



TERMS AND CONDITIONS OF SALE

1. BASIS OF SALE

- 1.1 SWTS Pte Ltd (“**SWTS**”) shall sell and Purchaser shall purchase the Goods and/or Services in accordance with any written quotation of SWTS which is accepted by Purchaser, or any Order of Purchaser which is accepted by SWTS, subject in either case to these Conditions, which shall govern the contract to the exclusion of any other terms, conditions, arrangements, customs or practices provided that any terms or conditions stipulated incorporated or referred to by SWTS in the written quotation (or in SWTS’s written acceptance) that are inconsistent with or varies from these Conditions shall override these Conditions. These Conditions shall supersede any other express or implied, written or oral terms, arrangements, customs or practices unless the written quotation of SWTS specifically states otherwise.
- 1.2 No variation to these Conditions shall be binding unless agreed in writing and signed by the authorised representatives of Purchaser and SWTS. SWTS objects to any varying terms proposed by Purchaser in its Order or any other document of Purchaser. Such varying terms shall not become part of the contract without the express written consent and signature of the authorised representatives of SWTS.

2. PRICE & TAXES

- 2.1 The price shall be SWTS’s quoted price, or the price accepted in writing by SWTS. The quoted prices are based upon the scope of the Services and/or Goods referred to in SWTS’s quotation. In the event of any variation in the scope of Services and/or Goods ordered from that of SWTS’s quotation, SWTS reserves the right to vary the price.
- 2.2 All transportation costs shall be for the account of Purchaser and shall be added to the invoice.
- 2.3 The price is exclusive of any applicable goods and services tax (“GST”) or other government charge or duty, which Purchaser shall be liable to pay at the rate from time to time prescribed by law. Any additional costs incurred by SWTS pursuant to any Act or any order or regulation made by any governmental body or department shall be paid by Purchaser. The price shall be net of any withholding tax payable by Purchaser.

3. TERMS OF PAYMENT

- 3.1 Purchaser shall pay the price within 30 days of the date of SWTS’s invoice. The time of payment of the price shall be of the essence of the contract. If Purchaser fails to make payment on the due date, then, without prejudice to any other right or remedy available at law or in equity, SWTS shall be entitled to:
- (a) cancel the contract or suspend any further deliveries and/or Services to Purchaser; and
 - (b) charge Purchaser interest on the amount unpaid on a daily basis at the rate of three per cent (3%) per annum above the DBS Bank Limited prime lending rate, from the due date until payment in full is made.
- 3.2 SWTS shall have the right to require full or partial payment in advance at any time if in its opinion the financial condition of Purchaser does not justify the terms of payment specified.

4. PRODUCT INFORMATION

- 4.1 All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the contract.

5. DRAWINGS AND DESCRIPTIONS

- 5.1 All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party.
- Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
- 5.2 SWTS shall, not later than at the date of delivery, provide information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. SWTS shall not be obliged to provide manufacturing drawings for the Product or for spare parts.



6. ACCEPTANCE TEST

- 6.1 Acceptance tests provided for in the contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.
If the contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.
- 6.2 SWTS shall notify the Purchaser in writing of the acceptance tests in sufficient time, but not less than 3 working days to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.
- 6.3 If the acceptance tests show the Product not to be in accordance with the contract, SWTS shall without delay remedy any deficiencies in order to ensure that the Product complies with the contract. New tests shall then be carried out at the purchaser's request, unless the deficiency was insignificant.
- 6.4 SWTS shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

7. RISK OF LOSS

- 7.1 Risk of damage to or loss of the Goods and/or Equipment shall pass to Purchaser at the time of delivery or, if Purchaser wrongfully fails to take delivery of the Goods and/or Equipment, the time when SWTS has tendered delivery of the Goods and/or Equipment. If the Services are performed on Purchaser's Site, risk of damage to or loss of the Goods and/or Equipment shall remain with Purchaser at all times.
- 7.2 Risk of loss or damage during transit to and from a SWTS factory or repair facility shall remain with Purchaser.

