advertising or promotional materials. These confidentiality requirements shall be maintained for the duration of performance under the Terms and for a period of five (5) years thereafter. Upon the request of SMR-T, Supplier agrees to return to SMR-T all information, including all copies thereof, confidential or otherwise, related to the Terms.

#### **15. Intellectual Property Rights and Technical Information**

15.1 Supplier shall create, maintain, update and provide to SMR-T, all technical information relating to the Supply, including information subject to industrial and/or intellectual property rights and information that may relate to tooling, machines or equipment, software, works of authorship, computer programs and databases (including object code, micro code, source code and data structures) and all enhancements, modifications and updates to such information ("the Technical Information"). The Technical Information shall not be subject to any use or disclosure restriction.

15.2 Upon a breach by Supplier of these Terms, Supplier grants to SMR-T a royalty free, fully paid-up license for all Technical Information in order to manufacture, or have manufactured, the Supply. At SMR-T's request, Supplier shall transfer to SMR-T ownership of the tooling and equipment necessary to manufacture the Supply, whether or not such tooling and equipment has been paid for by SMR-T.

15.3 Supplier agrees not to assert any claim (other than patent infringement) against SMR-T, SMR-T's customers or their respective suppliers with respect to any Technical Information that Supplier discloses under the Terms.

15.4 SMR-T shall own all right, title and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property developed by Supplier under these Terms. Supplier shall assist SMR-T in perfecting its right, title and interest and shall execute and deliver all documents reasonably requested by SMR-T in order to perfect, register or enforce the same. SMR-T shall reimburse any associated costs incurred by Supplier in providing such assistance.

15.5 If a third party asserts claims of actual or alleged infringement of any Technical Information relating to the Supply, Supplier, at no expense to SMR-T, shall provide SMR-T and its customers, the right to manufacture, use and sell the Supply or shall provide any substitute of an equivalent item acceptable to SMR-T, and shall reimburse SMR-T for any costs incurred related to this Article.

15.6 The Supplier warrants that to the extent that the Supplier uses or purposes to use intellectual property of any third party in the provision of the Supply, the Supplier has obtained, or will obtain, at no further cost to SMR-T from the relevant third party all necessary licences and consents to use of such intellectual property.

**16. SMR-T's Proprietary Interests in Supply or Tools**

16.1 Notwithstanding Article 5 above, ownership of the Supply shall be transferred to SMR-T immediately upon its identification in the purchase order.

16.2 Supplier shall not impose or permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supply.

16.3 If SMR-T purchases or finances all or part of the raw materials or semi finished products for incorporation into the Supply, the raw materials and semi finished products shall become the property of SMR-T immediately upon payment. Supplier, as bailee, shall identify the raw materials and semi finished products by plainly marking them as the property owned by SMR-T.

16.4 All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products, materials and other items (collectively "Tools") purchased by or furnished by SMR-T, in whole or in part, or by third parties on SMR-T's behalf, to Supplier under these Terms, or for which Supplier has been reimbursed by SMR-T, shall remain the property of SMR-T and shall not be pledged to any third party. Supplier shall provide SMR-T with drawings, technical specifications, FMEAs and control plans for the Tools. Supplier shall bear the risk of loss and damage to the Tools. The Tools shall be as follow:

- (a) shall at all times be properly stored, operated and maintained by Supplier,;
- (b) shall not be used by Supplier for any purpose other than the performance of these Terms,;
- (c) shall be deemed to be personal property of SMR-T, not a fixture,;
- (d) shall conspicuously identified as property of SMR-T with relevant part numbers,;
- (e) shall not be commingled with other property of Supplier or with that of a third party,; and
- (f) shall not be moved from Supplier's premises without SMR-T 's prior written approval.

Supplier shall insure the Tools for damage or loss (including theft) in an amount not less than replacement value and shall maintain general liability insurance regarding operation of the Tools in amounts and coverage reasonable in the circumstances and acceptable to SMR-T. Upon the request of SMR-T, the Tools shall be delivered to SMR-T by Supplier, either (a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the Terms and requirements of the carrier selected by SMR-T, or (b) to any location designated by SMR-T, provided that SMR-T shall pay Supplier the reasonable cost of delivering the Tools to the location.