8. DELIVERY, DELAY & FORCE MAJEURE

- 8.1 Shipping and or completion dates are approximate and are subject to prompt receipt of all necessary information from Purchaser.
- 8.2 If work is delayed by Purchaser, SWTS may require payment for all Goods procured, materials accumulated and Services performed on this order and any expenses incurred as a result of such delay.
- 8.3 For the provision of Services at Purchaser's Site, Purchaser shall at its own costs and expense, take all necessary measures, to prepare Purchaser's Site and make available to SWTS free of charge such labour and equipment and any other materials and tools which SWTS requires for the provision of the Services. Purchaser is responsible for all things related to Purchaser's Site and shall supply SWTS with any information relating to Purchaser's Site which is relevant for the purposes of the provision of the Services.
- 8.4 SWTS shall not be liable for failure to perform or for delay in performance due to force majeure. For the purposes of this clause, force majeure shall mean any unforeseen event beyond the reasonable control of SWTS such as, but not limited to any act of God, act of government or any authorities, hostilities between nations, war, riot, civil commotions, civil war, insurrection, blockades, import or export regulations or embargoes, rainstorms, national emergency, earthquake, fires, explosion, flooding, hurricane or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings due to any such events. In the event of delay in performance due to any such cause the date of delivery or time for completion will be postponed by such length of time as may be reasonable necessary to compensate for the period of force majeure.

9. CONTAINERS

- 9.1 An extra charge will be made for returnable containers and special shipping devices (such as oil barrels, reels, tarpaulins, commutator clamps, etc.) where they are consigned to Purchaser, but refund will be made if returned in good condition to the factory, or other points designated by SWTS, within ninety (90) days from date of original shipment, charges prepaid.

10. SCRAP MATERIAL

- 10.1 All scrap materials shall become the property of SWTS.



11. WARRANTY

11.1 SWTS warrants that:

- (a) Services performed hereunder shall be free of defects in workmanship or material. Should any failure of the Services to conform to this warranty appear under normal and proper use within one year after shipment of the repaired or revamped Equipment by SWTS (or in the case of Equipment repaired or revamped on Purchaser's Site, after SWTS has notified Purchaser that the same is ready for commercial operation) SWTS shall correct the same by replacement or repair, F.O.B. factory of the defective part or parts.
- (b) If the Goods sold hereunder are the products of manufacturers other than SWTS, SWTS makes no warranty, express or implied concerning such Goods. Such Goods are sold "as is" with all faults, but SWTS shall use its best reasonable efforts to obtain from the manufacturer, in accordance with such manufacturer's customary practices, the repair or replacement of any Goods as may prove defective in workmanship or material.

11.2 SWTS shall be under no liability whatsoever:-

- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow SWTS's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without SWTS's approval or improper or inadequate maintenance by Purchaser; or
- (b) if the total price for the Services has not been paid by the due date for payment;

11.3 The warranty expressed in this paragraph is exclusive and in lieu of all other warranties, express or implied, including any warranties of satisfactory quality and fitness for purpose.

11.4 The remedy(ies) provided above shall be Purchaser's sole remedy(ies) for any failure of SWTS to comply with the warranty provisions, whether claims by Purchaser are based in contract or in tort (including negligence) or otherwise.

12. CLAIMS

12.1 Purchaser agrees in consideration of SWTS's execution of this contract that any claim of any kind by Purchaser based on or arising out of this contract or otherwise shall be barred unless asserted by Purchaser by the commencement of an action within 12 months after the delivery of the Services and/or Goods or other event, action or inaction to which such claim relates. This provision shall survive any termination of this contract however arising.

13. LIMITATION OF LIABILITY

13.1 Neither SWTS nor its subcontractors and suppliers shall be liable in contract or in tort (including negligence) for any special, indirect, incidental or consequential damages including but not limited to damage or loss of other property or equipment, loss of profits or revenue, loss of use of Equipment, cost of capital, economic loss or other loss of turnover, business, goodwill, data or losses arising from production stoppage, or claims of customers of Purchaser for service interruptions.

13.2 The remedies of Purchaser set forth herein are exclusive, and the liability of SWTS with respect to any contract, or anything done in connection therewith such as the performance or breach thereof or from the manufacture, sale, delivery, resale, installation or technical assistance during installation, maintenance, repair, technical assistance during maintenance and repair, or use of any equipment covered by or furnished under this contract whether in contract, in tort or otherwise shall not, except as expressly provided in the provision entitled "Warranty", exceed the price set forth herein for the Services.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 If any claim, demand, action or proceeding is brought against Purchaser for alleged infringement of any registered design or trade mark or trade name or copyright or letters patent (the specifications of which are published prior to the date of the Order) by the Goods or any part thereof or any allegation of such infringement is made, and provided that Purchaser does not concede the existence of an infringement but gives SWTS immediate notice in writing of any such allegations or infringement or of the institution of any such action or proceeding and permits SWTS to answer the allegation as it deems fit, and also provided that Purchaser gives SWTS (at SWTS's costs and expense) all information assistance and authority required for those purposes and does not by any act (including any admission or acknowledgment) or omission prejudice the conduct of such defence; then SWTS will at its own election either effect any settlement or compromise which it deems reasonable or at its own costs and expense defend any such action or proceeding, or inform the manufacturer of the Goods accordingly, and if the Goods or any part thereof is in such action or proceeding held to constitute infringement and is the subject of an injunction restraining its use or any order providing for its delivery up or destruction SWTS shall at its own election and costs and expense either:



- (a) procure Purchaser the right to retain and continue to use the Goods or part thereof; or
- (b) modify the Goods or any part thereof so that it becomes non-infringing; or
- (c) replace the Goods or any part thereof with one that is non-infringing.

14.2 SWTS shall not be under any of the obligations specified in clause 12.1 hereof in any of the following events:

- (a) Any infringement or allegation thereof which is based upon the use of the Goods in a manner or for a purpose not reasonably to be inferred by SWTS or disclosed to SWTS prior to making the contract; or
- (b) Purchaser entering into any compromise or settlement in respect of such action or proceeding without SWTS's prior consent in writing; or
- (c) Modifications of the Goods by Purchaser or a third party.

14.3 If Purchaser stops using the Equipment and/or Goods in order to reduce the damage or for any other reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

14.4 In any event, SWTS shall not be liable for any damage or losses incurred by Purchaser arising from the use or non-use of the Equipment, any infringing Goods or any part thereof.

15. INDEMNIFICATION

15.1 SWTS shall subject to provision entitled "Limitation of Liability", indemnify and save Purchaser harmless for, but only for, claims for physical damage to property and personal injuries, including death, occurring during the performance of the Services and resulting directly and solely from the negligence of the employees of SWTS while engaged in such Services. SWTS shall, with respect to such Services, comply with the Workmen's Compensation Act.

16. TERMINATION

16.1 SWTS shall be entitled to (i) cancel the contract or suspend any further deliveries of the Goods or the Services under the contract without any liability to Purchaser, and (ii) if the Goods and/or Services have been delivered or completed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and (iii) retain any security given or monies paid by Purchaser and apply the said security or monies against the assessed loss and damages, if any, suffered by SWTS, in the event that:

- (a) Purchaser is in breach of the contract; or
- (b) Purchaser makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or have an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such proposal, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager or be placed under a judicial management order; or
- (c) an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of Purchaser; or
- (d) Purchaser ceases, or threatens to cease, to carry on business; or
- (e) there is a change in control of Purchaser which in the reasonable opinion of SWTS adversely affects the position, rights or interests of Purchaser (For the purpose of this sub-clause, "control" means the ability to direct the affairs of another whether by virtue of contract, ownership of shares, or otherwise howsoever); or
- (f) in the opinion of SWTS, there occurs a material change in the financial position of Purchaser which is likely to affect Purchaser's ability to perform its obligations under the contract; or
- (g) SWTS reasonably apprehends that any of the events mentioned above is about to occur in relation to Purchaser and notifies Purchaser accordingly.

16.2 Termination of the contract by SWTS shall not discharge Purchaser from any existing obligation accrued due on or prior to the date of termination.

16.3 The rights and remedies granted to SWTS pursuant to the contract are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

17. CONSEQUENTIAL LOSSES

17.1 Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.



18. MISCELLANEOUS

- 18.1 No waiver by SWTS of any breach of the contract by Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision. If SWTS delays or chooses not to enforce its right under the contract, it shall not affect its right to do so at a later date.
- 18.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part such provision shall be construed, limited or if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected but shall remain in full force and effect.
- 18.3 The contract is the entire agreement between the parties and may not be changed unless agreed in writing by properly authorised representatives of both parties.
- 18.4 Save for the SWTS group of companies, the parties do not intend that any term of the contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act (Chapter 53B of Singapore) or otherwise, by any person who is not a party to the contract.
- 18.5 The contract and these Conditions shall be governed by and construed in accordance with the laws of Singapore. The parties submit themselves to the exclusive jurisdiction of the Singapore courts.

19. DEFINITIONS

- 19.1 "Equipment" means Purchaser's equipment which is the subject of the Services to be provided by SWTS under this contract.
- 19.2 "Goods" means the goods (including spare parts and replacement parts) which SWTS is to supply together with the provision of the Services in accordance with these Conditions.
- 19.3 "Services" means without limitation the maintenance, overhaul, rebuilding, repair, retrofitting, testing, upgrading, and project related services which are the subject of the contract.
- 19.4 "Site" means the address where any Services are to be performed.