SMR-T has the right to enter Supplier's premises at all reasonable times during working hours to inspect the Tools and Supplier's records with respect to the Tools. SMR-T does not guarantee the accuracy of any Tooling or the availability or suitability of any Tools furnished by SMR-T to Supplier, including any warranty, either express or implied, as to fitness, condition, merchantability, design or operation or fitness for a particular purpose. Supplier agrees to check carefully and approve all Tools supplied by SMR-T prior to use. Supplier shall assume all risk, loss, damages, injuries or expenses arising, either directly or indirectly, from the use, maintenance, repair of the Tools, including any interruption of service or loss of business, profits or any other indirect, special or consequential damage and/or personal injury or death. In any dispute involving ownership of Tools, there is a rebuttable presumption that SMR-T is the sole owner of the Tools and Supplier grants SMR-T a security interest in the Tools to secure Supplier's obligations under these Terms. Supplier authorizes SMR-T, at SMR-T's sole option, to file financing statements to evidence SMR-T's interest in the Tools.

16.5 Supplier grants SMR-T an exclusive, irrevocable option to purchase any Tools owned by Supplier and used in the manufacture of the Supply at a price agreed upon in writing by the parties, but in no event greater than the replacement cost of the Tools less depreciation. SMR-T may exercise this option at any time, provided that Supplier does not utilize the Tools owned by Supplier for staple goods for third parties. Supplier

shall obtain any applicable waiver, release or approval from financing sources so that SMR-T may exercise its rights under this Article.

## **17. Cancellation of Orders / Termination**

17.1 SMR-T may terminate any purchase order in the event of any breach by Supplier of these Terms or Supplier's failure to provide SMR-T with reasonable assurances of future performance upon request. Additionally, SMR-T may cancel any purchase order in the event of any of the following:

- (i) insolvency of Supplier;
- (ii) filing of an involuntary or voluntary petition of bankruptcy against Supplier;
- (iii) execution by Supplier of an assignment for the benefit of creditors; or
- (iv) appointment of a receiver over Supplier's assets.

In the event of termination for cause, SMR-T shall not be liable to Supplier for any amount except for conforming Supply that has been delivered to SMR-T in accordance with these Terms prior the termination, and Supplier shall be liable to SMR-T for all damages sustained by reason of the default which gave rise to the termination.

17.2 SMR-T reserves the right to terminate any purchase order for its sole convenience. Supplier may not terminate any purchase order once accepted and at all times must continue to deliver Supply in accordance with the Terms. In the event of such termination by SMR-T, Supplier, its suppliers and subcontractors, shall stop immediately all work. At SMR-T's sole discretion, Supplier may be paid a reasonable termination charge consisting solely of a percentage of the order price reflecting the percentage of the work performed pursuant to valid purchase orders or material releases from SMR-T prior to the notice of termination, which shall be Supplier's sole and exclusive remedy on account of such termination. Within thirty (30) days after receipt of a termination notice, Supplier shall submit its claim. Supplier shall not be paid for any work performed after receipt of the notice of termination, or for any costs incurred by Supplier's suppliers or subcontractors that Supplier could reasonably have avoided or that were not authorized pursuant to a valid purchase order or material release by SMR-T. In no event SMR-T shall be liable for loss of profits or cancellation charges.

## **18. Force Majeure**

18.1 Any delay or failure of either party to perform its obligations shall be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks and sabotage. Written notice of the delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Supplier, SMR-T, at its option, may purchase Supply from other sources and reduce its schedules to Supplier by such quantities, without liability to SMR-T, or cause Supplier to procure the Supply from other sources in quantities and at times requested by SMR-T and at the price set forth in this agreement. If requested by SMR-T, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay shall not exceed a period of time that SMR-T deems appropriate. If the delay lasts more than the time period specified by SMR-T, or Supplier does not provide adequate assurance that the delay shall cease within the time period, SMR-T may, among its other remedies, immediately cancel this Agreement and shall be entitled to claim any damages against Supplier for its non performance.

## **19. Ethical Trading**

**19.1** Supplier warrants that no child, prison, forced or involuntary labor shall be used by Supplier or its subcontractors in the provision of Supplies. Supplier and its subcontractors shall maintain a work place free from physical abuse and any practice in violation of local laws. Supplier and its subcontractors shall provide a healthy, safe work environment, wages and benefits as required by law, freedom of association and reasonable working conditions.

**19.2** Supplier shall not:

- (a) give or offer to give any gift or benefit to SMR employees;
- (b) solicit or accept any information, data, services, equipment or commitment from SMR-T's employees unless it is:
  - (i) required under a contract between SMR-T and Supplier,
  - (ii) made pursuant to a written disclosure agreement between SMR-T and Supplier, or
  - (iii) specifically authorized in writing by SMR-T's management;
- (c) solicit or accept favoritism from SMR-T's employees;
- (d) enter into any outside business relationship with SMR-T's employees or other suppliers without full disclosure to and prior approval of SMR-T's management; or
- (e) provide to or accept from other suppliers any information regarding SMR-T or its business.

For the purposes of this Section:

"employee" includes members of the employee's immediate family and household, plus any other person who is attempting to benefit from his or her relationship to the employee;

"Supplier" includes all employees and agents of Supplier;

"gift or benefit" includes money, goods, services, discounts, favors and the like in any form but excluding items with a value of THB 500.00 or less;

"supplier" includes prospective, current and past suppliers; and

"favoritism" means partiality in promoting the interest of Supplier over that of other suppliers.

Any breach by Supplier of its obligations under this Section shall constitute a material default by Supplier of every contract and Order with SMR-T and may further result in Supplier's debarment from doing business with SMR-T. Supplier shall also comply with all Discrimination and Harassment, neutrality of Interests, Conflict of Interest, Non-Disclosure, Solicitation, Immigration Law Compliance, and Equal Employment Opportunity policies of SMR-T.

## **20. Miscellaneous Provisions**

### **20.1 Assignment/Change in Control**

Supplier shall not assign, in whole or in part, this purchase order or delegate the performance of its duties without the written consent of SMR-T. Any assignment or delegation without the previous written consent of SMR-T, at the option of SMR-T, shall cancel the purchase order. Any consent by SMR-T to an assignment shall not waive SMR-T's right to recoupment from Supplier and/or its assigns for any claim arising out of these Terms. If SMR-T agrees to the assignment of the purchase order, in whole or in part, Supplier shall remain solely liable to SMR-T for the adherence of the assignee to these Terms. In addition, SMR-T may terminate these Terms upon giving at least 30 days written notice to Supplier, without any liability to Supplier, if Supplier (i) sells, or offers to sell, a material portion of its assets or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Supplier or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Supplier.

## **20.2 Duty Drawback Rights**

This purchase order includes all related customs duty and import drawback rights, if any, which Supplier can transfer to SMR-T, including rights developed by substitution and rights which may be acquired from Supplier's suppliers. Supplier agrees to inform SMR-T of the existence of any such rights and upon request shall supply documents as may be required to obtain the drawback.

## **20.3 Limitation on SMR-T's Liability/Waiver**

In no event shall SMR-T be liable to Supplier for anticipated profits or for incidental or consequential damages. SMR-T's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from these Terms, or from any performance or breach, shall in no case exceed the price allocable to the Supply giving rise to the claim. No action or inaction by SMR-T to enforce the Terms shall constitute a waiver of compliance with any of the provisions in these Terms.

## **20.4 Relationship of Parties**

Supplier and SMR-T are independent contracting parties and nothing in these Terms shall make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

## **20.5 Remedies and Injunctive Relief**

The rights and remedies to SMR-T in these Terms are cumulative with, and in addition to all other and further remedies provided in law or equity. To the extent that these Terms are for Supply for use as, or fabrication into, parts, components or systems, Supplier acknowledges and agrees that money damages would not be sufficient remedy for any actual, anticipatory or threatened breach of these Terms by Supplier and that, in addition to all other rights and remedies which SMR-T may have, SMR-T shall be entitled to specific performance and injunctive or other equitable relief.

## **20.6 Dispute resolution**

Any dispute, contrary or claim arising out of or relating to the Terms or the breach, termination or invalidity hereof, shall first be tried to be settled in an amicably manner and in good faith between Supplier and SMR-T. If the dispute is unable to resolved within [30] days after the negotiation, then either parties may commence legal proceedings in an appropriate court to resolve the dispute.

## **20.7 Applicable Law and Jurisdiction**

This Agreement is to be construed according to the laws of the country (and state/province, if applicable) from which this Agreement is issued as shown by the address of SMR-T, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any action or proceedings by SMR-T against Supplier may be brought by SMR-T in any court(s) having jurisdiction over Supplier or, at SMR-T's option, in the court(s) having jurisdiction over SMR-T's location, in which event Supplier consents to jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Supplier against SMR-T may be brought by Supplier only in the court(s) having jurisdiction over the location of SMR-T from which the Terms is issued.

## **20.8 Continuing Obligations**

The obligations of Supplier under the following Articles will survive the expiration, non-renewal or termination of any purchase order: Articles 2.9, 7, 10, 11, 12, 14, 15, 16 and 20.

## **20.9 Severability**

If any terms or provisions of the Terms and/or purchase order are found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of the Terms.

Where any Terms are invalid, illegal or unenforceable, the parties shall negotiate in good faith to replace such Terms by a provision which is in accordance with the applicable law and which must be as close as possible to the parties' original intent and appropriate consequential amendments (if any) will be made to the Terms and/or purchase order.